

South Dakota Public Utilities Commission

HP14-001 In the Matter of the Petition of TransCanada Keystone Pipeline, LP for Order Accepting Certification of Permit Issued in Docket HP09-001 - Evidentiary Hearing August 5, 2015, 8:00 a.m.

Room 414, State Capitol, 500 E. Capitol Ave., Pierre, SD

Please Print Legibly

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Zora Lone Eagle	" "	
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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PETITION HP14-001
OF TRANSCANADA KEYSTONE PIPELINE,
LP FOR ORDER ACCEPTING CERTIFICATION
OF PERMIT ISSUED IN DOCKET HP09-001
TO CONSTRUCT THE KEYSTONE XL
PIPELINE

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Transcript of Hearing
July 27, 2015 through August 5, 2015

Volume IX
August 5, 2015
Pages 2253-2507

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BEFORE THE PUBLIC UTILITIES COMMISSION

CHRIS NELSON, CHAIRMAN
KRISTIE FIEGEN, VICE CHAIRMAN (not present)
GARY HANSON, COMMISSIONER

COMMISSION STAFF

John Smith
Kristen Edwards
Karen Cremer
Greg Rislov
Brian Rounds
Darren Kearney
Tina Douglas
Katlyn Gustafson

Reported By Cheri McComsey Wittler, RPR, CRR

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota State Capitol
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South Dakota, on the 5th day of August, 2015.

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1 MR. SMITH: We'll call the hearing back to order
2 in Docket HP14-001, In the Matter of the Petition of
3 TransCanada Keystone Pipeline, LP For Order Accepting
4 Certification of Permit Issued in HP09-001 to Reconstruct
5 the Keystone XL Pipeline Project.

6 And we are now at the point of Applicant's --
7 Petitioner's, I should say, rebuttal. And I will turn it
8 over to TransCanada.

9 MR. WHITE: Thank you, Mr. Smith. Keystone
10 calls Dan King to the stand.

11 (The oath is administered by the court reporter.)

12 DIRECT EXAMINATION

13 BY MR. WHITE:

14 Q. Good morning, Mr. King.

15 A. Good morning.

16 Q. Would you state your name and business address for
17 the record, please.

18 A. Dan King, Calgary, Alberta.

19 Q. And could you briefly describe your educational
20 background?

21 A. I have a Bachelor of Science degree in electrical
22 engineering from the University of Calgary.

23 Q. And could you tell us about your employment history
24 at TransCanada, please.

25 A. I have 32 years of experience with TransCanada.

1 Q. And what is your current position?

2 A. Currently I am vice president of engineering and
3 asset reliability and chief engineer for the company.
4 Engineering and asset liability is accountable for the
5 long-term reliability for all of TransCanada's physical
6 assets.

7 Q. And in the course of your 32 years of employment at
8 TransCanada have you developed a familiarity with welding
9 practices and procedures and wedding inspection
10 procedures?

11 A. The welding and welding inspection group reports to
12 myself, and I have general familiarity with working with
13 senior individuals in those groups over the past number
14 of years.

15 Q. And do you have before you what's been marked as
16 Exhibit 2006, which is called the rebuttal testimony of
17 Dan King?

18 A. Yes, I do.

19 Q. And did you participate in the preparation of that
20 testimony and review it?

21 A. Yes, I did.

22 Q. And is it your understanding that paragraphs 12 and
23 13 of that testimony are not going to be offered today as
24 they address issues in Mr. Vokes's testimony which was
25 not admitted into evidence?

1 A. That is correct.

2 Q. And if I asked you the questions in that prepared
3 testimony today, with the exception of paragraphs 12 and
4 13, would your answers be the same?

5 A. Yes, they would.

6 Q. Would you adopt that testimony as your sworn
7 testimony in this proceeding?

8 A. I do.

9 MR. WHITE: I would move the admission of
10 Exhibit 2006 with the exception of paragraphs 12 and 13.

11 MR. SMITH: Is there objection from Intervenors?

12 MR. ELLISON: No objection.

13 MR. SMITH: I'm not seeing anybody indicating
14 objections so I'm going to assume not.

15 MR. GOUGH: No interrupting objections.

16 MR. SMITH: Okay.

17 Staff.

18 MS. EDWARDS: No objection.

19 MR. SMITH: What is it?

20 MR. WHITE: 2006.

21 MR. SMITH: 2006 is admitted.

22 Q. Mr. King, your rebuttal testimony that was just
23 admitted, whose testimony does that rebuttal testimony
24 address?

25 A. That of Mr. Evan Vokes.

1 Q. Okay. And were you in the room here on Saturday and
2 Monday when Mr. Vokes testified live and added additional
3 testimony to the record?

4 A. Yes, I was.

5 Q. And do you have familiarity with Mr. Vokes's roles
6 and responsibilities while he was employed at
7 TransCanada?

8 A. Yes, I do. During Mr. Vokes's employment with
9 TransCanada he worked in a group of which I led.

10 Q. Could you briefly discuss your views of Mr. Vokes's
11 level of expertise with respect to the issues that he
12 testified on?

13 A. Mr. Vokes began with TransCanada as an engineer in
14 training and had limited amounts of practical experience.
15 We had teamed him up with senior individuals, a number of
16 who he mentioned during his testimony, all of who have
17 greater than 30 years of experience in the areas of
18 welding and welding inspection.

19 Mr. Vokes -- or the areas of welding and welding
20 inspection were really the core areas of Mr. Vokes's work
21 done. He was not asked nor did he really gain any
22 experience in areas of coatings or cathodic protection.

23 Q. And do you recall the correction that Mr. Vokes made
24 to his testimony with respect to the length of the
25 North Central Corridor Buffalo West system?

1 A. Yes, I do.

2 Q. And do you have any comment on that correction?

3 A. That number was incorrect. The actual length of
4 that pipeline is 54.3 kilometers which works up to be
5 about 33.7 miles, not the 306 miles that he corrected
6 that to.

7 Q. And did you hear Mr. Vokes's testimony with respect
8 to a project called the Cutbank project?

9 A. Yes, I did.

10 Q. Could you very briefly describe that project?

11 A. The Cutbank Pipeline project is a 24-inch diameter
12 natural gas pipeline project located in Northern Alberta,
13 Canada.

14 Q. And for the Commission's benefit could you briefly
15 describe what was called the AUT or automated ultrasonic
16 testing process?

17 A. An AUT is a technique for inspecting welds that is
18 actually -- the closest analogy that I can come up with
19 or the similar technique -- when I try to explain AUT to
20 people the way I explain it is it's similar to medical
21 ultrasounds that people would be familiar with.

22 In the case of AUT on pipeline, the ultrasonic
23 inspection head is mounted on a band or a track that goes
24 around the pipe. The head has to be virtually in contact
25 with the pipe. It travels around the pipe through

1 digital signal processing, an imagine is rendered of the
2 weld, which then the operator can interpret.

3 Q. And do you recall Mr. Vokes's testimony regarding
4 issues around AUT testing on the Cutbank project, welding
5 testing?

6 A. Yes, I do.

7 Q. Were there problems associated with those issues on
8 that project?

9 A. When we submitted the procedures to the National
10 Energy Board there were a couple of clerical and
11 administrative errors in the procedures.

12 Frankly, the first one that happened was that when
13 we photocopied the procedures the procedures were double
14 sided and we -- the person who copied them put the copier
15 on single sided so there was gaps, which the board
16 obviously caught.

17 They also didn't like the way we had the procedures
18 organized, even though we had previously been submitting
19 the procedures that way.

20 Q. And did the Canadian National Energy Board consider
21 and make findings concerning those procedures?

22 A. Yes, they did.

23 Q. And what was the nature of those findings?

24 A. They obviously wanted us to correct the immediate
25 clerical errors, the double-sided problem I talked about.

1 After we explained the way they were organized they
2 allowed us to proceed with welding on that particular
3 project, and we undertook over the following year to
4 rewrite the procedures to organize them more in the way
5 the National Energy Board would like them to be
6 organized.

7 Q. And did those issues with respect to the welding
8 procedures on that project affect the safety of the welds
9 on the project?

10 A. As I said, the problems with the procedures were
11 administrative in nature and not technical. And so they
12 in no way impacted the actual physical safety of the
13 welds.

14 Q. And do you recall Mr. Vokes's testimony with respect
15 to an incident at Otterburne, Manitoba?

16 A. Yes, I do.

17 Q. And was there a pipeline failure at Otterburne,
18 Manitoba?

19 A. Yes, there was. In January of 2014 a natural gas
20 pipeline about 50 kilometers, 30 miles, south of Winnipeg
21 failed, ruptured.

22 Q. And do you know, was it ultimately determined what
23 the cause of that failure was?

24 A. Yes, it was.

25 Q. What was the cause?

1 A. The Canadian Transportation Safety Board Report,
2 which came out last week, determined that the pipe failed
3 at a weld where the pipeline was connected to a main line
4 valve. There was a flaw in that weld that had been there
5 since the weld was completed.

6 Q. And do you know the vintage of that weld?

7 A. That weld was completed in 1960 so about 53, 54
8 years ago.

9 Q. And when that weld was made were there different or
10 the same standards in effect at that time?

11 A. There were different standards in place.

12 Q. Have there been any improvements to welding
13 procedures since that time?

14 A. Yes. There's been significant changes in the
15 recognition of what causes cracks in welding. Those have
16 been changed.

17 And the real significant difference is that in 1960
18 all welds were not inspected. TransCanada now inspects
19 100 percent of pipeline welds.

20 Q. So do any of the remaining 1960s vintage welds on
21 that system pose a safety threat in your view?

22 A. No, they do not.

23 Q. Why is that?

24 A. Well, TransCanada worked with the National Energy
25 Board to look at other welds on that pipeline. We

1 inspected all the similar welds and found no issues. And
2 if you look at the conclusions or recommendations of the
3 Transportation Safety Board Report, there are no further
4 actions recommended by TransCanada.

5 Or sorry. For TransCanada.

6 Q. Thank you.

7 Do you recall Mr. Vokes's testimony concerning
8 problems with the pipe and the welding on the base
9 Keystone Pipeline system?

10 A. Yes, I do.

11 Q. And did Mr. Vokes work on or have any involvement
12 with the U.S. portion of the base Keystone system?

13 A. Mr. Vokes worked on the Canadian portion of the
14 Keystone project. Mr. Dave Hodgkinson, who Mr. Vokes
15 referred to numerous times, was the person assigned to
16 the U.S. portion of the base Keystone.

17 Q. Was there a problem with the pipe that was being
18 produced at the original pipe fabrication mill for the
19 Canadian portion of that project?

20 A. Yes. The pipe that was being manufactured at the
21 original mill was rejected by TransCanada.

22 Q. So did TransCanada install any of that pipe?

23 A. None of that pipe was ever shipped to be received by
24 TransCanada.

25 Q. Was there an alternate pipe mill for the pipe that

1 needed to be fabricated for that project?

2 A. Yeah. At the time we were actually looking to
3 diversify the number of suppliers of steel pipe. That
4 was in short supply. And knowing that this mill was
5 really trial order, first order with TransCanada, we had
6 arranged with three other mills to be able to prepare
7 pipe should we need it.

8 Q. So did the pipe that was ultimately procured for
9 that project meet code?

10 A. Yes, it did.

11 Q. Were there issues related to what's been described
12 as "peaked pipe"?

13 A. No, there was not.

14 Q. Again, for the Commission's benefit, could you just
15 briefly describe what peaked pipe means?

16 A. When pipe is -- well, longitudinal seam pipe is
17 constructed it is built from flat plate. The plate is
18 first formed up into a U shape and then formed, as I say,
19 into an O pipe at the top.

20 You can imagine as the pipe comes together at the
21 top there's an opportunity for the pipe not to be round.
22 And so what they do is before the plate is formed into
23 the U shape they crimp the edges of the pipe so that they
24 come together, sort of in a -- you know, aligned as you
25 would like.

1 If they crimp it too much, you end up with a flat
2 spot on the pipe. If they don't crimp it enough, you end
3 up with a peak on the pipe. So that is what Mr. Vokes
4 was referring to as peaked pipe.

5 Q. And is it possible that peaked pipe can cause
6 difficulties with the AUT process?

7 A. Well, it is possible. Because although it's not so
8 much the peak on the pipe that causes the problem, it's
9 the longitudinal weld seam as it comes up.

10 I talked about AUT being similar to medical
11 ultrasound. And for those people who have had a medical
12 ultrasound you know how they push the inspection head
13 quite hard into your body and they have this sort of
14 slime stuff to facilitate coupling of the ultrasonic
15 signal to your body? And so that close contact is
16 important for ultrasonic inspection.

17 In AUT it's a similar sort of dealing. The head has
18 to be very close, and they use water as the couplant. And
19 it's very rigid, fairly large inspection head. So any
20 sort of bump can lift the head off the pipe so it's
21 important to have smooth pipe.

22 Q. If that problem arises in the AUT process, is there
23 an alternative way to test those welds?

24 A. So typically what happens when they're doing a scan
25 is if they get a liftoff and a skip, they'll go back and

1 rescan again. If it still doesn't work, they'll look at
2 the long seam again.

3 Before they do AUT the long seam is actually ground
4 back to provide smooth surface. They may regrind if it
5 wasn't perfect to try to get it smooth. If that doesn't
6 work, they will go to a handheld ultrasonic inspection to
7 do the weld so they get 100 percent coverage.

8 Q. And if pipe is testing using the alternate handheld
9 method, does it come within the tolerances permitted by
10 code?

11 A. Absolutely.

12 Q. Was there any pipe installed on the base Keystone
13 project that was inspected in a manner that didn't come
14 within the tolerances permitted by code?

15 A. No, there wasn't. Code actually allows for -- code
16 recognizes that during that process you're not going to
17 get perfectly round pipe.

18 And I'll talk about the Canadian code for this one.
19 The Canadian and U.S. code are similar, but the Canadian
20 code says that if you were to draw a perfectly -- a
21 perfectly round circle, the pipe can't be lower or higher
22 than that perfect circle by more than 3 millimeters.

23 TransCanada specification requires that the pipe not
24 deviate by more than 2 millimeters from that perfect
25 circle. And all the pipe that was installed met

1 TransCanada's spec.

2 Q. Is peaked pipe -- sorry. Is peaked pipe more
3 susceptible to fatigue?

4 A. You know, theoretically if you were way outside of
5 those tolerances I just talked about, it could over a
6 very long period of time fatigue. But, you know, if it's
7 done within tolerance, fatigue is just not an issue, you
8 know, within the lifespan of a pipeline.

9 Q. So do you consider any of the pipe that was
10 installed on the base Keystone system to be unsafe?

11 A. No, I do not.

12 Q. Did you hear Mr. Vokes's testimony, I believe, on
13 Saturday regarding gas metal arc welding?

14 A. Yes, I did.

15 Q. Can you explain what's meant by that term?

16 A. Mechanized gas metal arc welding is a high
17 production welding system that we use. There is a -- a
18 band placed around the pipe. The welding head then moves
19 around this band to deposit the different weld layers
20 into the -- into the connection point.

21 It's a gas -- inner gas shielded process so there's
22 no weld slag as a result of using that process.

23 Q. And does TransCanada utilize that process on any of
24 its projects?

25 A. TransCanada uses that quite often on larger diameter

1 projects. It really -- it sort of pays off on larger
2 diameter projects.

3 Q. And I believe Mr. Vokes referred to a term called
4 "lack of fusion defects." Do you recall that?

5 A. Yes, I do.

6 Q. Can you explain what's meant by that term?

7 A. Lack of fusion is something that happens in this
8 process where the weld bead tends to fuse more to one
9 side of the -- of the weld bevel than to the other. And
10 so there's a lack of fusion to both sides. That would be
11 a lack of fusion defect.

12 Q. And are those types of defects generally found
13 during the inspection process?

14 A. Yes, they are.

15 Q. And what happens if they are found?

16 A. If they're found, they're removed or repaired.

17 Q. Do you recall Mr. Vokes's testimony with respect to
18 the Bison Pipeline project?

19 A. Yes, I do.

20 Q. And can you very briefly describe that project?

21 A. The Bison Project was a project primarily in -- was
22 a project in the --

23 Sorry. I'm just having a mental lapse here on which
24 state it was in.

25 Q. Would it have been in Wyoming?

1 A. In Wyoming. Thank you.

2 It was a natural gas project. It was built under
3 Part 192, under a new Section 192 called the Alternate
4 MOP Rule, which allows natural gas pipelines to operate
5 to 80 percent stress level.

6 Q. And were there any problems related to construction
7 of that project?

8 A. Not -- you know, I'd say there was typical startup
9 problems, as Mr. Vokes referred to. Not only was this an
10 Alternate MOP Project under the gas rule, it was also one
11 of the first applications under PHMSA's construction
12 OQ Rule. And so there was a lot of teething pains as we
13 got all of that up to speed.

14 Q. And was there a failure on the Bison Project?

15 A. Yes, there was. There was an in-service failure.

16 Q. And has the cause of that failure been identified?

17 A. Yes, it was. It was caused by external force.

18 Although we were not able to determine exactly what that
19 was, it appears that it was struck, you know, by a large
20 piece of heavy equipment, backhoe or similar equipment.

21 Q. And does that represent a welding defect, that type
22 of cause?

23 A. No, it doesn't.

24 Q. And did PHMSA become involved when there was a
25 failure on the Bison Project?

1 A. Yes. After the pipeline failure PHMSA issued a
2 corrective action order to TransCanada to, you know, stop
3 operating the pipeline and work through the cause.

4 Q. And what was the result of PHMSA's involvement and
5 review of that incident?

6 A. So PHMSA reviewed all the orders that had been part
7 of that pipeline. We inspected the pipeline again from a
8 high resolution caliber inspection as well as a high
9 resolution MFL tool, a gouge -- a tool that detects
10 gouges and corrosion.

11 As a result of that inspection, there were a number
12 of digs to check on indications from the tools. There
13 were no other issues found on the pipeline other than I
14 think three other gouges in very close vicinity to the
15 one that caused the failure. No other issues were found.

16 Q. Did PHMSA allow the Bison Project to go back into
17 service?

18 A. Yes. After the review PHMSA allowed the project to
19 go back into service at the 80 percent stress level
20 pressure, and they have cleared the corrective action.

21 Q. Has TransCanada incorporated any improvements to its
22 practices and procedures as a result of the Bison
23 incident?

24 A. Yes. As a result of that project, we improved
25 worker and inspector training, and we increased the

1 number of inspectors typically on the projects. The next
2 projects in line were those implemented on the Gulf Coast
3 project.

4 Q. And do you anticipate that those improvements will
5 be carried forward on future projects?

6 A. Absolutely.

7 Q. I believe it was on Saturday -- it might have been
8 Monday. I think there was an allegation from Mr. Vokes
9 that TransCanada prefers to cover up problems and not
10 report and address them.

11 Can you comment on that assertion?

12 A. Yeah. I disagree with that comment.

13 Bison is the perfect example of this. I mean, if we
14 had been able to find that gouge in the pipeline when it
15 happened, the total cost to repair that would have been
16 \$100,000, probably.

17 The cost of the Bison failure just strictly in
18 dollar terms was in the millions of dollar range, and the
19 impact, our reputation and reputation with the shippers
20 on that pipeline was, you know, significant as well.

21 Q. Did you hear Mr. Vokes's comment that there are
22 1,200 to 1,300 welds in the ground that have not been
23 subject to an inspection that meets code?

24 A. Yes, I did.

25 Q. Could you comment on that assertion?

1 A. I disagree with that assertion. I mean, this
2 particular project with the huge scrutiny by PHMSA, the
3 signoff at multiple levels, 100 percent audit of the
4 welds, numerous reviews, that just is not the case.

5 Q. And do you recall Mr. Vokes stating that he was
6 asked to ignore regulatory violations on that project?

7 A. Yes, I do.

8 Q. Would that direction be consistent with
9 TransCanada's policy and practice?

10 A. No. It certainly would not be.

11 Q. I believe on Monday Mr. Vokes testified with respect
12 to a welding inspection company called Weldsonex.

13 Did you hear that testimony?

14 A. Yes, I did.

15 Q. And was any Weldsonex entity ever disqualified from
16 performing services for TransCanada?

17 A. In 2004 TransCanada did a project in Northern
18 Alberta called the Peerless project. And on that project
19 Weldsonex was the inspection vendor. We weren't happy
20 with the way they performed, and we did suspend them for
21 some time after that until they could determine that they
22 had improved.

23 Q. And was there a Weldsonex entity that was contracted
24 to perform welding inspection services on the base
25 Keystone project?

1 A. The powerless Project it was Weldsonex Canada. We
2 did contract with Weldsonex U.S.A. for work on the base
3 Keystone Project.

4 Q. Was there a qualification process involved in
5 retaining Weldsonex U.S.A.?

6 A. Yes, there was. There was a trial as well as
7 100 percent audit on the work that they did on base
8 Keystone.

9 Q. Can you briefly discuss the performance of Weldsonex
10 U.S.A. on the base Keystone Project?

11 A. So they performed very well for us. As I said,
12 because of the -- you know, the fact that we were just
13 using them effectively for the first time or Weldsonex
14 U.S.A. for the first time we did 100 percent audit.

15 As part of that project or after that project we
16 also had an anonymous person raise issues about
17 inspection on that pipeline. So we had another
18 100 percent audit, which in this case was carried out by
19 Dave Hodgkinson. He inspected 100 percent of the welds
20 and, once again, found no issues with the work that
21 Weldsonex had done.

22 Q. Did you hear Mr. Vokes's testimony on Monday
23 regarding scraping of the coating on an HDD that was
24 ultimately unsuccessful?

25 A. Yes, I did.

1 Q. And what happens in the event that an HDD is
2 unsuccessful?

3 A. Well, when we do an HDD there are always these
4 chances of damage. So we inspect the pipe carefully for
5 any deformations, any other sort of issues.

6 If the issues are ones that can be repaired, we
7 repair them. If the damage is such that they can't be
8 repaired, we redrill and put a new crossing in at the
9 same point. This all happens before we go into service
10 obviously.

11 Q. And is that what happened in that instance?

12 A. I can't remember exactly what happened on that
13 failure, if it was repaired or if it was replaced.

14 Q. Okay. Do you recall Chairman Nelson's question
15 regarding whether there were any hydro test failures in
16 South Dakota?

17 A. Yes.

18 Q. On base Keystone?

19 A. Yes, I do.

20 Q. Were there any such failures?

21 A. There was one failure on the pipeline construction
22 project, yes.

23 Q. And can you discuss the characteristics of that
24 failure?

25 A. The -- we had a leak during the hydro test at a road

1 crossing where there had been a weld that had been
2 repaired during construction.

3 Q. Was that an open cut crossing?

4 A. Yes, it was.

5 Q. Could you briefly discuss the purpose of hydro
6 testing?

7 A. Hydro testing is one of the numerous steps we have
8 within our quality management process to ensure that a
9 pipeline's safe before it went into service. As is
10 designed, this is sort of the ultimate test, and that
11 weld was discovered through that ultimate test.

12 Q. And what happens when there's a hydro test failure?

13 A. Well, obviously the affected area or the affected
14 weld had to be replaced. As part of the Special Permit
15 Conditions on base Keystone we also had to report this to
16 PHMSA and provide a detailed cause analysis report.

17 Q. And did you do anything to check similar welds after
18 that hydro test failure occurred?

19 A. Yes. In conversations or discussions with PHMSA we
20 evaluated all similar welds on the pipeline and there was
21 six other welds that were excavated and there was no
22 issue found with any of those welds.

23 Q. So in your position as senior vice president and
24 chief engineer, are you familiar with the company's
25 overall safety record and performance?

1 A. Yes, I am.

2 Q. Would you care to comment for the Commission on
3 that?

4 A. Sure. You know, our safety record is very important
5 to us. Our objective is to have zero failures. It's a
6 score card item at a corporate level and at an individual
7 level.

8 Every time we have a failure every employee in the
9 company's compensation is impacted by events like that.
10 We compare our performance against other companies out
11 there.

12 We compare very favorably in our performance
13 compared to those companies and other companies in
14 Canada, Europe, Australia, other companies that prepare
15 and publish statistics around pipeline performance.

16 Q. And in your view has the base Keystone Pipeline
17 system performed in a safe manner since it's gone into
18 operation?

19 A. As we have discussed before and publicly released,
20 the pipeline's now flowed over 1 billion barrels of crude
21 oil. That's a significant milestone in five years and I
22 think goes to how well that pipeline has performed.

23 MR. WHITE: Thank you, Mr. King. I have no
24 further questions.

25 The witness is available for cross.

1 MR. SMITH: Okay. Mr. Clark.

2 MR. CLARK: No questions for this witness.

3 MR. SMITH: Thank you. Mr. Rappold.

4 MR. RAPPOLD: Rosebud's going to defer to Dakota
5 Rural Action.

6 MR. SMITH: Mr. Capossela.

7 MR. CAPOSSELA: Thank you, Mr. Smith.

8 CROSS-EXAMINATION

9 BY MR. CAPOSSELA:

10 Q. Good morning, sir. My name is Peter Capossela. I'm
11 a lawyer for the Standing Rock Sioux Tribe, South Dakota
12 and North Dakota.

13 You stated that whenever we have a failure every
14 employee's compensation is affected. And so is the point
15 there that safety affects the bottom line? Is that the
16 point you're trying to make?

17 A. I think the point I'm trying to make is that it's in
18 everybody's interest not only from sort of a moral and
19 ethical perspective but from a personal remuneration
20 perspective to make sure we do the right thing and we
21 don't have failures.

22 Q. What is the price of a barrel of oil today? Do you
23 know that?

24 A. Approximately \$50.

25 Q. Do you know, is the price going up or down

1 generally?

2 A. It's been volatile up and down.

3 Q. Do you know what the price of a barrel of oil was a
4 year ago?

5 A. \$100.

6 Q. So twice what it is today. So probably safe to say
7 it's gone down; is that correct?

8 A. I don't know. A few years ago it was \$40 a barrel.
9 So, I mean, it's volatile.

10 Q. When was that?

11 A. Five years ago I think it was \$40 a barrel.

12 Q. At what point per your information -- how far down
13 does the price of a barrel of oil need to go before
14 TransCanada will give up its quest to build Keystone XL?

15 MR. WHITE: Objection. Beyond the scope.

16 MR. SMITH: Sustained.

17 MR. CAPOSSELA: I have no further questions for
18 this witness.

19 MR. SMITH: Ms. Real Bird, Ms. Baker.

20 CROSS-EXAMINATION

21 BY MS. REAL BIRD:

22 Q. Good morning, Mr. King.

23 A. Good morning.

24 Q. My name is Thomasina Real Bird. I'm an attorney for
25 the Yankton Sioux Tribe.

1 Are you familiar with the terminology "sleeve" if I
2 use that in my questions?

3 A. Sorry. I didn't get that.

4 Q. Sleeve.

5 A. Yes. I've heard that terminology.

6 Q. And would you describe what a sleeve is?

7 A. Sleeves are used to repair the pipeline where there
8 are areas of metal loss. They can be sort of two major
9 forms, called type A sleeve and type B sleeve.

10 One of them is simply compressed around the pipe and
11 is not welded to the pipe. The other one is welded to
12 the pipe so two different types of sleeves.

13 Q. And were either of the two types of sleeves applied
14 to the base Keystone Pipeline?

15 A. Yes.

16 Q. Would you describe the process of applying those
17 sleeves to the base Keystone Pipeline?

18 A. So do you want the welded on sleeve or the nonwelded
19 on sleeve?

20 Q. Just start with one, and then I'll ask the question
21 for the second one as well.

22 A. For a nonwelded on sleeve the pipeline is excavated.
23 The area of -- you know, the defect is uncovered. The
24 pipe is sandblasted. The pressure in the pipeline is
25 lowered to facilitate work on the pipeline. The two

1 halves of the sleeve are placed around the pipe. There
2 is hydraulic clamps used to clamp them. Where the two
3 halves going together are welded.

4 The area is then -- or the actual sleeves are also
5 sandblasted and a repair coating is placed on the pipe
6 and it is reburied.

7 Q. And the second process?

8 A. Very similar to the first process, other than the
9 material of the base pipeline has to be prepared so that
10 it can be welded. That's in-service welding. We make
11 sure that the flow rate of the pipeline is such that
12 there's not excess cooling of the weld area we're
13 welding.

14 Very similar process. The two halves are put on.
15 They're clamped together. But this time not only are the
16 long -- the joining pieces of the two halves of the
17 sleeves welded together, the two circular ends are welded
18 to the pipe as well. And then the rest of it's the same.

19 Q. And how many sections of the base Keystone have had
20 a sleeve applied of either type?

21 A. I don't have the exact number.

22 Q. Do you know how many feet or miles or whatever unit
23 of measurement you're familiar with have had a sleeve
24 applied to Keystone?

25 A. So I don't know the overall numbers. I did look up

1 the numbers for South Dakota, and each of these sleeves
2 is a couple feet long. And we actually -- we did 10 digs
3 in South Dakota, none of which required a sleeve.

4 Q. So does that mean that there were no feet of sleeves
5 applied in South Dakota?

6 A. That would be correct, to the best of my knowledge.

7 Q. Are there any other forms of repair or replacement
8 in addition to the sleeve processes that you described
9 that were used for the base Keystone?

10 A. I don't believe we've done any -- I mean, the other
11 way you would address it would be you would cut out pipe.
12 And we haven't cut out any pipe. We have used -- not on
13 the pipeline. On the pipeline itself we haven't used any
14 other form of repair.

15 Q. So we heard testimony earlier in the proceedings
16 about 14 leaks that were present on the Keystone base
17 pipeline.

18 How were those repaired?

19 A. Well, none of those -- none of those leaks were
20 actually on the pipeline itself. All of those leaks were
21 within the pump stations, and they were on threaded
22 fittings.

23 So the way those were repaired are -- I mean, we're
24 talking short little pipe nipples generally. They're
25 basically tightened or they're removed and wrapped with a

1 thread sealant and tightened again. That's really what
2 the -- the way those are repaired.

3 Q. Could you repeat the -- is it a gasket? Basically a
4 gasket, what we would be familiar with in layman's terms,
5 what you described?

6 A. No. No. I don't think any of the leaks were what
7 we called a flanged fitting leak. They were all threaded
8 fittings. So, you know, just a regular pipe thread.

9 Q. Just repairing the threaded area?

10 A. No. The problem is it probably wasn't tightened
11 enough so you just tighten it more.

12 Q. So, I mean, what -- if it wasn't tightened enough, I
13 guess what are the quality assurances that you go through
14 when you do assemble that portion of the pipeline to make
15 sure it's tight enough?

16 A. Well, so as part of the commissioning process we do
17 systematically go through. Obviously, on base Keystone
18 those procedures weren't thorough enough.

19 So on the Keystone Extension and the Gulf Coast we
20 tightened up those procedures. We added another level of
21 check. And on Gulf Coast we had I think one threaded
22 leak compared to the number we had on base Keystone. So
23 the improvement inspection process worked.

24 Q. Are they mechanically tightened or hand tightened?

25 A. They're mechanically tightened with wrenches.

1 Q. So in the base Keystone there was just a problem
2 calculating the amount of torque or -- I guess what was
3 the problem? Why were they tightened to the --
4 correctly?

5 A. There are thousands and thousands of these
6 connections. You're implying much more sophistication
7 than there actually is in doing these types of fittings.

8 These are workers with pipe wrenches tightening
9 connections. And, you know, they have a certain amount
10 of torque that basically they can do based on the length
11 of the wrench. And really that's the sophistication in
12 tightening those up.

13 Q. Okay. I think I might have misunderstood you. I
14 thought you said they were mechanically tightened. Or my
15 understanding of mechanical. Maybe that's different for
16 an engineer. I didn't realize it's human.

17 So subject to human error. Is that what you're
18 telling me?

19 A. I'm telling you the pipe fitters that do this work
20 are trained in putting together these types of
21 connections and sometimes I guess, you know, they didn't
22 pull hard enough on some of them and so we have
23 instituted checks to make sure that, you know, that
24 doesn't happen anymore.

25 Q. And what are the backgrounds of the folks that do

1 that tightening? Are they -- are they trained or
2 certified or hold a type of engineering degree that might
3 help?

4 A. Like I said, these are pipe fitters. These are
5 trades, people who do this type of work for a living.

6 Q. Will Keystone XL have pump stations and the threaded
7 fittings that you described?

8 A. Yes, it will.

9 Q. Do you consider any of the pipe installed on the
10 base Keystone to be unsafe?

11 A. No, I do not.

12 Q. So is it your testimony today that a pipe that
13 spills 14 times in the first year including one spill of
14 400 barrels is safe?

15 A. Yes, it is.

16 MS. REAL BIRD: No further questions.

17 MR. SMITH: Mr. Ellison or Martinez.

18 CROSS-EXAMINATION

19 BY MR. ELLISON:

20 Q. Good morning, Mr. King.

21 A. Good morning.

22 Q. My name is Bruce Ellison. I'm an attorney for
23 Dakota Rural Action.

24 Do I understand, sir, that you -- according to your
25 rebuttal testimony, you lead a team of approximately

1 600 engineers and other professionals whose job it is to
2 meet and exceed regulatory requirements in design,
3 construction, and safe operation of the pipeline,
4 TransCanada's pipelines; is that right?

5 A. That is true.

6 Q. And as part of that it would seem to me -- excuse
7 me. How long have you held that job?

8 A. I've had that particular vice president role since
9 2004.

10 Q. Okay. Great. And this was in projects in Canada,
11 the United States, and Mexico and other places; is that
12 right?

13 A. I've worked in numerous places, projects around,
14 yes.

15 Q. Do you feel it's important, as you are the team
16 leader, that you know where there are problems in the
17 pipeline that have been subject to PHMSA warning letters
18 and other such issues?

19 A. As they relate to engineering issues, yes, I inspect
20 them and generally am informed.

21 Q. Remember when you began your testimony and you
22 couldn't remember where the Bison spill was and Mr. White
23 told you it was Wyoming and you laughed and everybody
24 laughed?

25 A. Yes, I do.

1 Q. If PHMSA warning letter -- and there was a PHMSA
2 warning letter dated March 21, 2011, in that particular
3 incident, was there not?

4 A. There was a corrective action order.

5 Q. If it says warning letter referring to DRA Exhibit
6 66, would you disagree with me, want to see it?

7 A. Well, I understand that there was a warning letter.
8 So just understand my role is that I'm not in charge of
9 construction of projects. So warning letters that are
10 issued during construction I don't necessarily -- I'm not
11 necessarily made aware of them.

12 Q. So if you lead a team whose job it is to meet or
13 exceed the regulatory requirements in the design,
14 construction, and safe operation of a pipeline, that's
15 not your job?

16 A. I provide engineering standards and engineering
17 guidance that support construction. I don't actually
18 have direct authority over construction projects.

19 Mr. Goulet has that authority.

20 Q. Okay. I'm going to get to that in a moment. But if
21 the PHMSA warning letter actually said that the Bison
22 Project incident was in North Dakota rather than Wyoming,
23 you wouldn't disagree with PHMSA, would you?

24 A. No.

25 Q. Okay. And I don't mean to be facetious about this,

1 but your testimony reminds me of two phrases and songs,
2 and I want you to tell me which really is the overall --
3 which better meets what really your role here today is.

4 And the first part is a song that goes everything is
5 wonderful in its own way and the other song would be
6 don't worry be happy.

7 MR. WHITE: Objection. Argumentative.

8 MR. SMITH: Sustained.

9 Q. Okay. Let's talk some specifics, sir. You are the
10 permit holder, I believe, for a lot of these projects?

11 A. I don't understand your question.

12 Q. Well, are you the person who signs off as being the
13 person -- you know, for TransCanada on, oh, say the XL
14 base pipeline, Gulf Coast Pipeline?

15 A. No. That's not correct.

16 Q. Okay. Would you be willing due to the fact that you
17 lead the team that oversees all of these things -- and I
18 imagine, are you saying you're going to lead the team for
19 the KXL Pipeline if this Commission were to approve
20 recertification of construction?

21 A. My team provides engineering support to the project
22 while it's being constructed -- designed. My role really
23 takes over to provide or ensure that that pipeline is
24 reliable after it's constructed.

25 During design construction that is the

1 accountability of Mr. Goulet.

2 Q. Well, I guess I'm just kind of wondering and
3 probably should have also asked Mr. Goulet this question,
4 but would you be willing right now to consent to the
5 jurisdiction of South Dakota circuit courts for any
6 problems, any damages that are caused by this pipeline,
7 should it be approved?

8 MR. WHITE: Objection. Outside the scope of
9 this witness's area. Calls for a legal conclusion.

10 MR. ELLISON: I'm asking if he would agree to
11 the juris -- to subject himself to the jurisdiction of
12 our courts if he doesn't do his job.

13 MR. SMITH: Sustained.

14 MR. WHITE: Renew the objection.

15 Q. Well, I keep getting confused, sir. You keep saying
16 on one hand you lead a team of 600 engineers and other
17 professionals whose job it is to meet and exceed the
18 regulatory requirements in design, construction, and safe
19 operation, and now you're telling us really, well, you
20 just kind of give a little advice, but really you take
21 over after it's all done.

22 What really is your job?

23 A. As I stated before, my group provides the
24 engineering standards, specifications to which projects
25 will be built during the design and construction of

1 projects. My team reviews at those various stages. We
2 have a procedure for what will be accepted to be turned
3 over into operations.

4 We are the gate keepers to make sure that anything
5 that is built is safe and suitable for going into
6 operations.

7 Q. Is your team part of a larger department called
8 operations and engineering?

9 A. Yes, it is.

10 Q. Do engineers who work in operations report to you?

11 A. Yes, they do.

12 Q. Do engineers who work in the integrity department
13 report to you?

14 A. At this time for facilities integrity, yes, they do.
15 As of March of 2013 the integrity -- the people who do
16 the integrity work between the pump stations report to
17 another vice president in O and E. Operations and
18 engineering.

19 Q. I'd like to talk with you about some of the
20 incidents that you have discussed in your direct
21 testimony, sir. One of them being the Ludden spill.

22 You're familiar with that, sir?

23 A. I'm familiar with the spill at Ludden, yes.

24 Q. Was that on base Keystone?

25 A. Yes, it was.

1 Q. 400 barrels?

2 A. Yes.

3 Q. And you will agree with me, sir, that that caused
4 soil contamination?

5 A. Five barrels was spilled offsite and cleaned up.
6 The rest was on the pump station area itself and
7 contained there.

8 Q. Did you understand my question, or are there any
9 words in there that were hard for you to understand?

10 MR. WHITE: Objection. Argumentative.

11 MR. ELLISON: I'm just trying to understand
12 because he didn't answer the question. So I'm wondering
13 what the problem is, sir.

14 Q. My question to you is was there soil contamination,
15 period? Yes or no?

16 A. I believe I described two places where the soil was
17 contaminated both within the pump site and outside.

18 Q. Okay. So the answer is yes, there was soil
19 contamination; correct?

20 A. Yes.

21 Q. Was there surface water contamination? Yes or no?

22 A. No.

23 Q. So if in the PHMSA report -- I'm sorry. The
24 accident report hazardous liquid pipeline systems, DRA
25 Exhibit 172 on the Ludden spill. It said if yes, check

1 if there was surface water contamination, and it says yes
2 on it.

3 Was this accident report wrong, or are you not being
4 candid with us, sir?

5 A. Well, to my knowledge there was -- if there was
6 surface water contamination, it must be very limited. I
7 was at site.

8 MR. ELLISON: We need just a moment. I will
9 move on in my questioning while Mr. Martinez goes to the
10 computer so we can all take a look at this.

11 A. Sir, I'm not going to dispute with you that that
12 form may have a check mark in that spot.

13 Q. Okay. But you agree with me that's the opposite of
14 what you told us and the Commission?

15 A. I explained to my understanding of what I saw.

16 Q. Okay. Would you agree that there was groundwater
17 contamination?

18 A. There was no groundwater contamination.

19 MR. ELLISON: I think we do need the exhibit,
20 Mr. Martinez. In fact, let me just show it to you real
21 quick. Maybe it will refresh your memory.

22 Q. Right there (indicating).

23 So do you agree with me, sir, in the accident
24 report -- and, by the way, how is an accident report
25 hazardous liquid pipeline systems -- how is this

1 generated? Who makes this report?

2 A. The field operations group makes the initial
3 notification to the National Response Center, and, you
4 know, the paperwork is submitted following that.

5 Q. Would you agree with me, sir, that in this spill
6 there was five barrels which reached a swamp area by the
7 pump station?

8 A. As I stated, there was five barrels that went
9 offsite into this area adjacent to the station.

10 Q. And that would include a swamp area?

11 A. There was some -- some wet area there, I guess.

12 Q. And what did you say the cause of this failure was,
13 sir?

14 A. This particular failure was a three-quarter inch
15 threaded pipefitting that was supporting a pressure
16 transmitter and valve, was not supported correctly, and
17 broke off.

18 Q. And why did it break off?

19 A. Because it wasn't supported properly and it shook
20 and it fatigued.

21 Q. This spill caused the pipeline to be shut down, did
22 it not?

23 A. Yes. We shut down the pipeline after this failure.

24 Q. That's a pretty significant occurrence for
25 TransCanada to actually shut an entire pipeline down;

1 isn't that right?

2 A. Yes. I think it indicates how seriously we took
3 this spill. We went to every other station and
4 replaced -- well, basically replaced every one of those
5 similar installations where we have that type of design.

6 Q. So was it a design problem, or was it an integrity
7 problem?

8 A. It was a design problem.

9 Q. And you got 600 people working for you to make sure
10 these kind of design problems don't happen? Am I hearing
11 that right?

12 A. These pump stations were designed by reputable
13 engineering company. The design was reviewed by another
14 reputable engineering company. They both signed off and
15 said that this design was adequate.

16 Q. Okay. So are you saying it's not your fault; it's
17 somebody else's?

18 A. I'm saying we rely on outside experts, you know,
19 worldwide engineering companies to do some of the work on
20 complex projects like this.

21 Q. You've got 600 people, and you need to go outside to
22 get this kind of basic design work done?

23 A. My group is accountable for operations of 42,000
24 miles of pipe, 14 pipeline systems, 14 power plants. I
25 have a pretty small group when it comes down to what we

1 do. So we focus on ensuring the plans and stuff we do
2 are prepared properly, and we bring in outside experts as
3 necessary to do the heavy lifting.

4 Q. This time it didn't work. It failed. You failed.

5 A. Absolutely.

6 Q. Okay.

7 Are you familiar, sir, with cathodic corrosion
8 issues which arose outside of St. Louis within 100 yards
9 of the Mississippi River?

10 A. I have some knowledge about that particular issue.

11 Q. And where the corrosion actually got to the point of
12 a 97 percent pipe wall loss?

13 A. I'm aware of the details, yes.

14 Q. And that that was caused by the cathodic protection,
15 was it not, being adequately what, tuned or in place with
16 respect to the cathodic issues that would be caused by
17 another pipeline within 40 feet?

18 A. So the -- the interference issues, I mean, we don't
19 exactly know which pipeline in that corridor created the
20 problem. During the design we followed the practices and
21 procedures prescribed by NACE and by TransCanada's own
22 procedures for interference.

23 We had discovered that there was interference from
24 where we don't know. Measures were taken to resolve the
25 interference. Obviously those measures were insufficient

1 initially.

2 Q. And obviously your integrity program wasn't
3 sufficient to catch the corrosion until there was only
4 about 3 percent of that pipeline wall left; isn't that
5 correct?

6 A. No. I disagree with you that it wasn't effective.
7 I think it's unfortunate, and I'm not happy that the
8 corrosion progressed to that depth. But we did do an
9 inline inspection of that pipe. We did detect the
10 corrosion before any product was released.

11 We repaired the particular section in question, and
12 we changed our interference procedures going forward to
13 make sure that, you know, this is much less likely to
14 happen again.

15 Q. Doesn't PHMSA require that if a pipeline corrosion
16 exceeds 80 percent wall loss, that you are to take
17 immediate action?

18 A. Well, the regulation 195 requires you to take
19 immediate action once the corrosion is discovered. In
20 this case the corrosion was discovered through the inline
21 inspection. We got an initial report within a couple of
22 days of that report, draft report. Our immediate action
23 was to shut the pipeline down.

24 Q. Sure. That could have been a pretty major spill,
25 couldn't it?

1 A. Well, it was the size of a pencil head at the bottom
2 of that corrosion feature. I can't really speculate how
3 big that spill would have been.

4 Q. If your boss said it was a dime size, is that a
5 little bigger than a pencil?

6 A. As we saw in the pictures, the size of the
7 corrosion, the pitting corrosion at the surface, was
8 larger. It necked down until it got to the bottom.

9 The part that was measured to be, you know, very
10 thin, 97 percent through wall, was actually about the
11 size of a pencil head.

12 Q. How long did it take for the corrosion to go from
13 80 percent to 97 percent wall loss?

14 A. We don't know. The interference issue had been
15 addressed before the inline inspection. It's likely the
16 corrosion of that area had stopped. We don't know when
17 it started. We don't know when it stopped.

18 Q. Sounds to me like an integrity issue, does it not,
19 if you can't -- in other words, you're telling this
20 Commission that a near -- a spill near a -- one of the
21 major rivers in our country, that you cannot tell this
22 Commission even now how long it took to go from
23 80 percent from 90 percent wall loss; is that correct?

24 A. That is correct.

25 Q. And I imagine we have your promise that that won't

1 happen again; is that right, sir?

2 A. As I have said, we have implemented numerous
3 different design techniques well and above what is
4 required by NACE standard practice reference and code to
5 mitigate these types of things from happening in the
6 future.

7 Q. I imagine you made the same comments on the Bison
8 Project when the warning letter from PHMSA said that the
9 construction project did not have adequate quality
10 inspection and testing procedure for Holiday detection of
11 coatings during field construction; correct?

12 A. My team provided technical support on that issue.
13 If you want a very technical explanation of what that
14 was, I can give it to you.

15 PHMSA was suggesting a voltage for the Holiday
16 detection that was higher than that recommended by the
17 coating vendor. So we had to resolve the differences
18 between what PHMSA wanted and what the coating vendors
19 said would damage the coating. That's what that was all
20 about, sir.

21 Q. Okay. Let's talk about a few others.

22 A. Sure.

23 Q. The Gulf Coast project, you're familiar with that,
24 are you sir?

25 A. I'm familiar with the project, but, once again, I'm

1 not familiar with the construction. I'm familiar with
2 what's happened afterwards in operations.

3 Q. Okay. You will agree with me that there were at
4 least two PHMSA warning letters in connection with
5 compliance issues on the Gulf Coast Pipeline?

6 A. Like I say, I'm not super familiar with the issues
7 or the warning letters that were issued by PHMSA during
8 construction.

9 Q. Would you agree with me, sir, that one of the
10 letters found that TransCanada was not following
11 construction specifications to protect coating from
12 damage due to welding splatter?

13 A. I've heard some comments to that during the past
14 week here, yes.

15 Q. You're the weld -- you said -- didn't you say
16 welding is one of your specialities?

17 A. Protecting the pipeline against welding splatter is
18 a very construction tactical issue. It's not something
19 my group would normally get engaged in.

20 Q. Okay. It's another thing you don't do; is that
21 right?

22 A. Sure.

23 Q. Okay. So somebody else failed; is that right?

24 MR. WHITE: Objection. Argumentative.

25 Q. Someone other than you was responsible for the --

1 MR. SMITH: Overruled.

2 MR. ELLISON: Thank you.

3 Q. Somebody else was responsible?

4 A. Someone other than me was accountable to make sure
5 that the work was happening within the pipeline ditch and
6 on the pipeline right of way --

7 Q. Was that Meera Kothari?

8 A. I can't say for sure if it was Meera.

9 Q. Let's go on.

10 The September 10, 2013, PHMSA warning letter also
11 said that TransCanada was not following construction
12 specifications when installing foam pillows to minimize
13 external stress on a pipe.

14 Are you familiar with that, sir?

15 A. No, I'm not.

16 Q. Were you familiar, sir, with -- since TransCanada's
17 interested in constantly making improvements, were you
18 familiar with the fact, sir, that PHMSA identified the
19 fact that of the welds which were improperly done, that,
20 first of all, they were being done by welders who had not
21 been properly qualified to perform Part 195 welding?

22 A. As I said before, I'm not aware of the specifics of
23 what happened during construction and what letters PHMSA
24 issued.

25 Q. And not only -- PHMSA not only identified problems

1 with the fact that these people weren't qualified but
2 that TransCanada allowed these unqualified people to, in
3 fact, being making these welds?

4 Are you familiar, sir, with the fact that 26.8
5 percent of the welds required repairs in one week alone?

6 A. Often during the initial phases of the construction
7 project the weld repair rate is high. It's a
8 productivity issue, not a safety issue. Every one of the
9 welds that fails is repaired or replaced.

10 Q. And I would imagine then that if you notice a weld
11 failure rate of almost 27 percent in one week, that you
12 would then take care to make sure that that number of
13 weld problems would go down rather than go up; isn't that
14 right?

15 A. So my team goes down to provide support, as
16 requested, to try and help the contractors improve their
17 productivity rate on welding.

18 Q. Are you aware, sir, that the second week 32 percent
19 of the welds needed to be redone?

20 A. I'm not aware of the specific numbers on that
21 particular project.

22 Q. Are you aware that in the third week 72.2 percent of
23 the welds had to be redone?

24 A. I'm not sure. Or I guess I'm not aware.

25 Q. And that at one point TransCanada, in fact, had to

1 stop Spread 3 weldings because 205 of 425 welds needed to
2 be repaired?

3 A. Sounds like our quality assurance systems were
4 working and catching this.

5 Q. Okay. Do you know what the cause of the high weld
6 rejection rate was?

7 A. No, I do not.

8 Q. What is the purpose of evaluation reports, sir, that
9 are done on pipeline construction?

10 A. I would have to have more information to know which
11 evaluation reports you're talking about.

12 Q. Okay. I'm talking about just what we've been
13 talking about, Gulf Coast.

14 A. Okay.

15 Q. What's the purpose of an evaluation report?

16 A. I would -- I don't know which evaluation report
17 you're talking about. I would assume there's lots of
18 different evaluation reports.

19 Q. I'm asking you what the purpose of them are.

20 A. What's the purpose of an evaluation report in
21 general terms?

22 Q. Yes, sir.

23 A. Evaluation reports are reports generated to
24 evaluate -- I'm sorry. I'm coming up with the name of
25 the report. Our records of evaluation.

1 Q. And if it lists as the personnel that are -- this is
2 addressed to within Keystone is Meera Kothari, and I'm
3 referring again to the Gulf Coast Evaluation Report,
4 inspection dates 2011 through 2014.

5 Would that refresh your memory as to who might have
6 been responsible from TransCanada?

7 A. No. Like I said, there's so many different types of
8 evaluations done during these complex projects, I have no
9 idea what you're talking about.

10 Q. Since your team wants to constantly improve the
11 quality of the design, construction, and safe operation
12 of the pipeline, are you saying you're unfamiliar with
13 evaluation reports that may have listed a number of
14 unsatisfactory findings by PHMSA?

15 MR. WHITE: Objection. Asked and answered and
16 vague.

17 MR. ELLISON: I'm referring to --

18 MR. SMITH: Sustained.

19 MR. ELLISON: I'm referring to the inspection
20 reports for 2011, 2014. I am referring to unit I.D.
21 No. 74979 and 83245. Referring to the Keystone Gulf
22 pipeline.

23 Q. Does that get a little more specific for you?

24 A. As I said, I was not engaged in the day-to-day
25 operations -- or day-to-day construction of that project.

1 There are many inputs, many sources of lessons learned
2 that we then pull together and incorporate into future
3 projects.

4 Q. So do I understand by that, sir, that if there is a
5 worst-case spill in the Little Missouri or the Cheyenne
6 or the Grand River, that you'll say you know what, we're
7 going to learn from this and next time we'll do better?
8 That's kind of the approach that TransCanada -- that's
9 what you're saying you do; right?

10 MR. WHITE: Objection. Argumentative.

11 MR. SMITH: Sustained.

12 Q. Were you aware, sir, that PHMSA found unsatisfactory
13 comprehensive written construction specifications?

14 A. As I said before, I'm not aware of the specifics of
15 the letters that were issued during construction of the
16 Gulf Coast.

17 Q. Well, if your job is to meet or exceed regulatory
18 requirements, comprehensive written instruction
19 specifications is part of that job, is it not?

20 A. The engineering portions of that is. The other
21 portions of that or other aspects of that are not.

22 Q. What about installing the pipe to minimize stresses
23 and protect pipe coatings from damage where there was
24 also an unsatisfactory?

25 A. We provide specification to the construction group

1 on how that should be done.

2 Q. And, again, in your specialty welding, sir, in fact,
3 there were 1, 2, 3, 4, 5, 6 unsatisfactory findings by
4 PHMSA, and this would have been in a warning letter
5 4-2-213-5017W sent to TransCanada September 10, 2013, for
6 not following construction specifications?

7 A. As I said before, I'm not familiar with the
8 particulars in PHMSA letters that were issued during
9 construction.

10 Q. Since one of the places that you worked, sir, was in
11 Mexico, we've heard a little bit of testimony during the
12 course of these proceedings of a failure in Guadalajara
13 of a pipeline -- TransCanada Pipeline.

14 You are familiar with that failure, are you not,
15 sir?

16 A. I have some familiarity with TransCanada's
17 Guadalajara pipeline, yes.

18 Q. And that was after TransCanada used its best
19 engineering and design and routing and put it through a
20 high hazard slope -- slip area?

21 A. That failure had nothing to do with a landslide.

22 Q. Oh, it didn't. That didn't take out the pipeline?

23 A. The pipeline was taken out, but it had nothing to do
24 with the landslide.

25 Q. What did it have to do with?

1 A. There was two hurricanes in three days. The river
2 moved 500 feet to a new channel, and the pipeline was
3 damaged.

4 Q. So, in other words, you did not take into
5 consideration the potential for severe weather situations
6 in the locating and design and construction of that
7 pipeline.

8 Is that a fair statement, sir?

9 A. We did. We used the date that that was provided by
10 the government. The two hurricanes in three days was not
11 foreseen.

12 Q. We had a 500-year flood here not too long ago.

13 MR. ELLISON: Excuse me.

14 Q. 2011.

15 A. I understand this was beyond a 1,000-year event.

16 Q. Okay. TransCanada actually prepares for two-day
17 weather events; right? Two-day, not 500-year?

18 A. My understanding is we design for a 1,000-year
19 flood.

20 Q. You do. How come you missed the one in Guadalajara?

21 A. It was beyond a 1,000-year flood was my testimony.

22 Q. You would agree you could have a 5,000-year flood in
23 one day and two months later have the next 5,000-year
24 flood; isn't that possible, sir?

25 A. I'm not an expert statistician.

1 Q. Are you sure you don't want to submit to
2 South Dakota jurisdiction?

3 MR. WHITE: Objection renewed.

4 MR. ELLISON: No further questions.

5 MR. SMITH: Ms. Craven.

6 CROSS-EXAMINATION

7 BY MS. CRAVEN:

8 Q. Kim Craven for the Indigenous Environmental Network,
9 and I just have a couple of questions.

10 I apologize for being late. I missed the
11 introduction, kind of the first part of your testimony.
12 I did read your written testimony.

13 What is a hectare? How large is that?

14 A. A hectare?

15 Q. Uh-huh.

16 A. A hectare is a metric unit of land. And I actually
17 don't know the coverage of that one. Sorry.

18 Q. Really? Uh-huh. Thank you.

19 So did you talk about the Peace River main line
20 pipeline failure in 2009 that devastated a native
21 community and raised two hectares of land? Did you talk
22 about that pipeline?

23 MR. WHITE: Objection. Assumes facts not in
24 evidence. Beyond the scope of this witness's testimony.

25 Q. Okay. Because you also spoke about the --

1 MR. SMITH: Sustained.

2 Q. -- Bison Pipeline failure and the Fearless [sic]
3 Pipeline failure and Keystone I Pipeline failure.

4 It seems like you -- that TransCanada learns lessons
5 from these pipeline failures; is that correct?

6 A. So, first of all, I'm not sure about some of the
7 names of pipeline failures you've indicated or the fact
8 there's even been those failures.

9 Q. Didn't you talk about the Bison Pipeline failure?

10 A. I did talk about Bison.

11 Q. Okay. And you talked about Fearless. I thought I
12 heard Fearless too.

13 A. I never heard Fearless. I did talk about Peerless.
14 There was no pipeline failure on the Peerless Pipeline.

15 Q. Oh, okay. The Keystone?

16 A. There's been no pipeline failures on Keystone.

17 Q. Keystone I hasn't leaked 14 times?

18 A. There have been no pipeline failures. There have
19 been leaks at the pump stations.

20 Q. You don't consider that a failure if it leaks?

21 A. I don't consider it a pipeline failure if the
22 pipeline does not break.

23 Q. Oh, okay. All right. Okay. So you -- but you do
24 have lessons learned from all of these pipeline failures;
25 is that correct? Or pipeline leaks?

1 A. Because pipeline failures are so few, such an
2 infrequent event, we learn from the pipeline failures we
3 have. We learn from the pipeline failures that other
4 companies have.

5 Q. All right. And so Keystone XL leaks, then you'll
6 also learn from that; is that right?

7 A. As I have stated in my testimony, the leaks at the
8 pump stations we have made design changes and
9 installation changes to hopefully reduce that number
10 towards our goal of zero.

11 MS. CRAVEN: We hope so too. Thank you.

12 MR. SMITH: Mr. Gough.

13 CROSS-EXAMINATION

14 BY MR. GOUGH:

15 Q. Thank you. Good morning, Mr. King.

16 A. Morning.

17 Q. Bob Gough, InterTribal Council On Utility Policy.

18 In your testimony you indicated that you were not
19 able to find the Bison Project problems -- you lamented
20 that you were not able to find the Bison Project problems
21 sooner; is that correct?

22 A. My statement was that it would certainly be my
23 desire and it would be our policy that the pipe -- if the
24 strike was done by somebody participating in the
25 construction of that project, that they would have

1 notified people of the pipeline strike at the time it
2 happened.

3 Q. And how is it that you found out about the pipeline
4 leak otherwise?

5 A. The pipeline failed in service. We had to run an
6 inline inspection tool through that line three days
7 prior. If we had had another couple of days of notice,
8 we would have shut the pipeline down. We would have
9 learned about it from an inline inspection tool.

10 Q. You would have found out about it with the inline
11 inspection tool.

12 My question was how did you find out about it?

13 A. We found out about it because the pipeline failed.

14 Q. And how did you find out that the pipeline failed?
15 What were the manifestations that indicated failure?

16 A. The pipeline failed. The people in the gas control
17 center got alarms. The pipeline self-isolated itself as
18 part of its emergency shutdown design. And so we knew.

19 Q. And how long did that take?

20 A. A matter of -- from the time that they noticed the
21 issue would have been minutes.

22 Q. How much sooner would you have known it?

23 A. I don't understand the question.

24 Q. If you're saying that there was some incident and if
25 they had notified you about the incident, you would have

1 known about it sooner. And now you're testifying that
2 once it failed you knew about it in minutes.

3 MR. WHITE: Objection. Mischaracterizing the
4 testimony that's not what he said.

5 MR. SMITH: Sustained.

6 MR. GOUGH: I don't understand the testimony,
7 which is why I'm seeking the clarification.

8 MR. SMITH: No. It's sustained. I guess what
9 I'd say is break it down into some pieces and -- if you
10 want to.

11 MR. GOUGH: Thank you.

12 Q. Your testimony was that once the failure occurred
13 you were -- the company became aware of it within
14 minutes.

15 Is that what you said?

16 A. What I'm saying is that the pipeline was damaged at
17 some point probably during construction. If it had been
18 reported during construction, the area that was damaged
19 would have been repaired before the pipeline was placed
20 in service.

21 Because it wasn't detected before the pipeline was
22 placed in service, the next opportunity to catch it would
23 have been when we ran the inline inspection tool.
24 Unfortunately, we had run the inline inspection tool but
25 had not got the report back from the company that runs

1 the inspection tool until two days after the pipeline
2 failed because of that gouge.

3 So two days later we would have found out about it
4 before it failed. Unfortunately, the timing was such
5 that it failed in service two days before we got the
6 report.

7 Does that make it clear?

8 Q. Okay. That's a little clearer. But it raises the
9 question of your inspection system.

10 Why is there a two-day delay in getting reports of
11 something that may lead to failure of a pipeline?

12 A. And so I think to explain that I'm going to have to
13 explain a little about smart pigging or pipeline
14 inspection. Smart pigs is an industry term used for
15 pipeline inspection tools.

16 These tools gather huge, huge, huge volumes of data
17 as they check every tiny piece of the pipeline as they
18 travel down. Huge amounts of data. Multiple, multiple
19 hard drives worth of data.

20 Processing that data takes -- to fully process the
21 data with huge computer centers takes probably a month to
22 do.

23 They do an initial scan of the data to look for
24 really large anomalies. That was what I talked about on
25 the Keystone -- base Keystone failure in Missouri where

1 they found the data. That came through -- that first
2 initial scan, which probably takes a week, we would have
3 got that initial scan, that first initial scan, that week
4 long scan, probably two days after the pipeline ended up
5 failing.

6 Q. Two days after the pipeline failure. How long was
7 it after the inspection with this smart pig did it take
8 for that data to get processed and then you get warned?

9 A. The pipeline had traveled through that -- or the pig
10 had traveled through that portion of pipeline probably
11 two days prior to when the pipeline failed.

12 So, as I said, it takes about a week to get that
13 initial report.

14 Q. I see.

15 How often do you run these smart pigs through your
16 pipeline?

17 A. The frequency is dictated by the regulations on
18 natural gas pipelines, which is what happened -- which
19 was the case in pipeline -- the requirement is to be no
20 more than seven years in high consequence areas.

21 Q. So at least once every seven years.

22 A. That's correct.

23 We also do a baseline inspection. And one of the
24 requirements of the Alternate MOP Rule is that there's a
25 baseline inspection done within I can't remember if it's

1 within one year or three years of initial operation.

2 Q. And was this a seven-year routine, or was this a
3 once in -- an initial run?

4 A. This was the baseline inspection that was being done
5 with -- six months after the startup of the pipeline.

6 Q. Thank you.

7 How many comparable pipeline projects have been
8 built in West River South Dakota?

9 A. Sorry. I'm not familiar with West River
10 South Dakota.

11 Q. West River South Dakota begins at the
12 Montana-Wyoming border and goes to the Missouri River.
13 That's the area known as West River South Dakota.

14 A. So you're speaking of the -- along the Bison route?

15 Q. No. I'm speaking along the KXL Pipeline route.

16 MR. WHITE: Mr. Gough, can you clarify
17 comparable to what?

18 MR. GOUGH: Pardon me?

19 MR. WHITE: Comparable to what?

20 MR. GOUGH: Well, that wasn't my question to the
21 attorneys. His question to me was whether it was in --
22 whether we were referring to something in Wyoming.

23 MR. WHITE: My objection is the question is
24 vague. He asked how many comparable projects are there?
25 I don't know comparable to what.

1 MR. SMITH: Sustained.

2 MR. GOUGH: Comparable to the Keystone Pipeline
3 project have been built or do exist in West River
4 South Dakota, west of the Missouri River, east of the
5 states of Wyoming and Montana.

6 A. I have no idea.

7 Q. Are you aware of any pipelines that exist in West
8 River South Dakota?

9 A. No. I do -- that's not my area of knowledge. I
10 really don't know, sir.

11 Q. In planning a pipeline do you look at existing
12 corridors?

13 A. I'm not accountable for routing of pipelines.

14 Q. Okay. So you're not responsible for routing them,
15 and you're not responsible once they're constructed.
16 You've got a limited responsibility during the permitting
17 and design phase?

18 Is that my understanding?

19 MR. WHITE: Objection. Mischaracterizes the
20 testimony.

21 MR. SMITH: Sustained.

22 Q. Do you have responsibility --

23 What are your responsibilities with regard to a
24 pipeline?

25 A. I'm accountable for setting TransCanada standards

1 for how pipelines should be constructed.

2 MR. DORR: Excuse me. I couldn't hear him at
3 the start.

4 THE WITNESS: You couldn't hear who? Me or
5 Mr. Gough?

6 A. I said I am accountable for setting TransCanada
7 standards and specification for how pipelines -- for the
8 engineering aspects of the pipeline. I'm accountable to
9 do checks as the -- around those technical issues as the
10 pipeline's constructed.

11 My group provides technical support to the
12 construction groups where they require it. I'm
13 accountable for the reliability of the projects after
14 they go into service.

15 Q. Thank you.

16 Your responsibility includes the preparation of
17 permits as well?

18 A. No, it does not.

19 Q. It does not.

20 Do you review the documents that go into a Permit
21 Application?

22 A. It depends. If there are some very engineering
23 specific documents, I may do them if my group has the
24 expertise in that area.

25 Q. Your testimony is that you've been in this position

1 since 2008?

2 A. I've been in this vice president position since
3 about 2008. Yeah. 2004. Yeah.

4 Q. 2004. Thank you.

5 Did you have responsibility to or an opportunity to
6 review the engineering documents submitted in the
7 Keystone Application to the State of South Dakota PUC?

8 A. No, I did not.

9 Q. You did not.

10 So while this is an area of responsibility, this was
11 not one for this project?

12 A. As I said, depending on the project and the aspect
13 of engineering engaged, I may be brought in to, you know,
14 provide comments or support.

15 Q. Were you brought in to inspect the river crossings,
16 designs, engineering designs?

17 A. No, I was not.

18 Q. You were not.

19 You're a licensed engineer in Canada?

20 A. I'm a registered professional engineer in the
21 province of Alberta.

22 Q. Are you registered in the United States?

23 A. No, I'm not.

24 Q. You're not.

25 Do you have any registered engineers on your staff

1 who are registered in the United States?

2 A. Many.

3 Q. Many. Out of the 600, what percentage would you
4 say?

5 A. I probably have 40 that are registered in the U.S.

6 Q. 40. Do you know if they worked on Keystone
7 Pipeline?

8 A. I don't believe -- I don't believe any of my staff
9 provided -- or any of my engineering staff provided
10 support to the Keystone XL Application.

11 Q. Okay. Thank you.

12 Are you familiar with Section 36-18A-45 pertaining
13 to South Dakota Board of Technical Professions?

14 A. No, I'm not.

15 Q. Are you familiar with the requirements for engineers
16 to sign off on documents submitted to government agencies
17 on engineering documents?

18 A. Generally, yes.

19 Q. Is that the usual practice in Canada, to submit
20 documents of an engineering nature, design nature, to
21 government agencies that are signed or sealed?

22 A. On final documents, yes.

23 Q. Right. Are you aware that in South Dakota the seal,
24 signature, and date shall be placed in such a manner that
25 can be legibly reproduced on the following: All

1 originals, number one, preliminary work, and in the case
2 of multiple -- I don't need to go to multiple seals, but
3 on preliminary work as well?

4 A. So the ethics and the issue around sealing drawings
5 is that when you put the seal on it means that people can
6 take that work and move forward with it.

7 I would argue that sealing preliminary work has to
8 be done very carefully because of what it may imply as to
9 what you're taking accountability for.

10 Q. So you would not build a pipeline based on documents
11 that were not sealed or signed? Is that what I
12 understand?

13 A. I would --

14 Q. You would not submit documents for a permit that
15 were not sealed or designed?

16 A. I can't say that.

17 Q. Would you expect agencies in Canada to approve
18 projects with unsigned or unsealed engineering
19 documents?

20 A. Depending on what they were, yes.

21 Q. Even though it's your testimony that an unsigned or
22 unsealed document is not completed?

23 A. Permit approvals often contain prospective
24 requirements. Obviously prospective requirements can't
25 be signed off as final and sealed until the work is done.

1 Q. Until the work is done on the document or the work
2 is done in the field?

3 A. The work is done on the design.

4 Q. So that what assurance do we have that any document
5 submitted that's unsealed or unsigned is ready to be
6 relied upon?

7 A. So I can't talk specifically to this one, but in
8 general there are other measures, other checks and
9 balances, to make sure that projects, pipelines, are
10 built according to regulations. There are other forms of
11 regulatory inspection.

12 Q. Are you aware that the Keystone Application in '09
13 and the Permit in 2010 contained unsigned engineering
14 documents?

15 A. I'm not aware of the specifics, other than I saw one
16 drawing that I think was shown here that didn't have a
17 seal on it.

18 Q. All right. Thank you.

19 The last area, with regard to your testimony with
20 regard to severe weather taking out a pipeline in Mexico.

21 MR. GOUGH: I would alert Keystone to a possible
22 future climate question since there's a standing
23 objection.

24 I just want to make that alert. I'm going to
25 try not to go there.

1 Q. But the design plans that you have testified to for
2 this pipeline, is that for the 1,000-year flood?

3 A. I'm not sure what the core requires for these
4 crossings. I do know that they review and approve all
5 the methods for crossings. I don't know the specifics.

6 Q. Your testimony was that the Mexican project was
7 designed for a 1,000-year flood?

8 A. I believe it was. I'm not totally sure what the
9 Mexican regulations are, but I believe it was 1,000 year
10 was the plan.

11 Q. Would you design a pipeline for South Dakota meeting
12 a standard less than that required in Mexico?

13 A. As I said, every jurisdiction has different
14 requirements. You know, I really can't comment on, you
15 know, what jurisdictions decide is appropriate.

16 Q. Regardless of its design, it failed because of two
17 hurricanes hitting within three days and the flooding
18 that resulted from that? Is that your testimony?

19 A. Yes.

20 Q. What's the likelihood of two hurricanes happening
21 within three days?

22 A. I'm not a statistician. I really can't answer that
23 question.

24 Q. Have you over the course of your 32 years with
25 Keystone seen any trend to increase the reliability of

1 the pipelines for more severe and more intense weather
2 conditions?

3 A. No.

4 Q. Have you always designed pipelines for 1,000-year
5 floods?

6 A. We design pipelines to what is required by that
7 local jurisdiction.

8 Q. How many pipelines have you designed to a 1,000-year
9 flood level?

10 A. It really varies on the jurisdiction. I don't have
11 the exact numbers. I really don't.

12 Q. Have you designed any besides the one in Mexico?

13 A. I believe so.

14 Q. Were they in the United States?

15 A. I -- no. I don't think so. But I believe some of
16 them have -- in Canada have been designed for 1,000
17 years.

18 Q. In Canada?

19 A. Yeah. For the 1,000-year flood.

20 Q. Do you happen to know what flood design this
21 pipeline is designed for?

22 A. No. As I said, I'm not aware of the specifics from
23 the Corps.

24 MR. GOUGH: No further questions. Thank you
25 very much, sir.

1 MR. SMITH: Mr. Dorr.

2 CROSS-EXAMINATION

3 BY MR. DORR:

4 Q. My name is Gary Dorr. I'm an Individual Intervenor.
5 You just testified that oil was at \$40 a barrel a little
6 while ago? In 2010?

7 A. In very general terms, yeah. I know it was low and
8 then it was high and then it was sort of back down to a
9 lower price again.

10 Q. So was that one month, or was that an average?

11 A. It's very volatile. Two months ago it was \$60 a
12 barrel.

13 Q. But I'm asking when you said 2010 it was -- you said
14 five years ago that would be 2010.

15 Was that an average that you were quoting?

16 MR. WHITE: Objection. This is not the oil
17 price expert.

18 MR. DORR: He testified to --

19 MR. SMITH: Sustained.

20 Q. Are you familiar with the United States Energy
21 Information Administration?

22 A. Yes.

23 Q. Okay. Do you accept their information as valid
24 then?

25 A. Yes.

1 Q. Are you aware that in 2010 the lowest price they
2 reported was \$79 a barrel?

3 MR. WHITE: Renew the objection. Relevance.

4 MR. SMITH: Sustained.

5 Q. How many leaks or spills were projected on
6 Keystone I, and the rate?

7 A. I understand that was part of the risk analysis. I
8 was not involved in that part of that, sorry.

9 Q. As the design engineer you were not involved in
10 that?

11 A. I was not involved in the risk analysis that was
12 used as part of permitting the project.

13 Q. Are you a U.S. citizen?

14 A. No, I'm not.

15 Q. Do you have access to map data for the pipeline
16 location?

17 A. You're referring to the national mapping whatever
18 it's called?

19 Q. No. I'm referring to the mapping of the actual
20 location of the Keystone XL Pipeline, proposed pipeline.

21 A. I only have -- the only access I personally have are
22 the general maps that we publish.

23 Q. Okay. Do you have a U.S. security clearance?

24 A. No.

25 MR. DORR: All right. Thank you. No more

1 questions.

2 MR. RAPPOLD: Mr. Smith, Matt Rappold. I had
3 deferred earlier.

4 Could I go ahead and ask a few questions now?

5 MR. SMITH: I thought you were turning that over
6 to Mr. --

7 MR. RAPPOLD: I just deferred meaning I wanted
8 to come back and ask a few questions.

9 CROSS-EXAMINATION

10 BY MR. RAPPOLD:

11 Q. Good morning, Mr. King.

12 A. Morning.

13 Q. It seems like to me in listening to the conversation
14 there's an awful lot of what I'll call practicing that's
15 involved this the engineering design and operation of
16 pipelines.

17 Would you agree with that?

18 A. You'd have to define practicing for me. I'm not
19 sure what you mean.

20 Q. Generally understood like when you do something, the
21 same task over and over again and you hope to get better
22 along the way.

23 I call that practicing. Would you agree?

24 A. No. I wouldn't characterize that at all. I think
25 what we're talking about with continuing improvement is

1 part of a quality management concept.

2 Q. Okay. Thank you.

3 You agree that 14 spills in one year on a pipeline
4 is safe; correct?

5 MR. WHITE: Objection. Asked and answered.

6 MR. SMITH: Sustained.

7 MR. RAPPOLD: We all heard his testimony.

8 Q. You're familiar with your overall safety records;
9 correct?

10 A. Yes.

11 Q. You didn't bring any, did you?

12 A. No.

13 Q. Your objective is zero failures; correct?

14 A. That is our objective.

15 Q. And you're not meeting that goal, are you?

16 A. No, we're not.

17 MR. RAPPOLD: Thank you.

18 MR. SMITH: We're at Mr. Harter, I believe.

19 CROSS-EXAMINATION

20 BY MR. HARTER:

21 Q. On the Bison line that you gave testimony on that
22 had a failure of 20 miles west of Gillette, why was the
23 defect not caught before the line was covered up?

24 A. That's something the investigation could never
25 determine. Was the operator unaware that he had done it?

1 Was the damage -- did the damage happen after
2 construction? We just don't know.

3 Q. So your integrity inspection team basically failed
4 to inspect the line?

5 A. No. They inspected the line. Unfortunately, we
6 missed by two days.

7 Q. Well, that was with the pig, though; right?

8 A. Correct.

9 Q. So are you telling me that there's no onsite
10 inspection for damage of the line before it's covered up?

11 A. Yes. There is onsite inspection, and they missed --
12 as I said, I'm not sure if the operator wasn't aware that
13 he had struck the pipe, whether it happened subsequently.
14 We just really don't note circumstances there.

15 We do have inspection there. We increased the
16 training for the inspectors and for the operators to be
17 aware of what they should do and the awareness around
18 that aspect. We've increased the number of inspectors
19 going forward. But we really don't know what happened in
20 that circumstance.

21 Q. Do you recall what the wall thickness was on that
22 pipeline that failed in Bison?

23 A. No, I don't.

24 Q. Yesterday Mr. Vokes gave testimony about welds, some
25 of them can fail right away and some of them can fail

1 down the road.

2 Would you agree with that?

3 A. Yes.

4 Q. And today you talked about a 53 year old weld that
5 failed; correct? Am I correct in how I stated that?

6 A. Yes. A weld that had a defect that wasn't inspected
7 when it was installed.

8 Q. So would you agree that Mr. Vokes's and your
9 testimony is basically the same thing?

10 A. I think what I testified to, and I'm not going to
11 characterize Mr. Vokes's testimony, is that because we've
12 improved the way we actually complete the welding and the
13 fact that we inspect 100 percent of welds, that the
14 chance for a weld making it through that initial check
15 is, you know, so much lower than it was in 1960, which
16 is, you know, what I was talking about this morning.

17 Q. With the program it sounds like you put your people
18 that weld through a pretty intense welding training;
19 correct?

20 A. Yes.

21 Q. So in that training are these welders not trained to
22 be able to look at their own welds and tell if their
23 fusion is acceptable?

24 A. Welders obviously are doing their best to make sure
25 they don't have lack of fusion defects. It's often not

1 obvious until you do the inspection whether it be
2 radiography or ultrasound.

3 Q. Well, I've done some of my own welding, and usually
4 when I'm welding something together I can tell if I've
5 made a bad weld right away and know that I could -- if I
6 have to grind it out and redo it.

7 And, I guess, would you agree that maybe they need a
8 little more training?

9 A. I would say that when welders that -- when welders
10 are making mechanized welding in this sort of fashion, I
11 would agree with you that some of them will know when
12 they have made an error that is going to create a bad
13 weld. And in that case they have stopped.

14 Sometimes it's not obvious, and it's not caught
15 until the inspection.

16 Q. And I would agree with that.

17 So is it your position that when you teach your
18 people when they observe something like that not to let
19 it go but to immediately report it?

20 A. Yes. And the company they work for has -- wants
21 them to do that as well because completing a weld that
22 they know is defective impacts their productivity and
23 costs the company doing the welding money.

24 Q. Thank you.

25 Has TransCanada ever buried unsafe pipeline and then

1 had to redig it back up?

2 A. We have buried pipelines that we were -- that
3 weren't unsafe, but as I talked about with the hydro test
4 in South Dakota base Keystone, we have gone back and dug
5 up welds that were similar to ones that failed in the
6 base Keystone, and there was no issue with these welds.
7 I mean, they weren't unsafe when we have dug up welds.

8 Q. Did this happen on the Gulf Coast project of the
9 southern Keystone XL?

10 A. Once again, I'm very vague on the particulars of
11 what happened on that project. Often in order to
12 demonstrate stuff to the regulator -- I wouldn't say
13 often, but sometimes in order to demonstrate stuff to the
14 regulators we do go back and reinspect stuff, if
15 required.

16 Q. On the base Keystone Project have any of the areas
17 along that route ever been exposed at water crossings?

18 A. Sorry. I missed the first part of your question.

19 Q. On the base Keystone Pipeline, after construction
20 have any of those areas been exposed at water crossings?

21 A. I'm not aware of any.

22 Q. Thank you.

23 Would you say that for the way you make a living
24 that your education is your greatest asset?

25 A. I think it's the combination of my education and my

1 experience that allows me to be effective in what I do.

2 Q. I would agree with that.

3 Would it affect you and your way of life if somebody
4 was to remove the ability for you to have your education
5 and your experience?

6 A. Yes.

7 Q. Thank you.

8 Can you answer on the Keystone XL project -- I
9 recall being at meetings and I don't recall the exact
10 amount but I recall that -- when it was stated that
11 almost all water crossings were going to be HDD
12 crossings.

13 Can you explain why that has changed now, according
14 to what we're being told at these hearings?

15 MR. WHITE: Objection. Assumes facts not in
16 evidence.

17 MR. SMITH: Sustained.

18 MR. HARTER: There's been a large conversation
19 on this. And this is coming from PUC public meetings.
20 This happened in Winner, South Dakota.

21 I would think it would be relevant to the
22 proceedings to explain to people why they have changed
23 the way they're doing things as they did on the pipe wall
24 thickness.

25 MR. WHITE: There's been no testimony to

1 demonstrate that TransCanada ever said that every water
2 crossing would be HDD at any public meeting.

3 MR. HARTER: I said almost.

4 MR. SMITH: Sustained.

5 Q. You gave testimony that you compared yourself to
6 other companies on pluses and minuses of how you operate
7 your business.

8 Do the other companies that you are compared to take
9 shortcuts in their work also?

10 MR. WHITE: Objection. Argumentative.

11 MR. SMITH: Sustained.

12 Q. Do you believe that the ability to do something
13 gives you the right to do it?

14 A. No.

15 Q. Thank you. Good answer.

16 On base Keystone Project there was an area -- and I
17 think more than one, but I know one area that, from wet
18 conditions, floated back out of the ground.

19 Are you aware if all the welds were rechecked on
20 this line before it was weighted and put back in the
21 ground?

22 MR. WHITE: Objection. Assumes facts not in
23 evidence.

24 MR. SMITH: Sustained.

25 MR. HARTER: I would think that would be

1 something that the PUC would be interested in for safety.

2 Q. Okay. There was testimony earlier on sleeving the
3 pipeline for like where you had the cathodic injury down
4 in the Kansas City, Missouri area.

5 Is this considered a Band-Aid fix, or is it a
6 permanent fix?

7 A. These are considered permanent fixes by TransCanada
8 by regulation.

9 Q. Okay. Thank you.

10 There was a considerable talk a little bit ago about
11 how the North Dakota spill on Keystone I failed. And I
12 guess what I got out of that is that your highly trained
13 union workers failed to do a professional job.

14 Would you agree with that?

15 A. Workmanship was not the issue at the Ludden failure.

16 Q. Did welding distortion at the threaded fittings have
17 anything to do with this?

18 A. No, it did not.

19 Q. So it was just vibration that caused the fittings to
20 come loose?

21 A. It was a design that allowed a large mass to remain
22 unsupported on a relatively thin walled pipe nipple.

23 Q. So break that down for a nonengineer.

24 A. If you put a lot of weight on a pipe nipple and let
25 it blow in the wind, it eventually fatigues the pipe

1 nipple.

2 Q. So the wind was working it back and forth is what
3 you're saying?

4 A. The wind, some vibration from the pumps. I mean,
5 all of these things combined caused fatigue.

6 Q. Thank you.

7 On that Ludden spill it's true that a neighbor
8 called that spill in. Is that not true?

9 A. My understanding is virtually the same time the leak
10 detection or the operators in the OCC noticed the spill
11 and were in the process of stopping the pumps that a call
12 also came in.

13 Q. But it's true that when the neighbor to the pump
14 yard called in that TransCanada didn't believe him that
15 it was shooting a great distance above the trees; isn't
16 that true?

17 A. I was not party to the conversation between the
18 person who called and the controller so I really can't
19 comment on that.

20 Q. Okay. Thank you.

21 Do you understand that the property owners don't
22 have no second chances when a spill occurs on their
23 property?

24 A. I think you'll have to clarify that, the question
25 for me.

1 Q. Would you agree that in a wetlands area that a spill
2 can be very devastating?

3 A. I think it depends on the wetland.

4 Q. How about on top of the Ogallala Aquifer system?

5 A. I'm not a hydrologist. I'm not qualified to comment
6 on impacts to the Ogallala Aquifer.

7 Q. Once you get a pinhole leak, as you described the --
8 in the area down by Missouri, it was a tapered downsizing
9 of the corrosion. Would that be a correct --

10 A. That would be correct.

11 Q. So on that pinhole leak, if it would have breached
12 that pipeline, with the pressure coming out of that, can
13 that release cause a pipeline to fail more and a bigger
14 area of failure comes from that?

15 A. No. Pinhole leaks tend to remain pinhole leaks.
16 You need long -- corrosion that is long on the pipeline.
17 It has to have lots of axial length of the pipeline
18 before you can have like a further breach of the
19 pipeline.

20 Q. So that's -- I've seen some pictures of some
21 Enbridge lines that blew -- actually it was the Kalamazoo
22 spill which was on a horizontal seam. So that would be
23 more likely to happen on that horizontal seam type of a
24 failure?

25 A. It depends on the type of coating. My understanding

1 of the pipeline at Marshall, the type of coating they had
2 on the pipe made it more susceptible to long corrosion
3 along the weld, along the long seam weld.

4 Q. So if you know, you can answer this.

5 So what I just got from what you said is that it was
6 a coating failure that led to a pipeline failure or
7 corrosion type inward. Is that what you're saying on
8 that line?

9 A. I mean, that was a vintage line. The coating was a
10 different -- was an old type of coating, and I'm not sure
11 if it was tape or asphalt coating. But yeah. It
12 effectively failed and created corrosion is my
13 understanding.

14 Q. Okay. I was just trying to separate that from
15 whether it was a long seam weld failure. So that was my
16 difference.

17 A. I don't believe it was a long seam weld failure.
18 But I could be mistaken.

19 Q. Okay. Thank you. That's fine.

20 There was some talk about the pillows that you put
21 along the pipeline. Can you explain that a little bit?

22 A. As I said, I wasn't involved in the specifics, but
23 one of the ways you protect pipe when it's lowered in the
24 ditch is to use foam pillows, which are either premade or
25 sprayed into the bottom of the ditch.

1 When the pipe is lowered on it, it protects the pipe
2 from, you know, damage from rocks or whatever that might
3 be in the ditch.

4 Q. Okay. I recall when the TransCanada was at my place
5 and we discussed this somewhat. There is another type
6 besides the foam, but I can't remember what that was.

7 Can you elaborate on that?

8 A. Yeah. I mean --

9 Q. It was more -- if I remember right, a non-manmade
10 like biodegradable type deal, was it not?

11 A. I'm not sure what they would be referring to. I
12 mean, the typical way of padding is either to use these
13 foam pillows or, frankly, sand.

14 Q. Okay. I think that might be what it was. Thank
15 you.

16 Are you aware in South Dakota the statement has been
17 made just wait five minutes and the weather will change?

18 A. I've heard that applied to many places, including
19 the city I live in so --

20 Q. With your experience in design and construction of
21 these pipelines have you ever learned of an area where
22 you shouldn't go -- where you should not put a pipeline?

23 A. I think as part of general routing there are lots of
24 areas that we avoid because, you know, they're areas that
25 are from an engineering perspective impossible to cross.

1 Q. Could you just name off a few of those?

2 A. Going over a mountain range with vertical faces, I
3 mean, is a classic example when you're trying to route
4 through mountains.

5 Q. Would near public water sources be one of those
6 things that you avoid?

7 A. Obviously, you want to be far enough away from that
8 water source you don't impact it.

9 Q. So if someone was to suggest a route that would
10 clear that, you would take it under consideration?

11 A. Yes.

12 Q. I find that interesting.

13 When you do your pigging -- you were talking about
14 the pigging process. As a property owner proposed to be
15 crossed by the Keystone XL, is that data available to me
16 for my property?

17 A. We typically -- the data is -- can only be viewed
18 with special computers and special tools so it's very
19 difficult to sort of give the data to somebody.

20 We do in discussion with certain landowners talk
21 about, you know, were there any issues found.

22 Q. So if you found an issue on a person's property, do
23 you contact them ASAP?

24 A. If we found an issue on a person's pipeline, an
25 immediate dig -- we would obviously be contacting them

1 immediately because we'd want to have access to the
2 property to execute a repair.

3 Q. Thank you.

4 Well, I guess it's my assumption that once you got
5 your easement and you have it, you don't have to ask my
6 permission to come in there. Is that not correct?

7 A. I think we always talk to the landowner before we
8 access the property.

9 Q. Thank you.

10 You gave testimony that the pig checks, you do a
11 baseline pig check after your construction's done;
12 correct?

13 A. We do a couple of different baseline inspections
14 after construction is done, yes.

15 Q. And then the next one would probably be seven years
16 later.

17 A. Well, seven years for gas. It's five years for oil.

18 Q. Okay. I'll write that down.

19 So in yesterday's testimony it was stated that at
20 the Colome water source area that it would take two years
21 for a pinhole leak to mitigate into the source protection
22 area.

23 So if you only checked that every five years after
24 your baseline check, if you had a problem such as you did
25 in Kansas City, it could potentially affect that water

1 source area within that time line.

2 Would that not be true?

3 MR. WHITE: Objection. Beyond the scope of this
4 witness's testimony.

5 MR. SMITH: Sustained.

6 Q. So you have no knowledge of how far the -- a leak
7 could flow in a five-year period?

8 MR. WHITE: Objection. Beyond the scope.

9 MR. SMITH: Sustained.

10 Q. Are you aware that I was refused a baseline
11 inspection for my property?

12 A. I'm not aware of any circumstances of discussions
13 with you, sir. Sorry.

14 Q. Thank you.

15 Are you aware of the statement that was made in
16 documents filed in this case that it is not TransCanada's
17 job to regulate the pipeline, that it's PHMSA's job?

18 A. I'm not sure how to respond to that question. It
19 is --

20 Q. It's basically a yes or no question. Are you aware
21 that a statement like that was filed in documents to this
22 proceeding?

23 A. I'm personally not aware a statement like that was
24 made.

25 Q. If you heard a statement like that made, would that

1 be alarming to you?

2 A. Once again, I'm having a hard time understanding the
3 way you phrased the statement.

4 Q. It was it is not TransCanada's job to regulate the
5 pipeline. That is PHMSA's job.

6 A. I would have to agree with that statement.
7 Obviously, we cannot regulate ourselves. That's PHMSA's
8 job. We cannot regulate the pipeline. That's the
9 federal regulator's job.

10 Q. Wouldn't you say that your own professional conduct
11 of how you handle and operate this pipeline and construct
12 this pipeline is self-regulation?

13 A. No. Our job is to maintain and operate this
14 pipeline as per the regulations. PHMSA is very intrusive
15 in inspections and monitoring what we do. So yeah.
16 We're definitely not self-regulated.

17 Q. But you do have self-oversight as a company?

18 A. We inspect the work that we do, and that's subject
19 to further levels of scrutiny.

20 Q. Okay. All right. Last question. Who do you hate
21 more, a rancher or a farm -- or a lawyer?

22 MR. WHITE: I'm going to object. But I'll let
23 that go.

24 MR. HARTER: That's fine. Thank you for your
25 testimony.

1 MR. SMITH: We'll be in -- it's 5 after. We'll
2 be in recess until 20 after.

3 (A short recess is taken)

4 MR. SMITH: We'll call the hearing back to order
5 in Docket HP14-001 after recess.

6 Mr. Harter doesn't seem to be in here so,
7 Ms. Jewett, did you have any --

8 Ms. Bardaglio. Pardon me. Do you have any
9 questions?

10 MR. BARDAGLIO: No, I don't. Thank you very
11 much.

12 MR. SMITH: Ms. Lone Eagle.

13 MS. LONE EAGLE: Yes. I do have some questions.
14 And before I begin my questions, I would like to have
15 notice taken of my standing objection to any future
16 objections that TransCanada may have regarding my
17 questions.

18 CROSS-EXAMINATION

19 BY MS. LONE EAGLE:

20 Q. I'm sorry. I also missed a little bit of the first
21 part of your testimony this morning. So most of my
22 questions are based on the testimony that I did hear.

23 Have you been present throughout the hearing?

24 A. For most of it. I've missed certain periods for
25 sure.

1 Q. Okay. So you did hear most of the testimony that's
2 been given so far?

3 A. The bulk of it.

4 Q. Okay. Were you made aware prior to your testimony
5 that you would be testifying in South Dakota?

6 A. Yes.

7 Q. Were you made aware prior to your testimony that the
8 Permit in question is subject to South Dakota laws and
9 regulations?

10 A. Not specifically.

11 Q. Okay. Well, that kind of explains -- my next
12 question is why does it seem to me -- well, it seems to
13 me that you are a little unprepared for some of the
14 questions that have been asked of you this morning, and I
15 was just trying to understand why. But I'll skip that
16 question.

17 Earlier you testified that -- regarding pipeline
18 failures and leaks. And I guess as a layperson I'm
19 having trouble understanding the rationale behind that
20 differentiation.

21 Could you explain a little bit more about that to
22 me, the difference in the rationale between a pipeline
23 failure and a pipeline leak?

24 A. In the testimony that I've given previously I think
25 what I was trying to distinguish between was a failure

1 that happens on the pipeline between the pump stations.
2 That would be a failure there.

3 The leaks I referred to are the stuff that happens
4 on TransCanada property within the pump station
5 boundaries.

6 Q. But is the pipeline subject to the possibility of
7 leaks in between the pump stations?

8 A. Sure. I think I would call that a pipeline failure.
9 But yes.

10 Q. Okay. So that kind of helps me. A leak is
11 something that happens at the pump station and a failure
12 is something that happens with the pipeline in between
13 those pump stations?

14 A. If I was going to characterize things, I would
15 call -- a failure is something that happens with the pipe
16 body, like the actual steel somehow breaks; whereas, the
17 leaks that I talked about, the reason I called them leaks
18 is because they were, as I said, with threaded fittings,
19 you know.

20 Q. Uh-huh. Okay.

21 From the time that a leak is detected and the
22 pipeline is shut down or a failure is detected and the
23 pipeline is shut down, is that product in the pipeline,
24 is that still flowing? From the time that the shutdown
25 happens to the time everything actually stops.

1 A. From the -- it takes a few minutes from the time a
2 shutdown is initiated on the pipeline to the time the oil
3 stops flowing in the pipe.

4 Q. Okay. So there is a certain amount of time that it
5 is still flowing, though?

6 A. Yes.

7 Q. Can you give me an estimate, about how long that is?

8 A. A couple minutes.

9 Q. A couple minutes.

10 And I don't know. This is a question I wrote down,
11 but you kind of answered. You know, why isn't any amount
12 of oil or tar sands that breaches the pipeline wall -- or
13 the pipe wall considered a failure. And I'm still
14 wrapping my head around the whole leak and failure thing.

15 And then I think -- I was listening to Mr. Harter's
16 questions regarding second chances. And I was hoping to
17 get a little bit more of a clarification, and I was
18 thinking maybe if I sort of reexplained what he was
19 trying to get at, that might give you a clearer picture
20 of how to answer because you had trouble answering that
21 question.

22 The learning that you talked about with reference to
23 pipeline failures and breaches, the devastation to the
24 environment also happens at that same time. And it's not
25 as immediately corrected as what you can do with a

1 pipeline. You can fix the pipeline, but what leaks into
2 the ground is a lot harder and takes longer to clean up
3 and that can be much more devastating. And that's I
4 believe what he was referring to with the idea of second
5 chances.

6 So would you agree that any pipeline breach has the
7 potential to be more devastating to the landowner than to
8 the pipeline owner?

9 A. No.

10 Q. You don't think the 400 gallons that leaked up in --
11 what was it? Ludden -- was more devastating to the
12 landowner that suffered that breach than it was to the
13 pipeline to fix what was wrong?

14 A. I think it depends on the magnitude of the leak. In
15 this case the landowner that was subjected to the
16 majority of the spill was TransCanada.

17 Q. But there have been breaches into other people's
18 lands; is that correct, in other pipeline breaches?

19 A. Not on Keystone.

20 Q. What about the Kalamazoo and what happened at Bison?
21 You don't think that that was more difficult for the
22 environment to recover from than the pipeline?

23 A. So just to be clear, Bison was a natural gas
24 pipeline failure. There was no spill.

25 Q. Okay. What about Mayflower, Arkansas?

1 A. Once again, you're talking about pipelines operated
2 by other companies, and other than what I see in the
3 newspaper, I have no knowledge of what happened there. I
4 was not on the ground in those.

5 Q. Okay. But you did say earlier that you also study
6 other pipeline breaches.

7 A. Yes. We read the -- the information I read or the
8 official reports from PHMSA or the National
9 Transportation Safety Board to find out what the cause
10 was.

11 Q. And Mayflower, Arkansas was a pretty large failure.
12 Would you agree?

13 A. I can't comment on the size -- I honestly don't
14 recall what the spill volume was. I do know what the
15 cause was.

16 Q. To fix the pipeline?

17 A. No. I know what caused that pipeline to fail. I've
18 read that failure report.

19 Q. Okay. So you know how it failed. Was the pipeline
20 easier to fix, or was the neighborhood easier to recover?

21 A. That's beyond my knowledge. I wasn't involved in
22 either fixing the pipeline or cleaning up the spill.

23 Q. So I guess some of the things that was seen in the
24 newspaper we are unable to draw a layperson's opinion
25 from because we don't have the professional stature that

1 you do?

2 A. I think what I'm saying is I'm unable to offer a
3 professional opinion on stuff where I don't have the
4 facts, was not there.

5 Q. But it -- I guess I'm having trouble understanding
6 how I can take a look at a breach as to what happened at
7 Mayflower and come to a common sense conclusion that it
8 was going to be more difficult for that neighborhood to
9 recover than it would be to fix the pipeline. Is that
10 correct?

11 MR. WHITE: I'm going to object on the basis
12 that this is argumentative questioning.

13 MR. SMITH: Sustained.

14 MS. LONE EAGLE: I have no more questions.

15 MR. SMITH: Mr. Harter, did you want to follow
16 up? You have one question, you said?

17 MR. HARTER: Thank you.

18 RE-CROSS-EXAMINATION

19 BY MR. HARTER:

20 Q. In your prefiled testimony it shows that you're a
21 member of the Professional Engineers and Geologists of
22 Alberta and American Society of Mechanical Engineers.

23 So under the guidelines for ethics practice in the
24 Association of Professional Engineers and Geologists in
25 Nebraska there is a statement that says Professional

1 engineers and geologists shall in their areas practice,
2 hold -- in their areas of practice hold paramount the
3 health, safety, and welfare of the public and have regard
4 for the environment.

5 Are you aware of that statement in there?

6 MR. WHITE: So for clarification, is this the
7 Alberta code or the Nebraska code that was just
8 referenced?

9 MR. HARTER: This is the Alberta code.

10 A. Yes. I'm aware of that.

11 Q. Okay. Thank you. Are you the engineer permit
12 holder for TransCanada?

13 A. I hold a particular permit -- or I am the COO
14 designate for the permit to practice that TransCanada has
15 for practicing engineering within the province of
16 Alberta.

17 Q. Okay.

18 MR. HARTER: Thank you. That's all.

19 MR. SMITH: Let's see. We're down to
20 Mr. Seamans.

21 MR. SEAMANS: Yes. I have a few questions.

22 CROSS-EXAMINATION

23 BY MR. SEAMANS:

24 Q. My name is Paul Seamans, and I'm a landowner on the
25 proposed Keystone XL route.

1 A. Good morning.

2 Q. Knowing that Keystone I had a 97 percent wall loss,
3 did TransCanada mobilize its spill response team?

4 A. My understanding of that response was that we
5 notified them, that they should be ready to go, but
6 because there was no breach of the pipeline, no.

7 Q. Okay. Thank you.

8 How long was it between the time that the pig
9 detected this defect and when the pipeline was shut down?

10 A. I don't know specifically, but it was a matter of a
11 few days as they processed the data.

12 Q. In the root cause analysis report from this
13 particular incident did the operator read the
14 measurements wrong?

15 A. No. And I was trying to explain this this morning.
16 When the pipeline was built the typical remediation
17 measures for interference were installed. The operator
18 came back and were doing measurements, recognized that
19 there was an interference issue, installed additional
20 measures to resolve the interference issue and had, in
21 fact, resolved the interference issue between the
22 pipelines before this defect was, in fact, discovered.

23 Q. Does TransCanada do an analysis of the effects of a
24 near miss such as this one? Like what could have
25 happened?

1 A. So we do near miss collection for occupational
2 safety type of incidents. We also do tracking on
3 pipeline integrity issues that were beyond what we would
4 like, and we do adjust our programs based on that
5 information.

6 Q. Okay. Thank you. Maybe you've been asked this
7 question before, but how much oil could have been lost
8 through, say, this pencil sized hole if it did --

9 A. I'm sorry. I really don't know. I can't
10 calculate -- I don't have no way to really calculate
11 that.

12 Q. Do you know the difference between AC and DC?

13 A. Yes, I do.

14 Q. The 600 engineers that you were responsible for,
15 would any engineers not know the difference between AC
16 and DC?

17 A. I would hope most of them would, but I can't
18 guarantee that.

19 Q. I would hope so too.

20 Is it your responsibility for whether or not the
21 600 engineers under your leadership have the proper
22 skills?

23 A. Yes. As part of the practice of engineering, part
24 of my role as chief engineer, we have a process for doing
25 engineering and quality assurance process for doing

1 engineering.

2 As part of that process, a qualified person has to
3 carry out the work, and a separate qualified person has
4 to review the work. That necessitates an understanding
5 of whether people have the appropriate training,
6 experience, and skills to do the work.

7 Q. Okay.

8 MR. SEAMANS: Well, thank you for your answers.
9 I guess that's all the questions I have.

10 MR. SMITH: Staff?

11 MS. EDWARDS: Thank you. Commission Staff has
12 no questions.

13 MR. SMITH: Do Commissioners have questions?
14 Chairman Nelson.

15 CHAIRMAN NELSON: You talked extensively about
16 the ultrasonic weld testing and images that are produced
17 by that.

18 Does TransCanada retain all of those images?

19 THE WITNESS: Yes. All of those images are kept
20 for the life of the project.

21 CHAIRMAN NELSON: And is that a requirement of
22 regulation or just company practice?

23 THE WITNESS: It depends on the jurisdiction,
24 but generally it's a regulatory requirement to keep those
25 images.

1 CHAIRMAN NELSON: You also talked, and I
2 appreciate your bringing this up, the one hydro test
3 failure on the base Keystone Pipeline that occurred in
4 South Dakota. You indicated that it was a welding repair
5 that ultimately failed.

6 Was there an ultrasonic test done after the
7 welding repair had been completed?

8 THE WITNESS: Yes, there was. But the -- in
9 this case it was a radiograph -- it did not -- it did not
10 see the crack that was in that particular pipe.

11 CHAIRMAN NELSON: So obviously after you
12 discovered the hydro test failure I'm assuming somebody
13 went back and looked at that radiograph.

14 In taking a second look at it, did you see any
15 anomaly, or was it simply not there?

16 THE WITNESS: In the second look the operator
17 said that they could see where it was, yes.

18 CHAIRMAN NELSON: We've talked extensively in
19 this hearing about the leaks at the pump stations.

20 When you do the hydro test, does that also test
21 all of the piping in the pump stations?

22 THE WITNESS: It tests all the high pressure
23 piping of the pump station. But these small little
24 branch connections are actually all plugged and shut off
25 because the pressure is so high that it would actually

1 damage the instrument on the end of that connection.

2 So but the procedures or what we've changed in
3 commissioning the stations going forward is in addition
4 to double-checking to make sure everything is tight we
5 actually do pressure test them more during the
6 commissioning process to make sure that there's no leaks
7 there.

8 CHAIRMAN NELSON: Thank you.

9 MR. SMITH: Commissioner Hanson.

10 COMMISSIONER HANSON: Thank you.

11 Good morning, Mr. King.

12 THE WITNESS: Morning.

13 COMMISSIONER HANSON: During your testimony at
14 two different times you spoke to -- I believe it may have
15 been in regards to the hydrostatic testing, the fact that
16 there were six excavations that took place?

17 THE WITNESS: Correct.

18 COMMISSIONER HANSON: Do you remember that?

19 THE WITNESS: That's correct.

20 COMMISSIONER HANSON: Later on in your testimony
21 you talked about 10 digs taking place.

22 Could you tell me how those fit together and --

23 THE WITNESS: So after the hydro test failure
24 and once we did the root cause analysis in conjunction
25 with PHMSA we identified six other locations where there

1 had been welds at -- tie-in welds, so welds at a road
2 crossing, where there had been a repair made to that
3 weld.

4 So we went back and excavated all of those
5 places and inspected all of them to make sure there were
6 no issues there.

7 COMMISSIONER HANSON: And you determined that --
8 the excavation by the fact that there had been secondary
9 welds to those?

10 THE WITNESS: Yeah. Through recordkeeping we
11 know that for each weld -- what the technique was used on
12 the weld and if a repair or not was made. So we went
13 back to every one that had had a repair.

14 COMMISSIONER HANSON: What is the time line
15 between the covering of that excavation and then the
16 testing? Do you know approximately? It doesn't --

17 THE WITNESS: Yeah. Sorry. In this particular
18 instance I'm not sure how long the pipe had been buried.
19 I don't know.

20 COMMISSIONER HANSON: Is it weeks, months?

21 THE WITNESS: It could be any of those.

22 COMMISSIONER HANSON: Okay.

23 THE WITNESS: It was just based on construction
24 time line, as they finished construction and backfilled.
25 And then we did the hydrostatic test. I don't know what

1 the time was.

2 COMMISSIONER HANSON: The pipeline was not put
3 into service, though; is that correct?

4 THE WITNESS: No. These were all excavated
5 before the pipeline was put into service. Part of the
6 work, we went into with PHMSA is to prove the pipeline --

7 COMMISSIONER HANSON: Thank you. What about the
8 10 excavations that you did? Were those done -- well,
9 why were those done?

10 THE WITNESS: So at the time I was talking about
11 the pipeline inspection we did to find -- and discovered
12 the corrosion feature in Missouri, we also inspected the
13 pipe -- well, the entire length of the pipeline,
14 including that third in South Dakota.

15 Based on the inline inspection, as we did in
16 South Dakota, we identified 10 locations to dig. I'm
17 trying to remember.

18 Six or seven of those locations were what we
19 call confirmation digs. So we have to prove that the
20 inline inspection tool is working accurately. So you
21 have to try to find something to dig.

22 So we picked seven locations based on segments
23 and differences in wall thickness and those sorts of
24 aspects and did those seven digs.

25 We did three additional digs. None of them

1 would be required under Part 195. So they identified
2 that there was wall loss or corrosion. None of them
3 would be required. Under base 195 and other Special
4 Permit Conditions any indication of walls at all
5 virtually requires us to go investigate it.

6 So we went out there. There was nothing
7 required to be repaired, and the pipe was just simply
8 recoated.

9 COMMISSIONER HANSON: So when you inspect then
10 and you go through that process that you related earlier
11 when you do those digs, is it a handheld ultrasound you
12 do at that juncture?

13 THE WITNESS: Typically we're looking for metal
14 loss. And either depending on the size of the metal
15 loss, they actually use a laser scanning tool which
16 actually measures the shape of the corrosion feature to
17 calculate a failure pressure basically.

18 Or they can do a manual process with sort of a
19 pen process which measures the contour of the corrosion
20 feature. Most of these were -- I mean, these were so
21 minor that they sort of measured them with -- I believe
22 they measured them manually.

23 COMMISSIONER HANSON: Okay. And so are you
24 saying that in a fashion you eliminate the -- the tool,
25 the next time you send it through, is going to send

1 similar readings to you. How are you going to know that
2 it's not a false positive versus a problem?

3 Do you correct that at that juncture?

4 THE WITNESS: So that corrosion feature is
5 recoated now so we're pretty sure it's stable. But each
6 time we run the tool through that section we'll look at
7 that corrosion feature. We'll compare it to how big it
8 appeared to be last time.

9 We'll look for any change. If there's change,
10 we'll go out and re-excavate. If it stays the same size,
11 we'll know the coating repair is good, and there's no
12 issue with regard to pipeline safety.

13 COMMISSIONER HANSON: Thank you.

14 Mr. Ellison was talking about adverse weather
15 conditions and the 2011 flood that we experienced here
16 along the Missouri River.

17 Are you familiar -- I'm assuming you're familiar
18 with the Keystone Pipeline, the crossing is it by Yankton
19 where that was crossed?

20 THE WITNESS: Yes.

21 COMMISSIONER HANSON: As I recall. I watched
22 part of the process. I'm trying to remember the distance
23 of that.

24 Do you recall any challenges that resulted from
25 the flooding of 2011?

1 THE WITNESS: To my understanding there was no
2 impacts to the pipeline during the flooding.

3 COMMISSIONER HANSON: Was any of it exposed that
4 had not been exposed as a result of it?

5 THE WITNESS: No. My understanding is it's all
6 still below the riverbed. There's no issues. To the
7 best of my knowledge.

8 COMMISSIONER HANSON: Thank you, Commissioner.

9 MR. SMITH: Okay. Are there any follow-ups to
10 Commissioner questions?

11 I'm not seeing anybody. So okay.

12 Any redirect?

13 MR. WHITE: Just one.

14 REDIRECT EXAMINATION

15 BY MR. WHITE:

16 Q. In response to the question raised by Commissioner
17 Nelson about retaining the weld records for the life of
18 the project, is it the scans themselves that are
19 retained, or is it the interpretation reports that are
20 retained for the life of the project?

21 A. Typically for radiographs it's the interpretation of
22 the scan. For ultrasonic quite often it's the
23 interpretation of the scan, but often the actual scan
24 itself is retained.

25 With the radiographs the film actually degrades over

1 time, and that's why you can't retain the actual film for
2 the duration.

3 MR. WHITE: Thank you. No further questions.

4 MR. SMITH: I think you may step down.

5 I think we would have an opportunity for
6 recross, but I'm not asking for any. I just wanted to
7 procedurally note that. But I have no questions.

8 MR. SMITH: Yeah. We can't go on forever. You
9 know, I mean, we've discussed that.

10 MR. ELLISON: Oh, I understand that. I just
11 wanted to -- the normal procedure and just state on the
12 record I have no questions.

13 MR. MOORE: Heidi Tillquist.

14 DIRECT EXAMINATION

15 BY MR. MOORE:

16 Q. Good morning, Ms. Tillquist. Can you introduce
17 yourself again, please.

18 A. My name is Heidi Tillquist. I'm with Stantec
19 Consulting.

20 Q. And have you previously testified in this
21 proceeding?

22 A. Yes, I have.

23 Q. And have you prepared rebuttal testimony that has
24 been previously marked as Exhibit 2017 and captioned
25 Corrected Amended Rebuttal Testimony?

1 A. I have a different exhibit number. Could we just
2 confirm?

3 Q. 2017 is the one that we corrected to fix some of the
4 internal references.

5 A. Okay.

6 Q. The substance is the same as the previous.

7 A. Very good. Thank you.

8 Q. All right. And other than with respect to
9 paragraphs 14 and 16, do you have any changes or
10 corrections to what has been marked as Exhibit 2017?

11 A. No, I don't.

12 Q. And if I asked you the same questions as contained
13 in Exhibit 2017, other than with respect to paragraphs 14
14 and 16, would you provide the same answers?

15 A. Yes, I would.

16 Q. And other than paragraphs 14 and 16, do you adopt
17 today the testimony that is contained in Exhibit 2017?

18 A. Yes, I do.

19 MR. MOORE: So, Mr. Smith, other than paragraphs
20 14 and 16, which we are not offering for the record, I
21 would offer Exhibit 2017 as the rebuttal testimony of
22 Ms. Tillquist.

23 MR. SMITH: Is there any objection?

24 Seeing none --

25 MR. MARTINEZ: Mr. Smith, could I just have a

1 clarification? You are not offering rebuttal testimony
2 with respect to which paragraphs?

3 MR. MOORE: 14 and 16.

4 MR. MARTINEZ: Okay. So are you essentially
5 asking to strike that from the rebuttal testimony as it's
6 been filed?

7 MR. MOORE: That's fine. However the Commission
8 prefers. We're not offering those two paragraphs.

9 MR. SMITH: Okay. Either way, the ruling will
10 be because they're not offering it, if I receive it,
11 they're not in.

12 MR. HARTER: Very good.

13 MR. SMITH: Now I don't know and again we can do
14 this any way people want and I don't know -- Ms. Douglas
15 down there, Tina Douglas, asked in terms of the exhibits
16 whether we had to do an actual black out of everything.

17 And I think it was sort of my feeling that I
18 don't think that's necessary because we can just -- you
19 know, in considering the evidence we'll -- the evidence
20 that has not been admitted will not be considered,
21 regardless of whether it's blacked out or not. Okay.

22 MR. MARTINEZ: Very good. Thanks. I just
23 wanted that clarification.

24 MR. SMITH: With that, what were the two
25 excluded paragraphs again?

1 MR. MOORE: 14 and 16.

2 MR. SMITH: Exhibit 2017 is admitted except for
3 paragraphs 14 and 16.

4 MR. MOORE: Thank you. Tender the witness for
5 cross-examination.

6 MR. SMITH: Mr. Clark.

7 CROSS-EXAMINATION

8 BY MR. CLARK:

9 Q. Good morning, Ms. Tillquist.

10 A. Good morning.

11 Q. I've just got a few questions for you. Your
12 rebuttal testimony to Dr. Arden Davis states that it's
13 your opinion that a spill contaminating drinking water is
14 unlikely; is that correct?

15 A. Yes.

16 Q. Would you agree with me that unlikely is not the
17 same as impossible?

18 A. Yes.

19 Q. Okay. So by your admission there is always going to
20 be a risk that the pipeline may spill and contaminate
21 drinking water; is that correct?

22 A. Yes.

23 Q. You also said that a spill similar to the one
24 experienced at Talmadge Creek is unlikely; is that
25 right?

1 A. Yes. Talmadge Creek was a very large spill volume
2 so it's a low probability event.

3 Q. And like the exercise we just went through, unlikely
4 is not the same as impossible; right?

5 A. Yes.

6 Q. Okay. So it is possible that a similar spill to
7 Talmadge Creek could occur in South Dakota?

8 A. Yes.

9 Q. Would it be fair to characterize your rebuttal
10 testimony as being -- to Dr. Davis as being premised on
11 the assumption that TransCanada will be able to timely
12 detect and respond to a leak?

13 A. My response is basically -- it complements
14 Dr. Davis's testimony. It's premised on, you know,
15 TransCanada's ability to detect leaks as well as the
16 incident frequencies and volumes that we've looked at.

17 Q. Right. I'm just making that clear.

18 So basically your rebuttal testimony is saying
19 Dr. Davis didn't account for TransCanada's ability to
20 timely detect and respond to a leak; is that right?

21 A. Are you saying -- could you refer me to where you're
22 saying I --

23 Q. Sure. I don't have it pulled up.

24 A. -- specifically rebutted Dr. Davis on that?

25 Q. Question -- I may not be looking at the same copy as

1 you.

2 In your original rebuttal testimony it was question
3 31, which states -- the question is Dr. Davis's
4 testimony, page 5, restates the Stansbury 2011 argument
5 that "worst-case spill volumes from the proposed Keystone
6 XL Pipeline are likely to be significantly larger than
7 those estimated by TransCanada."

8 It's a very long answer so I'll just try to jump to
9 the --

10 MR. MOORE: Excuse me. Mr. Clark, just for the
11 record, that is paragraph 14 in the Amended Rebuttal
12 Testimony.

13 MR. CLARK: Is that the part that's been
14 excluded?

15 MR. MOORE: That's correct.

16 MR. CLARK: I'll move on then.

17 Q. Would you agree that it is possible -- would you
18 agree that it is possible that a leak can go undetected?

19 A. A leak can be undetected for a period of time. I
20 think the statistics show that leaks are -- I think I
21 provided the statistics that most leaks are detected
22 within two days and that 99 percent are detected within
23 seven days and of those that aren't detected within the
24 first two days, the mean spill -- or median spill volume
25 is 15 barrels.

1 So could a leak go undetected for a period of time?

2 Yes. But I would say that the volumes aren't large.

3 Q. Okay. But it is possible that a leak can occur and
4 that TransCanada won't be able to catch it in a timely
5 manner.

6 A. It depends on what you say a timely manner, but
7 okay.

8 Q. Would you agree that the factual circumstances in --
9 you're generally aware of the Kalamazoo River spill;
10 correct?

11 A. Generally.

12 Q. Okay. And how far were contaminants detected in
13 that spill?

14 A. There was oil as far as 30 miles downstream.

15 Q. So in that spill it was contaminants were detected
16 30 miles downstream?

17 A. Yeah. The heavier weight.

18 Q. You're aware that the factual circumstances of that
19 spill are materially different than in South Dakota,
20 namely the presence of a dam; correct?

21 And in Kalamazoo there was a dam that prevented some
22 of that from traveling downstream; is that correct?

23 A. There was a roller dam there. So the crude oil
24 would have flown over the dam. And that was part of the
25 reason that the oil became neutrally buoyant.

1 Q. But you would agree that the dam probably helped
2 prevent some downward movement of the contaminants?

3 A. Yeah. It probably slowed the flow, but it didn't
4 certainly stop it in that case. But yeah.

5 Q. And you are aware that most streams the water
6 crossings that we're talking about in South Dakota the
7 circumstances are different.

8 So, for instance, Bridger Creek does not have a dam;
9 correct?

10 A. I'm not aware of any on Bridger Creek. We do look
11 at the locations of manmade stock ponds and things like
12 that. But there's not on Bridger Creek. So I think the
13 dams that I'm aware of, the large dams would be on the
14 Missouri River.

15 Q. Right. Okay. So it is possible because we've just
16 said that a spill similar to Kalamazoo could occur so it
17 is possible that those contaminants can travel further
18 than 30 miles; correct?

19 A. So I would suggest that the reason that the
20 Kalamazoo -- the downstream transport distance was as far
21 as it was when it went over the roller dam, again, the
22 oil had been sitting and again we had talked the other
23 day, we talked about the oil weathering.

24 So this was an oil that was an API gravity of 16
25 when it came out of the pipe. We talked about

1 weathering, and that reduces the API gravity. Once it
2 reaches 10 -- I'm sorry. I'm not trying to -- it becomes
3 neutrally buoyant.

4 So when it went over the roller dam it had the
5 ability to become neutrally buoyant and incorporated
6 sediment, dirt, and that sinking material was the
7 material that was moved downstream and was actually along
8 the bottom.

9 Q. That is a very good answer, very good technical
10 answer. I guess I'm looking for just a simpler --

11 A. Sorry.

12 Q. -- explanation of what may occur.

13 Because the rivers and streams and water bodies in
14 South Dakota are in a factually different situation than
15 the dam -- than the river in Kalamazoo, it is possible
16 that a similar spill could spread further than what was
17 detected in Kalamazoo?

18 A. You know, I guess, you know, when we look at the --
19 how far downstream transport could happen we -- in our
20 Risk Assessment we're using some very simplistic
21 assumptions, you know, velocity, time of transport.

22 This doesn't account for a lot of factors that
23 occur. So, again, we had talked the other day about oil
24 being stranded, you know, along the beaches. You know,
25 the stream banks, caught by vegetation, drifting out into

1 backwaters. More sophisticated models that models oil
2 spills in rivers actually come up with quite lower
3 numbers than we do. So the more realism you add to the
4 model the less farther downstream it goes.

5 So I would say that it's my experience that 30 miles
6 on the Kalamazoo, really it presents an outlier, and I
7 wouldn't expect things to go -- that would be very close
8 to the maximum extent downstream I'd really expect
9 anything to go.

10 Q. Okay. Just to clarify -- I think I know what you're
11 saying, but just to clarify, it's your testimony that
12 even though the streams in South Dakota are not -- do not
13 have dams that can stop contaminants, it's your testimony
14 that you don't believe that a similar spill in
15 South Dakota would travel 30 miles or more?

16 A. I don't think it would go much past 30 miles, no.
17 And we also think about emergency response too.

18 MR. CLARK: No further questions.

19 MR. RAPPOLD: Rosebud has no questions. Thank
20 you, sir.

21 MR. SMITH: Mr. Capossela.

22 MR. CAPOSSELA: Thank you, Mr. Smith.

23 CROSS-EXAMINATION

24 BY MR. CAPOSSELA:

25 Q. Good morning, Ms. Tillquist.

1 A. Good morning.

2 Q. Your rebuttal testimony it states pipeline failures
3 at river crossings are highly uncommon and almost always
4 are associated with loss of depth of cover.

5 Do you know what caused the Talmadge Creek release?

6 A. It was the -- I believe it was the loss of depth of
7 cover on that. Can you refer me to the question you're
8 looking at? We probably don't have the same numbers.

9 Q. 9.

10 Do you know how many gallons of bitumen were
11 released into the Talmadge Creek in the Kalamazoo River?

12 A. There was no bitumen. It was diluted bitumen. And
13 I think it was 19,000 plus. I think was close to 20,000
14 barrels.

15 Q. Your testimony further states According to a PHMSA
16 report to Congress, 2012, during a 21-year span between
17 '91 and 2012 only 20 accidents involving water crossings
18 occurred.

19 How many is that on an annual basis?

20 A. A little under one a year.

21 MR. CAPOSSELA: Thank you. I have no further
22 questions for this witness.

23 MR. SMITH: Ms. Real Bird or Baker.

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CROSS-EXAMINATION

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BY MS. BAKER:

Q. Thank you. Jennifer Baker for the Yankton Sioux Tribe.

In your prefiled testimony you mention in question No. 6 in your answer that "The windblown sands south of Buffalo in Harding County has been mapped by Erickson 1956 and Petsch 1956."

I was just wondering if it's possible for windblown sand to shift or change over the course of more than 50 years.

A. Yes. I would assume so.

Q. Okay. So reliance on those maps from more than 50 years ago isn't necessarily accurate?

A. I wouldn't -- yeah. So the maps that are being used right now are -- that's a 1 to -- sorry. 7 and a half million map. So these are, I would say, very general maps. And so it's important to understand what the soil conditions are when you're out in the field and underlying methodology.

Q. Right. So you would want more recent maps than this, than 50 plus year old maps?

A. Yeah. So what we're looking at is basically if you look at these maps and you map the GIS features and you quantify that, we looked at where the well locations were

1 in relationship to those sand formations. That's what
2 this response was.

3 Q. Okay. You mentioned in your response to question
4 No. 10 that the Keystone XL Pipeline will not exceed
5 temperatures of 150 degrees Fahrenheit per PHMSA special
6 Condition 15.

7 Do you consider the Special Conditions to be
8 mandatory?

9 A. The Special Conditions are included as part of the
10 FSEIS and, therefore, are required for PHMSA to
11 implement.

12 Q. Is it mandatory for Keystone to comply with the
13 Special Conditions?

14 A. Yes.

15 Q. Thank you. And you mentioned in your answer to
16 question No. 11 regarding benzene causing leukemia in
17 humans, you describe a study of 79 individuals exposed to
18 benzene through their work in the Australia petroleum
19 industry.

20 And I was wondering if a study of 79 individuals is
21 really a sizable enough study to give statistically
22 reliable predictions about cancer risks?

23 A. No. The reason this is a -- as an example of what's
24 out in the literature. And basically the idea is that a
25 benzene exposure is a time-weighted average for what is

1 the standard for exposures.

2 Q. Okay. But you're using this as an example, but you
3 are admitting that 79 individuals is not really a great
4 enough depth for a study to be representative to be
5 relied on?

6 A. No. I think this is a, you know, peer reviewed
7 scientific paper. It provides an analysis. This is one
8 of many studies that are usually conducted to provide a
9 weight of evidence for looking at benzene exposure.

10 Q. Okay. And you go into some detail about the
11 particular benzene exposure in this study being eight --
12 the equivalent to being exposed eight hours a day for two
13 working years.

14 Did that study only look to that particular
15 exposure, or -- because you're distinguishing between
16 what would happen if there was a crude oil spill and what
17 would happen in this study and saying this study showed
18 leukemia rates but only if there was a significant
19 exposure for two working years eight hours a day.

20 Did that study actually look at anything that's
21 comparable to a crude oil spill?

22 A. No. This is -- so crude oil, the benzene that you
23 would experience from a crude oil spill would be a
24 short-term exposure. These individuals were exposed to
25 long-term exposure, and that's typically what would cause

1 effects such as leukemia.

2 Q. Okay. So the results of that study aren't really
3 relevant for the purposes of assessing a crude oil
4 spill?

5 A. It's again trying to demonstrate that it's a
6 time-weighted average and that, you know, a single
7 short-term exposure is -- is not what is causing this
8 leukemia that was observed here.

9 Q. You also in your rebuttal testimony mentioned
10 Keystone's Emergency Response Plan. And you stated that
11 municipal groundwater and residential intake users would
12 be notified in the event of a release through
13 implementation of Keystone's Emergency Response Plan.

14 Have you seen the Emergency Response Plan?

15 A. No. I have worked with the emergency response
16 personnel, and the notification procedures are something
17 that we've talked about quite a bit and is an integral
18 part of their plan.

19 Q. So the plan does exist?

20 A. The plan for the Keystone Project exists.

21 Q. And what about for Keystone XL is that the one
22 you're referring to?

23 A. That plan is in development. Those are the people I
24 work with.

25 Q. Okay. So you haven't seen it because it's still in

1 development. So how do you actually know that that's
2 part of the plan?

3 A. Notification procedures are required to be included
4 in facility response plans as required by Part 194.

5 Q. I believe I have just one more question.

6 MS. BAKER: No. Actually I think that wraps it
7 up for me. Thank you very much.

8 MR. SMITH: Dakota Rural Action.

9 MR. MARTINEZ: Thank you, Mr. Smith.

10 CROSS-EXAMINATION

11 BY MR. MARTINEZ:

12 Q. Robin Martinez on behalf of Dakota Rural Action. I
13 did have a number of questions, but I think the removal
14 of item No. 16 and 14 probably took away about 80 percent
15 of what I was going to ask.

16 Let me focus you on No. 13 of your rebuttal, item
17 No. 13 within your prefiled testimony, Ms. Tillquist,
18 where you're talking about spill frequencies.

19 Do your spill frequency calculations, for instance,
20 that you engaged in, do they make the assumption that
21 TransCanada is effectively going to comply with all of
22 the PHMSA requirements?

23 A. Yes.

24 Q. Okay. Are those assumptions that you make or are
25 those risk calculations also assuming that TransCanada is

1 not going to have any issues with inspections of the
2 pipeline during construction?

3 A. Please repeat.

4 Q. Okay. Do your risk calculations also assume that
5 TransCanada is going to be able to effectively engage in
6 all of its necessary inspections during the course of
7 construction of the pipeline?

8 A. Yeah. So the answer is yes. And I would say that
9 the incident frequencies that we use are based on the
10 PHMSA database, which assumes that all pipelines have
11 completely complied with, you know, what I'm looking at
12 with construction procedures.

13 Now they may or may not have, but the incident
14 database is what we use, and I'm assuming that
15 TransCanada is abiding by all the regulations that
16 they're required to.

17 Q. So the Risk Analysis, in effect, assumes a perfect
18 world; correct?

19 A. No.

20 Q. Okay. You've heard some testimony today about the
21 two hurricanes that hit down in Guadalajara; is that
22 correct?

23 A. I heard testimony about that.

24 Q. Okay. What's the likelihood from a risk analysis
25 standpoint of two hurricanes, major adverse weather

1 effects like that, occurring so close in time like that?

2 A. I have no data to give you an answer to that.

3 Q. Okay. When you're engaging in a risk analysis would
4 you agree that -- or strike that.

5 What relationship does complexity bear to risk?

6 A. I think more complex systems are more -- you know,
7 there are threats -- more threats that are -- must be
8 considered.

9 Q. Why is that? Could you maybe give me a little bit
10 better explanation?

11 A. You know, if -- the more complex a system, you know,
12 there's more -- the more moving parts, the possibility of
13 something occurring.

14 Q. So a greater number of factors than that need to be
15 considered? Would that be a fair statement?

16 A. Yes.

17 Q. And so the greater number of factors that you have,
18 what does that do? Does that multiply the risk then? Or
19 what's the math behind that?

20 A. I'm not sure how you're exactly implying -- applying
21 this to what we're doing.

22 Can you clarify, please.

23 Q. Well, I'm trying to get an understanding of how
24 complex systems increase risk when you're conducting a
25 risk analysis on a complex system such as a pipeline.

1 A. So I think we've been pretty clear. I mean, complex
2 systems have more things that can pose a threat.

3 Q. Would you agree that a pipeline is a complex system?

4 A. I would -- I would agree that the pump stations and
5 many of the components are complex systems with many
6 things that go on.

7 The pipe is actually quite simple. The way it's
8 operated can be -- it's relatively straightforward.

9 Q. What about all of the design factors that go into
10 designing and --

11 A. That's outside my area of expertise, sir.

12 Q. Are there risk factors included in, for instance, a
13 pipeline design?

14 A. There are -- when we did our risk assessment the --
15 there is a component that accounts for those types of
16 threats to the pipeline.

17 Q. So you're saying that that is included in your risk
18 calculations?

19 A. Yes.

20 Q. Okay. Can you tell us what those factors were that
21 you included in your Risk Analysis?

22 A. So the Risk Analysis looks at the threat causes that
23 are identified in the PHMSA database. The ones that I
24 would think that would apply off the top of my head would
25 be materials, which would include the design, and perhaps

1 hydraulics because of the way it's operated.

2 Q. Do you take into calculation or do you take into
3 account human error?

4 A. Yes. There is a -- yes.

5 Q. How big of a factor does that play?

6 A. I don't have that number off the top of my head.
7 It's -- it's not one of the major -- it's not one of the
8 top ones, but it is a factor.

9 Q. Can human error occur at each sort of section or
10 component where risk factors are identified?

11 A. Yes.

12 MR. MARTINEZ: Okay. No further questions.

13 MR. SMITH: Ms. Craven.

14 MS. CRAVEN: I have no questions. Thank you.

15 MR. SMITH: Mr. Gough.

16 MR. GOUGH: Yes. Thank you. A couple of
17 questions.

18 CROSS-EXAMINATION

19 BY MR. GOUGH:

20 Q. Good morning, Ms. Tillquist.

21 A. Good morning.

22 Q. Bob Gough, InterTribal COUP.

23 In your testimony in response to question 13 you
24 indicate approximately two-thirds of the pipelines in the
25 U.S. were constructed prior to 1970.

1 Were any of those constructed in West River
2 South Dakota?

3 A. I'm not sure.

4 Q. Are you aware of any pipelines constructed, oil
5 pipelines constructed in West River South Dakota?

6 A. I didn't specifically look at that, sir.

7 Q. So in your work in preparing for this project you
8 didn't look to see what pipelines have already come
9 through the region?

10 A. We looked at some other -- I mean, we looked at more
11 of a national level where pipelines were, and I don't
12 recall specifically narrowing it down to western
13 South Dakota to see if there was anything here
14 specifically. I honestly don't remember.

15 Q. Would it be fair to say that there are no pipelines
16 of note in western South Dakota?

17 A. I wouldn't have the ability to accept or refute
18 that.

19 Q. Would you be surprised if there were no pipelines
20 ever built in western South Dakota to carry oil?

21 A. Yeah. I would be surprised. Yeah.

22 MR. GOUGH: Thank you. No further questions.

23 MR. SMITH: Mr. Dorr.

24 MR. DORR: I have no questions.

25 MR. SMITH: Mr. Harter.

1 MR. HARTER: I have just a few.

2 CROSS-EXAMINATION

3 BY MR. HARTER:

4 Q. There's been a lot of talk on the benzene product.
5 The benzene has the possibility of separating in a spill
6 into let's say a gas or a plume, cloud, however you want
7 to describe it up away from the spill; right?

8 A. Correct. It will evaporate, yes.

9 Q. Okay. So because we know that this does -- this
10 benzene has the ability to do this and we know that it's
11 in gasoline, should we take a spill with little regard to
12 the public?

13 Should we not be worried about this, although we
14 know it's in gasoline?

15 A. Are you asking -- I'm sorry.

16 Q. I'll rephrase it.

17 A. Thank you.

18 Q. We know the product's in gasoline. It's in all the
19 crude oil products; correct?

20 A. Yes, sir.

21 Q. So if there's a spill, because we know this, should
22 we take this lightly?

23 A. Should we take a spill lightly? No. Absolutely
24 not.

25 Q. Thank you.

1 Okay. You talked earlier about -- I think we were
2 talking about the Bridger Creek area but the product
3 traveling you thought no further than 30 miles; correct?

4 A. That would be a rough estimate. That's the longest
5 that I've seen in the case studies that I've evaluated,
6 yes.

7 Q. Okay. So we're talking about the heavy based
8 product. Is that not what you're describing here when
9 you're talking about the travel -- what's traveling in
10 the water on the -- the dilbit, talking just about the
11 dilbit.

12 You're talking about the heavy product; right?

13 A. So when the spill is initially released you have
14 basically a -- a heavy conventional oil, in essence, that
15 contains the light ends as well as the heavy ends.

16 And as the spill moves away from of the source, most
17 of the concentration will stay close to the source, but
18 as it moves downstream we talked about the other day how
19 things weather so the light end components will weather.
20 And as you get further and further downstream what's left
21 is the heavier weight products.

22 So yeah. I think that's what you're trying to say?

23 Q. Well, sort of. I guess just for -- what I read on
24 this and the products -- and, of course, I don't know all
25 the diluents that are also put in this.

1 But my understanding is that some of these chemicals
2 will separate from the product, and could these chemicals
3 possibly go further than your 30 miles that you're
4 stating?

5 A. No. The products that I'm referring to, when I'm
6 talking about further downstream is the products would
7 have the longest environmental persistence.

8 So those are the ones that would go the farthest
9 downstream. You know, again, the things that are in the
10 diluent, you know, those are -- again, they're going to
11 have a propensity to evaporate more quickly.

12 They will partition into drink -- or into the water
13 but that's a very slow process but it can happen. That
14 benzene again starts to volatilize out of the water
15 itself, which is another fade process, and quickly
16 removes the benzene from the water.

17 Q. What about in an aquifer where your water is
18 submerged and covered?

19 A. So in an aquifer the evaporation process would be
20 highly restricted. So the oil -- if an oil product -- if
21 crude oil were to reach the water interface with the
22 aquifer, it would sit on top of the water. And as we
23 have talked before, benzene has a greater affinity to the
24 crude oil so it will stay in the crude oil. But over
25 time it will begin to dissolve out, and that is what

1 forms the groundwater plume.

2 Q. Thank you.

3 You were talking about putting your evidence
4 together for your risk. So when you're putting this
5 together are you just using low risk, or do you average
6 like low, medium, high together to create your risk
7 analysis?

8 A. We don't use any categories like that.

9 Q. Then explain -- just briefly explain that, if you
10 can, so we have a concept of are you using high risk
11 analysis to make your decisions, or are you using low
12 risk analysis to make your decisions on the risk
13 analysis?

14 A. We don't use low -- I'm not sure what you're trying
15 to ask. We don't have low risk analyses that we do or
16 high risk analyses.

17 I'm really not sure what you're asking, sir. I'm
18 sorry.

19 Q. I guess my question is just elaborate on the
20 materials you use to make your Risk Analysis. Does that
21 make sense?

22 A. Sure. So we -- again, we've talked about we use the
23 PHMSA database to extract incident frequencies, spill
24 volumes, and then we've looked at a number of other
25 factors. Sorry.

1 So with those numbers we generate the probability of
2 an event, and then the likely spill volumes. We look at
3 the range of spill volumes, the probable spill volumes.
4 And then we use the components that are within the
5 product that's being transported to estimate potential
6 effects to various environmental media.

7 So if it's water, we look at benzene. We try to be
8 conservative. We, in essence, basically take the spill
9 volume and assume all that benzene gets into the water
10 immediately and compare that with the drinking water
11 contaminant level.

12 Now that would never happen in reality. But what
13 we're trying to do is provide a conservative estimate of
14 risk for communicating to the public -- trying to make it
15 accessible for people.

16 MR. HARTER: Thank you. That's all.

17 MR. SMITH: Thank you, Mr. Harter.

18 Ms. Bardaglio.

19 MS. BARDAGLIO: I do have one question.

20 CROSS-EXAMINATION

21 BY MS. BARDAGLIO:

22 Q. When you were talking about the benzene separating
23 and being released, can you tell me whether that release
24 of benzene into the atmosphere is -- into the atmosphere
25 is toxic or poisonous or a threat at the levels that it

1 would be released?

2 A. So as far as the levels that would be released, that
3 would really be site specific conditions. But I will say
4 that, you know, the benzene that -- so when a release
5 happens and the benzene evaporates, those concentrations,
6 you know, are in the air. They'll be dispersed by wind.

7 And then there's a lot of environmental processes
8 that degrade the benzene photolysis, basically sunlight
9 breaking down the components. There's a number of things
10 that break down the benzene within the natural
11 environment, within the air. So it's not a permanent
12 fixture within our atmosphere.

13 MS. BARDAGLIO: Thank you. I have no other
14 questions.

15 MR. SMITH: Ms. Lone Eagle.

16 CROSS-EXAMINATION

17 BY MS. LONE EAGLE:

18 Q. I just have one question to follow up on Wrexie's
19 question, and that is how long does that process take?

20 A. You know, I would have to go back and look at my
21 references. My guess is, you know, if I had to go off of
22 sheer recollection, I would say days to weeks.

23 Q. So you're saying that that benzene could remain in
24 the air for days to weeks?

25 A. Yeah. So the benzene, again, will disperse because

1 of the air, and then the half life --

2 Basically so the activity of, you know, these
3 processes, these environmental fate processes, will
4 gradually diminish the concentrations within the air and
5 quickly reduce it down.

6 At the actual site what you see is the
7 concentrations in the air that are being released from
8 the oils actually exponentially declines.

9 Q. Over days or weeks?

10 A. Hours, in that case.

11 MS. LONE EAGLE: Okay. Thank you.

12 MR. SMITH: Mr. Seamans.

13 CROSS-EXAMINATION

14 BY MR. SEAMANS:

15 Q. I just have a couple questions.

16 Suppose as a property owner I discover a spill.
17 Should I be taking any special precautions like wearing a
18 special mask or anything like that?

19 A. I believe TransCanada has a landowner engagement
20 process. You know, my -- from my professional expertise,
21 I would say you would get out of the area and notify
22 TransCanada.

23 Q. Okay. On benzene like in dilbit do you know the
24 percentage of benzene that becomes water soluble?

25 A. The fraction that becomes water soluble is a very

1 small fraction of the total volume. And it can't exceed
2 the maximum solubility of the water itself, and it's
3 usually a fraction of that. So, again, it's a small
4 fraction, and it takes time.

5 Q. And this benzene that does become water soluble,
6 does it stay in the water for very long?

7 A. No. So if benzene's released -- if we just think
8 about benzene in the water, again, it's going to be
9 buoyant. It's going to stay near the water surface.

10 And volatilization again occurs with benzene from
11 the water surface. So that is evaporating from even --
12 when it gets into the water it's being evaporated from
13 the water surface. So it doesn't persist for very long.

14 Q. Would that apply to an aquifer also?

15 A. No. Again, because we're limiting the component
16 that's available for evaporation or in this case
17 volatilization in the water surface. So it would be --
18 it would stay in the water longer, which is --

19 You know, some of the ways -- when they look at
20 remediating it, that's some of the ways they look at
21 remediating benzene out of the water.

22 MR. SEAMANS: Okay. Thank you. I have no more
23 questions.

24 MR. SMITH: Staff.

25 MS. EDWARDS: Thank you. Staff has no

1 questions.

2 MR. SMITH: Commissioners, any questions?

3 None.

4 Yes.

5 MR. CAPOSSELA: Mr. Smith, may I do some recross
6 briefly?

7 MR. SMITH: Sure.

8 MR. CAPOSSELA: Thank you. And I will be brief.

9 REXCROSS-EXAMINATION

10 BY MR. CAPOSSELA:

11 Q. Ms. Tillquist, you stated that when the benzene
12 evaporates into the atmosphere the wind and other
13 conditions will take care of it.

14 Do you know how many hundreds or thousands of
15 families were forced to evacuate after the Kalamazoo
16 River spill?

17 A. I'm not aware of that number.

18 Q. Okay. You also testified that the scouring in the
19 riverbed was the cause, per your information, of the
20 involuntary release of oil; is that correct?

21 A. I believe scour was a factor in the eventual cause
22 of the release.

23 Q. Was disbonded polyethylene coating of the pipe also
24 a cause?

25 A. I'm not sure what the root cause of the actual pipe

1 failure was. Again, scour I believe was a part of why
2 the event occurred.

3 Q. Do you know, is the cleanup completed?

4 A. I know that they've dredged the river. I do not
5 know if they're complete.

6 Q. Do you know what the original cost estimate by the
7 EPA for the cleanup was?

8 A. No, I do not.

9 Q. Do you know what the cost up to date of the cleanup
10 is, has been?

11 A. I do not know. It's -- no. I do not know the
12 number.

13 Q. Would it surprise you to -- would it surprise you if
14 it were 1,000 times more than the original estimate?

15 MR. MOORE: I'll object to relevance and
16 argument at this point. She testified she doesn't know.

17 MR. CAPOSSELA: No further questions.

18 MR. SMITH: Sustained.

19 MR. CAPOSSELA: Thank you, Mr. Smith, for
20 recross.

21 MR. SMITH: Redirect?

22 MR. MOORE: No redirect. Thank you.

23 MR. SMITH: You may step down.

24 MR. TAYLOR: TransCanada calls Rick Perkins.

25 (The oath is administered by the court reporter.)

DIRECT EXAMINATION

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BY MR. TAYLOR:

Q. Will you state your name for the record, please.

A. It's Frederick J. Perkins.

Q. Do you go by Rick?

A. I do.

Q. Have you been patiently waiting since last Tuesday to give your rebuttal testimony?

A. I have.

Q. Patiently?

A. Patiently.

Q. Do you have in front of you TransCanada Exhibit 2007?

A. Yes, sir.

Q. And that's the Prefiled Rebuttal Testimony that you prepared in this matter?

A. Yes, sir.

Q. Are you familiar with that and have reviewed that Prefiled Rebuttal Testimony?

A. Yes, sir.

Q. Do you adopt that as your testimony here today?

A. I do.

MR. TAYLOR: We would offer Exhibit 2007.

MR. SMITH: Is there objection?

MR. ELLISON: No objection.

1 MR. SMITH: I don't see any other indicators of
2 objection. 2007 is admitted.

3 MR. TAYLOR: Surrender the witness for
4 cross-examination.

5 MR. SMITH: Mr. Clark.

6 MR. CLARK: Thank you, sir.

7 CROSS-EXAMINATION

8 BY MR. CLARK:

9 Q. Thank you, Mr. Perkins. You stated that you're
10 aware of the proposed man camp in Meade County; is that
11 correct?

12 A. I'm aware of the workforce camp that we plan to
13 build in Meade County.

14 Q. Okay. You also stated in your direct testimony that
15 you have already had preliminary discussions with local
16 law enforcement; is that correct?

17 A. That's correct.

18 Q. To the best of your knowledge, has TransCanada made
19 any contact with the law enforcement agency of the
20 Cheyenne River Sioux Tribe?

21 A. Not to my knowledge.

22 MR. CLARK: No further questions.

23 MR. SMITH: Mr. Rappold.

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CROSS-EXAMINATION

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BY MR. RAPPOLD:

Q. Good morning, Mr. Perkins.

Regarding law enforcement, contact with local law enforcement providers, are you aware of any contact that's been made by TransCanada with the Rosebud Sioux Tribe Law Enforcement Services?

A. No, sir.

MR. RAPPOLD: Thank you. No further questions.

MR. SMITH: Mr. Capossela.

MR. CAPOSSELA: Thank you. Mr. Smith.

CROSS-EXAMINATION

BY MR. CAPOSSELA:

Q. Good morning, sir. My name is Peter Capossela. I'm a lawyer for the Standing Rock Sioux Tribe, South Dakota and North Dakota.

Where is the planned camp in Harding County? Would you just describe the location?

A. Approximately 7 miles west of Buffalo.

Q. Is there a police station or sheriff's office in Buffalo? Do you know?

A. Yes, sir, there is.

Q. Do you know how many officers there are?

A. I don't know specifically. It's a very small staff. Probably less than five.

1 MR. CAPOSSELA: I have no further questions,
2 Mr. Smith.

3 Thank you, sir.

4 MR. SMITH: Ms. Real Bird or Baker.

5 CROSS-EXAMINATION

6 BY MS. BAKER:

7 Q. Thank you. Good morning. Jennifer Baker for the
8 Yankton Sioux Tribe.

9 In your prefiled testimony you said there will be
10 three camps in South Dakota. Do you anticipate that all
11 of those camps will open at the same time?

12 A. No, ma'am.

13 Q. Okay. Could you give us a rough estimate? I know
14 you don't know when they'll start opening. It will
15 depend on a few factors if they do. But approximately in
16 relation to one another?

17 A. Well, the camp in Buffalo and the camp in Colome
18 will open the same year. The camp plan for Meade County
19 will open the second year of construction.

20 Q. Thank you. How long before construction begins
21 would the camps be built?

22 A. Well, a lot of that depends on when we get -- and if
23 we get a Presidential Permit. If we get a Presidential
24 Permit, for instance, soon we could possibly do some
25 infrastructure work, such as water and waste water

1 systems this year at the two camps I mentioned.

2 But the actual onsite, aboveground construction
3 would probably not begin until April, maybe February or
4 April of the following year.

5 Q. Okay. And I'm not sure if you understood me
6 exactly. I'm looking to in relationship to breaking
7 ground for the pipeline, when would ground be broken for
8 the camps?

9 A. Oh. Sorry.

10 Q. That's okay.

11 A. At least four to six months prior to construction of
12 the pipeline.

13 Q. Thank you. And how long before construction of the
14 pipeline would the camps be occupied?

15 A. Probably two months. Could be a little bit longer.
16 Two and a half. But about two months.

17 Q. Okay. Thank you. And I noticed you used the term
18 pipeliners in your testimony.

19 Are you comfortable with that term?

20 A. I am.

21 Q. Where will the pipeliners come from to the camps?

22 A. Well, they will come from all parts of the
23 United States. All these pipeliners are -- I say "all."
24 Relatively all will be union workers. They will come out
25 of the local union halls.

1 Many of them will be locals, residents, as much as
2 possible. But if they are not available locally, which
3 is an issue obviously in remote areas, then they will
4 come from other parts of the United States.

5 Q. Okay. Do you know how most of them would travel to
6 the camp when they come to move in?

7 A. They will probably travel by their personal vehicle.

8 Q. Okay. And that was going to be my next question.
9 Do most pipeliners in your experience have personal
10 vehicles?

11 A. Most of them do.

12 Q. Are certain pipeliners required to stay at the
13 camps, or is it optional?

14 A. It's optional.

15 Q. And when workers do reside at the camps do they sign
16 any kind of contract with TransCanada?

17 A. They do not.

18 Q. Okay. Do they sign any kind of contract with Target
19 Logistics?

20 A. The only thing they sign is a code of conduct that
21 says that they will abide by the code of conduct and camp
22 rules that are established for that camp.

23 Q. So there's nothing that actually makes that code of
24 conduct legally binding; it's just their signature on a
25 document?

1 A. That's correct.

2 Q. Can you tell me the ratio of women to men who reside
3 at the camps?

4 A. That's a good question. That's why we don't call
5 them man camps. We have approximately 3 to 6 percent
6 female population in the workforce, and the rest
7 obviously are men.

8 Q. To your knowledge, has sexual harassment ever been
9 alleged at any of these camps?

10 A. None. Never.

11 Q. What does the work schedule of the workers look
12 like?

13 A. Typical workday is it starts at about 4 o'clock in
14 the morning. When they rise they have breakfast, and by
15 7 o'clock they walk through a gate into an adjacent
16 contractor yard where the contractor, the pipeline
17 contractor, has their spread construction offices.

18 They essentially go on the clock at that point.
19 They go through a safety meeting each morning. Various
20 topics are discussed. But usually by 7:30, 8 o'clock
21 they are en route to the pipeline right of way to start
22 their day. And they work a 10-hour day, and they are
23 back usually by 6, 7 o'clock at night.

24 Q. Okay. How many days a week?

25 A. Six days a week.

1 Q. Okay. So in the evenings they are free, and then
2 they have a full day one day a week that's free?

3 A. That's correct.

4 Q. To your knowledge, especially on those evenings
5 after such a long day of work what do employees generally
6 do to relieve that stress?

7 A. Well, during the workweek they simply have dinner,
8 shower, and many turn in early because they're back up at
9 4 o'clock the next morning.

10 Q. And what about those that don't?

11 A. I can't speak -- there is a media center. There's a
12 recreation center planned for all of our camps. So I
13 assume they'll take advantage of that.

14 Q. Okay. Do they ever leave the camp when they're not
15 working?

16 A. They're not restricted to stay at the camp at all.
17 They can leave as they wish.

18 Q. Okay. It sounds like you've had some experience in
19 this field. In your experience is that common to leave?

20 A. I think it is, yes.

21 Q. Okay. And for these camps here in South Dakota
22 would you anticipate the workers leaving? Would you
23 expect that to happen?

24 A. The workers leaving during the workweek I think will
25 be minimal. The workers leaving possibly after they

1 complete their workweek on Saturday, they may -- probably
2 more would leave on Saturday and Sunday to sightsee and
3 go to the local restaurants. Although food is provided,
4 three meals a day, they will get out and frequent
5 restaurants.

6 Q. Okay. So there's -- there's food available, but
7 there aren't restaurants available at the camps; is that
8 correct?

9 A. Well, there's -- the camps are all catered so all
10 the meals are provided by Target Logistics.

11 Q. So if they want a different choice, different
12 options, they leave?

13 A. They will.

14 Q. Any other needs that they might choose to leave the
15 site for?

16 A. As I said, on Sunday many of them, I assume, will
17 not have been in South Dakota before. They will want to
18 go see the countryside. Area attractions, Black Hills,
19 you know, that sort of thing.

20 Q. Okay. And as far as that work schedule, you
21 mentioned six days on, one day off. Will that go all
22 through -- I know the duration of these employees with
23 the company will vary, but will that go through their
24 entire duration?

25 A. It will. And that's what distinguishes pipeline

1 construction from maybe what you see in the Bakken.
2 Those folks that work in the Bakken area typically work
3 three weeks on and go home a week to two weeks. That is
4 not the way pipelines are constructed.

5 Folks come. Workers, pipeliners, come to the job,
6 and they generally do not leave except for an emergency
7 until the job is finished.

8 Q. Okay. Can you tell me how the locations of the
9 camps were selected?

10 A. The camps were selected -- the locations were
11 selected before I came to the project. But generally the
12 way they're selected is that you want a camp somewhere
13 midrange between the ends of a pipeline spread.

14 Now a pipeline spread is the number of -- well, it's
15 defined by me as the labor and equipment needed to build
16 a certain number of miles of pipeline.

17 So ideally you want that camp near the center to
18 avoid a lot of windshield time by the workers getting to
19 and from the right of way each day. So generally the --
20 ideally you want the camps in the center of the spread.

21 Q. Okay. Is consideration given to socioeconomic
22 factors when identifying these locations?

23 A. Well, again, I was not a part of the project when
24 those decisions were made, but I assume they are or were.
25 Obviously, you have to look at lodging.

1 Lodging studies were done several times by
2 TransCanada and determined essentially nonexistent to
3 support the kind of labor staff needed the pipeline. So
4 I can tell you at least lodging and availability of
5 housing was looked at.

6 Q. But no consideration was really given to the local
7 community as far as not what's available to you but what
8 the impact would be of the camps on the local community?

9 A. Well, I think they probably were but that was done
10 by somebody else and I can't speak to the -- in depth of
11 those studies.

12 Q. Okay. Are you aware that the Colome camp will be
13 relatively close to the Yankton Sioux Tribe's
14 Fort Randall Casino?

15 A. Yes. I understand that.

16 Q. Okay. And are you aware that this casino is the
17 closest casino and one of the closest locations for
18 entertainment to Colome?

19 A. Yes, ma'am.

20 Q. Was that a consideration in the siting of this camp?

21 A. Not at all.

22 Q. Let me switch gears a little bit.

23 Are you familiar with Keystone's base pipeline?

24 A. Somewhat. Not a lot.

25 Q. Are you aware of whether man camps were utilized in

1 the construction of that pipeline?

2 A. They were not. And I don't use the word man camp.

3 Q. Okay. I believe it was used by one of TransCanada's
4 witnesses earlier in the proceeding.

5 A. Well, I've worked hard to educate them not to do
6 that so I'm sorry that was done.

7 Q. Okay. Your prefiled testimony stated that you
8 coordinated with local law enforcement regarding the man
9 camps.

10 Can you tell us which law enforcement you did
11 coordinate with?

12 A. Well, we've talked to all three law enforcement
13 agencies in the three counties where we --

14 Q. Okay. Can you name them? Because I believe there
15 may be more than three law enforcement agencies in the
16 county.

17 A. Well, I'm sorry. We've talked to the sheriffs, the
18 local commissioners and the sheriffs in Harding County,
19 Meade County, and in Tripp County.

20 Q. Okay. And I know you were previously asked about
21 law enforcement by some of the other Tribal Intervenors
22 here.

23 Have you coordinated with Yankton Sioux Tribe's law
24 enforcement?

25 A. We have not. We don't cross the reservation so we

1 have not done that. And what we would ask is that -- and
2 once we get more certainty that this project will be
3 built, if it will be built, we will go back and sit down
4 with those same sheriffs that we have talked to, and we
5 will discuss cross-jurisdictional coordination between
6 them and the Tribes.

7 But we have not done that yet.

8 Q. Okay. Have you coordinated with the Bureau of
9 Indian Affairs' law enforcement?

10 A. We have not.

11 Q. Okay. You indicated in your prefiled testimony that
12 local law enforcement will be augmented when necessary.

13 How would that occur? What would that look like?

14 A. Well, the conversations every time we have met with
15 local law enforcement -- and I'm talking about the
16 sheriff's department -- we have told them that as we get
17 closer to reality for this project our corporate security
18 group in Calgary and myself would come back, sit down
19 with them, discuss concerns that they've got with
20 their -- the size of their force, and we would agree to
21 supplement that force at TransCanada's cost.

22 Q. And when you say "supplement" you mean financially
23 you would pay for additional officers?

24 A. That's correct.

25 Q. Who would determine whether it was necessary, and,

1 if so, when it was necessary to make that
2 supplementation?

3 A. I think it's just a meeting of the minds with the
4 sheriffs that you cannot take a camp and seven miles, for
5 instance, from Buffalo when the population of Buffalo is
6 300 plus people and put 800 to 1,200 people seven miles
7 away without some impacts.

8 Obviously, traffic is going to be a significant
9 concern of the town of Buffalo. They will probably want
10 additional officers to make sure speeding is kept under
11 control, that there's no speeding, and that all traffic
12 warning signs are adhered to and that sort of thing.

13 Q. So basically it would be a joint decision, meeting
14 of the minds you called it, between yourselves and local
15 sheriffs to decide how much law enforcement is
16 necessary?

17 A. Yes, ma'am.

18 Q. Okay. And it would be up to your and the sheriffs'
19 discretion to decide when you would be giving money to
20 the sheriff's departments?

21 A. Again, that's done by our corporate security group.
22 I think that's probably true.

23 Q. Okay. Do you know where additional officers might
24 come from?

25 I know you've implied or indicated that there is not

1 a significant population around here so I'm wondering
2 where you might draw the personnel.

3 A. Well, I believe our corporate security group would
4 find licensed officers or assist the sheriffs in finding
5 licensed officers from the State of South Dakota in
6 various locations to come to that particular area.

7 Q. Would they be expected just to move temporarily?

8 A. Yes.

9 Q. Okay. And is that common practice for law
10 enforcement in your experience?

11 A. I'm not sure. I can tell you that that's the way it
12 was handled in Texas, although we did not have any
13 particular camps in Texas. We did supplement and augment
14 the police forces and the sheriffs in the Gulf Coast
15 project with officers from and around the state of Texas.

16 Q. Okay. So in your experience it doesn't violate any
17 kind of policies or anything with law enforcement to just
18 hire for a short-term duration or recruit for a
19 short-term duration from a different --

20 A. Not that I'm aware of.

21 Q. Okay. And you touched on this already, but to your
22 knowledge do local law enforcement agencies have the
23 capacity to handle the influx of additional population
24 from the camps to the area?

25 They do now? Or not without additional resources?

1 A. Well, one conversation I had with one of the
2 sheriffs, he did not see any impacts. He did not see it
3 to be a concern. But as we talked more about traffic
4 issues and that sort of thing, he did recognize that he
5 may need some additional staff.

6 Q. Has there been any type of study conducted to
7 determine whether local communities like the Yankton
8 Reservation could withstand the influx of the population
9 and increase in criminal activity without an increase in
10 law enforcement officers?

11 A. Not to my knowledge but --

12 MR. TAYLOR: Never mind. Go ahead and answer.

13 A. Not to my knowledge. I mean, we don't expect any
14 increase in crime as a result of our workers.

15 Q. Okay. Your testimony also mentions that you have
16 officers. What kind of training do your officers have?

17 A. The security officers --

18 Q. Uh-huh.

19 A. -- of Target --

20 Q. I'm sorry. I apologize for that. That's my
21 mistake.

22 But as far as Target Logistics, what kind of
23 training do their security officers have?

24 A. Honestly, I don't know the in depth that they go
25 through for their training. I know that they are not

1 licensed to carry weapons so they are not -- they will
2 not carry weapons within the camp premises.

3 Q. Okay. And so you don't know whether they're trained
4 in state and federal laws or just the camp rules?

5 A. I do not, no.

6 Q. Okay. And your prefiled testimony states that at
7 its peak a camp might have about 1,200 people.

8 How many Target Logistics employees would reside at
9 the camp?

10 A. At peak capacity, approximately 65.

11 Q. Okay. And is that in addition to the 1,200 people?

12 A. No.

13 Q. That's inclusive. Okay.

14 A. Yes. Assuming they have to live in the camp.

15 Target always tries to find locals to hire, but if
16 they're unable, which most cases they aren't because of
17 where the camps are located, those workers have to live
18 within the camp.

19 Q. And for clarification, Target tries to find locals
20 to hold those security officer positions?

21 A. All positions.

22 Q. All positions. Okay.

23 Does Target Logistics provide any training for those
24 that they hire locally?

25 A. I'm not sure to what depth, but they hire -- they

1 try and hire experienced maintenance workers, and
2 obviously all their cooks and kitchen staff typically
3 have some type of formal training.

4 Q. And specifically their security officers. You said
5 that they would try to hire those locally if possible?

6 A. Yes. And they will bring them from other Target
7 Logistics camps as well.

8 Q. Okay. But they don't provide security officer
9 training.

10 A. They do, but I don't know to what extent.

11 Q. Okay. Are you familiar with any particular man
12 camps that have been used in the oil and gas industry by
13 TransCanada or by any other company?

14 A. We use or have to rely on workforce camps in our
15 Canadian provinces significantly. But in terms of the
16 United States, I'm not aware of any other.

17 Q. Are you aware of any specific camps that Target
18 Logistics has operated?

19 A. Oh, yes.

20 Q. Can you list any of those?

21 A. Well, they currently operate eight workforce camps
22 in the Bakken area of North Dakota. They are probably
23 the premier camp operator in the Bakken area.

24 They currently manage approximately 4,000 beds in
25 North Dakota alone.

1 Q. Okay.

2 A. They have camp -- they have approximately five camps
3 in Texas currently as well.

4 Q. And you described previously a little bit of
5 distinction between Bakken and this proposed pipeline as
6 far as logistics and operation of the camps.

7 Are you aware of any other camps that are more along
8 the lines of these pipeline camps operated by Target
9 Logistics?

10 A. To my knowledge, there are no other pipeline camps
11 operated by Target Logistics in the United States. It's
12 all based essentially on oil field workers.

13 Q. Okay. And, to your knowledge, is there an increase
14 in drug use in areas where these camps are set up?

15 A. I don't have knowledge of that. I read the same
16 papers you read, and I hear that there is a drug issue
17 from time to time in the Bakken area. And a lot of that
18 is simply because of the well paid workers, and they --
19 there's always some bad elements.

20 But there's never been an issue in any other Target
21 camps whatsoever.

22 Q. So that bad element doesn't exist in the Target
23 camps?

24 A. No.

25 Q. How do you keep it out?

1 A. Well, they keep it out by a code of conduct that
2 they work very hard to make sure everybody's in
3 compliance. You asked earlier if there's a contract
4 between Target and the workers. There's not.

5 They sign a code of conduct, and that code of
6 conduct there's one remedy if somebody violates the code
7 of conduct rules and that's to kick them out of the camp
8 and they have to go where else.

9 Q. Okay. To your knowledge, is there an increase of
10 alcohol abuse or use in areas where these camps are set
11 up?

12 And keep in mind, please, I'm not talking about
13 within the camp itself necessarily, but within the
14 community, in the vicinity?

15 A. Honestly, I don't know.

16 Q. What about criminal activity? Is there an increase
17 in criminal activity in those areas?

18 A. I'm not aware of it.

19 Q. Are you aware that human trafficking is a problem in
20 areas where these camps are set up?

21 A. Yes. We have read the same articles that you have
22 that human trafficking can be a problem.

23 Q. Okay. You say that as if you don't have a lot of
24 knowledge, but I'm curious how that could be if you're so
25 intimately familiar.

1 Do you know anything specific or any further details
2 about the human trafficking?

3 MR. TAYLOR: The question's argumentative.

4 MR. SMITH: Overruled.

5 MS. BAKER: Thank you.

6 A. I don't. No, ma'am.

7 Q. How is it that you're unfamiliar with the human
8 trafficking but you're aware of it if you're so involved
9 in these camps?

10 A. Well, we have read the articles. I have read the
11 articles of human trafficking. And we -- I have -- I was
12 not able to attend, but Travis Kelly of Target Logistics
13 attended a -- not a seminar but a presentation by -- have
14 to forgive me. Windie Lazek [sic]. She's 4her --
15 4herself North Dakota. And he conveyed to us her
16 experience with human trafficking, and that's pretty much
17 the limit of my knowledge there.

18 Q. Has TransCanada or Target Logistics made any kind of
19 efforts to curtail this human trafficking problem?

20 A. There is no problem in Target Logistics camps with
21 human trafficking.

22 Q. Okay. What about TransCanada? I mean, these are
23 employees -- maybe not employees directly of TransCanada
24 but workers on the pipeline. And these are impacts that
25 the pipeline will have if it's built in these

1 communities.

2 A. All I can tell you is that Target Logistics is aware
3 of the issue, and they will work very hard to make sure
4 there's no trafficking or prostitution in their camps.
5 It's never happened before. There's no reason to think
6 it will happen now in any of our workforce camps.

7 Q. Okay. And you mentioned the code of conduct. Does
8 that code of conduct have any applicability to activities
9 outside of the camp?

10 A. It does not.

11 Q. Okay. So are there any plans or measures taken to
12 prevent an increase in criminal activity outside of the
13 camps?

14 A. When a worker leaves the camp on his or her own
15 volition they are under the same societal rules that you
16 and I are under and we expect them to be good citizens
17 and we do not anticipate any issues with these pipeliners
18 at all.

19 Q. Those criminal activities outside of the man camp --
20 excuse me. Outside of the camps, particularly drug and
21 alcohol abuse, you indicated that one of the causes is
22 because they're so well paid.

23 Are the employees that will be staying at these
24 particular camps going to be well paid?

25 A. Yes, they will be.

1 Q. Thank you.

2 Can you explain what the code of conduct is exactly?

3 A. It's a listing of items that Target Logistics has
4 developed over their years and experience of operating
5 camps, and we have augmented that with some of our own
6 requirements.

7 Q. Okay. So who develops the code of conduct?

8 A. Well, we had developed it in conjunction with Target
9 Logistics.

10 Q. Okay. It's a joint --

11 A. It's a joint development.

12 Q. And what is it based on?

13 A. It's based on their years of experience of operating
14 camps in the United States.

15 Q. And can you tell me why it exists, why there is a
16 code of conduct?

17 A. Well, we expect certain just -- I'll liken it to
18 you're checking in to the Holiday Inn. The Holiday Inn
19 does not want you to have an open flame in your room.

20 Okay. We do not want an open flame anywhere in our
21 camp as well. So things such as prohibiting open flames
22 is one of the code of conducts.

23 Q. Okay. And you mentioned consequences earlier. What
24 consequences exist for violating the code of conduct?

25 A. Well, it can be as severe as losing your privileges,

1 your residency privileges.

2 Q. Okay. Are there any less severe consequences?

3 A. Oh, sure. There will be a rules committee to
4 determine if something is severe enough to warrant a
5 resident from losing camp privileges.

6 There is a -- there's one zero tolerance rule, and
7 that is no firearms at all. If there is a firearm found,
8 that person will lose camp privileges immediately.

9 Q. Okay. You mentioned the firearms. And so besides
10 firearms and open flames, what else does the code of
11 conduct prohibit?

12 A. The code of conduct covers approximately 25 or 30
13 different items. But one of them, for instance, covers
14 the use of alcohol. They have to -- we will not prohibit
15 the use of alcohol -- it will not be sold in our -- in
16 Target's camps, but it is very strictly limited on where
17 that alcohol can be consumed.

18 It's got to be consumed in their individual
19 residential rooms or within their RV.

20 Q. And since there's an array of consequences, what's
21 the consequence for soliciting prostitution?

22 A. Well, there will be -- that will be a -- dealt with,
23 I guess, by Target Logistics and ourselves, but there is
24 no -- and Target Logistics has never had an issue with
25 prostitution in their camps. Never.

1 Q. Okay. So is it actually in the code of conduct, a
2 prohibition?

3 A. It is not.

4 Q. It's not. What is the consequence for engaging in
5 sexual activity with a minor?

6 A. The same as it would be in society. That is
7 something that will be turned over to law enforcement.

8 Q. Okay. So that's not really a consequence; it's just
9 turning them over to law enforcement?

10 A. That's correct.

11 Q. Okay. So there's no other consequence for that kind
12 of behavior?

13 A. Well --

14 Q. Is there --

15 A. There's no written consequence in the code of
16 conduct, yes. It's not addressed.

17 Q. Okay. Is there any requirement imposed on Target
18 Logistics employees creating a duty to turn this over to
19 law enforcement?

20 A. We have indicated to Target Logistics that if any
21 law is broken, that they are to notify us and that we
22 will work with them and local law enforcement in the
23 prosecution of that individual.

24 Q. The local law enforcement, the same local law
25 enforcement you'll be sending funds to to supplement

1 their forces.

2 A. If you want to put it like that.

3 Q. What sort of conduct would cause one's residency to
4 be terminated?

5 A. As I said, having a firearm.

6 Q. Is that the only --

7 A. No. No. Use of drugs. The sale of drugs. That is
8 covered in the code of conduct. And, again, we would
9 work with local law enforcement and Target to make sure
10 that we do nothing to interfere with the prosecution of
11 that individual.

12 Q. And if one of those sorts of offenses was committed,
13 would the employee be given a warning before being
14 evicted?

15 A. No.

16 Q. You mentioned and I forget how you described it or
17 the title you gave it, but there's a board that would sit
18 to determine what consequence might be determined?

19 A. Yes. I called it a rules committee. Each camp will
20 have a rules committee made up of somebody from the
21 workforce staff, Target Logistics, and TransCanada.

22 Q. Okay. So that committee consists of three people,
23 one from each of those --

24 A. We have not formalized the exact makeup of the
25 committee, but generally that's what we see.

1 Q. How often is it that you -- or that a committee
2 would impose that harshest penalty of removal from the
3 camp?

4 A. I don't envision it ever happening.

5 Q. Has it ever happened before?

6 A. Well, I can tell you in the five years that Target
7 Logistics has managed camps in the Bakken area they have
8 had to evict several residents. But I don't -- I can't
9 tell you the cause for that eviction, but it's been very
10 limited.

11 Q. And are those Bakken camps operated under the same
12 code of conduct that would be used if the camps are put
13 up here in South Dakota?

14 A. Target Logistics has a very similar code of conduct
15 for those Bakken camps. I won't tell you it's identical
16 to ours, but we've added some items such as firearms,
17 prohibit -- the prohibition of firearms in the camps.

18 Q. Okay. And, just for clarification, you say "we"
19 because TransCanada has worked in conjunction with Target
20 Logistics for the particular manual or code of conduct
21 that would be operated under in South Dakota?

22 A. Correct.

23 Q. Okay. You mentioned those camps in the Bakken and
24 that there have been occasions to discipline and remove
25 individuals from the camps. So I'm wondering how you can

1 say that you anticipate no discipline problem whatsoever
2 at the camps in South Dakota?

3 A. Well, I say that because there is a -- there's
4 several incentives, and one incentive is that these
5 workers are not being charged -- the workers for the
6 Keystone XL Pipeline when and if we build this line and
7 those that choose to live in the camps will not be
8 charged anything by TransCanada or Target for living in
9 those camps. They'll receive free room and board during
10 the life of their stay.

11 So we anticipate -- that is a huge financial
12 incentive to be good citizens and obey the code of
13 conduct.

14 And I might add, in addition to that, there's an
15 additional incentive that these workers receive as being
16 union employees. They receive a per diem as part of
17 their wage scale. Which means it pays for their room and
18 board or a portion of their room and board.

19 That goes in their pocket when they live in the
20 camp. So there is a financial incentive for them to be
21 good citizens and obey all the rules.

22 Q. And does that same financial incentive, the free
23 room and board, apply to workers in the Bakken?

24 A. I don't know.

25 MR. SMITH: Ms. Baker, do you have an endless

1 run of questions here? Because we're going to have to
2 take a break here before too long because we've got a
3 Commission meeting here at 1:30.

4 MS. BAKER: It's not endless, but I do have
5 additional questions.

6 MR. SMITH: Well, why don't we go until a
7 quarter after, and then we'll go into recess.

8 CHAIRMAN NELSON: Let's go to 12:15.

9 MR. SMITH: 12:15. Okay.

10 MS. BAKER: Thank you.

11 Q. Does Target Logistics perform background checks on
12 its employees that will be working at the camps?

13 A. Not to my knowledge.

14 Q. Will the typical pipeliner at the camp have a
15 criminal record?

16 A. You say "will"?

17 Q. Yes. Would you expect the typical pipeliner to have
18 a criminal record?

19 A. I'm not sure how to answer that. I wouldn't know
20 that.

21 Q. Okay. So does Keystone or Target Logistics conduct
22 background checks on its employees who reside at the
23 camps?

24 A. Does TransCanada?

25 Q. TransCanada or Target Logistics.

1 A. Well, let me use myself as an example. When I went
2 to work for TransCanada there was a background check.
3 Now are all TransCanada employees, do they receive
4 background checks? I don't know.

5 Is that your question?

6 Q. No. It's whether the pipeliners, the residents of
7 these camps, will be subjected to background checks.

8 A. I do not think so, no.

9 Q. Does TransCanada or Target Logistics preclude
10 registered sex offenders from employment?

11 A. Not to my knowledge.

12 Q. Does Keystone or Target Logistics allow employees
13 who are registered sex offenders to reside in the camps?

14 A. Let me first explain that the workers that reside in
15 the camps are not our employees. They are employees of
16 the pipeline contractors and the various contractors that
17 work. So whether or not they have policies that pertain
18 to that, I am unaware of.

19 Q. Okay. Well, we are considering the impacts of this
20 project as a whole and compliance with laws with respect
21 to this project as a whole. So I would ask you to answer
22 to the best of your ability.

23 So you have no knowledge of any prohibition against
24 registered sex offenders?

25 MR. TAYLOR: I'm going to object to that. Asked

1 and answered three times.

2 MR. SMITH: Sustained.

3 Q. Can you tell me if the employers of the pipeliners
4 conduct background checks?

5 MR. TAYLOR: That's also been asked and answered
6 twice.

7 MS. BAKER: I believe it's actually a different
8 question. I asked about TransCanada and I --

9 MR. SMITH: Well, here's what we're going to do.
10 It's a quarter after. We're going to go into recess and
11 we'll discuss that or you can reask the question when we
12 come back to session.

13 MS. REAL BIRD: So we'll just have a pending
14 objection that you'll have to rule on?

15 MR. SMITH: Well, I thought you can reask your
16 question, and we'll address it then. Okay.

17 CHAIRMAN NELSON: Okay. Here's --

18 MR. SMITH: We're going into recess until --

19 CHAIRMAN NELSON: Just hang on.

20 Okay. Here's what's going to happen. I think
21 we had an optimistic expectation we might be concluded by
22 this point. Yeah. John's smiling now.

23 We've got a Commission meeting at 1:30. Our
24 expectation is that meeting will take somewhere between
25 an hour, hour and a half.

1 And so what I am proposing is that we reconvene
2 back here at 2:30 or as soon as our meeting is concluded
3 over in the next room with again another optimistic
4 expectation that perhaps we can finish up this afternoon.

5 MR. TAYLOR: This is our last witness.

6 CHAIRMAN NELSON: Excellent. And then obviously
7 we'll go into any of the closing statements that the
8 Individual Intervenors wish to do this afternoon.

9 Mr. Rappold.

10 MR. RAPPOLD: So we'll take a break now, come
11 back, work until your next meeting starts?

12 CHAIRMAN NELSON: No. We will come back here at
13 2:30 or as soon as we conclude over there. It won't be
14 before 2:30.

15 MR. RAPPOLD: Okay. So back here at 2:30.
16 Thank you.

17 (A recess is taken)

18 MR. SMITH: It's 2:30, our appointed time for
19 reconvening so I'll call the hearing back to order in
20 Docket HP14-001. We were in the middle of Ms. Baker's
21 cross-examination of Mr. Perkins.

22 Anyway, Ms. Baker, you had a question that was
23 pending and did you want to start with just reasking that
24 question and then we'll proceed from there?

25 MS. BAKER: Sure.

1 (Reporter reads back the last question.)

2 A. No.

3 Q. I'm sorry. Could you repeat your answer?

4 A. No.

5 Q. Do the employers of the pipeliners conduct
6 background checks?

7 A. They do to some level, but they're management. And
8 I don't know how low they go in that management structure
9 with those background checks.

10 Q. Do you know whether they go as low as the employees
11 that reside in the work comps?

12 A. They may do background checks on their
13 superintendents, but below that, those are union
14 employees who they pull out of the unions. So I don't
15 know if they do background checks on those folks. I
16 don't think they do, but I could stand to be corrected.

17 Q. Thank you. What specific measures will Keystone or
18 Target Logistics take to prevent registered sex offenders
19 who live at the camps from committing criminal acts in
20 nearby communities?

21 MR. TAYLOR: I'm going to object to the
22 question. It calls for speculation on the part of this
23 witness.

24 MS. BAKER: I don't believe it does. He has
25 extensive experience working with these camps, and he's

1 an employee of TransCanada which encompasses part of the
2 question. I'm simply asking what measures would be taken
3 as preemptive measures to prevent criminal activities in
4 the vicinity.

5 MR. SMITH: I'm inclined to -- can you maybe
6 start with does he know and go on from there, perhaps.

7 Q. Do you know if Keystone will take any measures to
8 prevent registered sex offenders who live at the camps
9 from committing criminal acts in the nearby communities?

10 MR. TAYLOR: And I'd also point out that it
11 presumes a whole world of facts that are not in evidence.
12 A, one, that the sex offenders will live in the camps.
13 First, that they'll be employed. Second, they'll live in
14 the camps. And, third, that they'll commit criminal acts
15 in nearby communities. And, fourth, that there are
16 nearby communities.

17 MS. BAKER: I think it's clear that there are
18 nearby communities in this instance. We've heard from
19 intervenors in quite a few of them.

20 And he's not denying that there's a possibility
21 that there will be registered sex offenders so the
22 question really is if there are registered sex offenders
23 or sex offenders who fail to register, for that matter,
24 what measures will be taken to prevent them from
25 committing criminal acts in nearby communities.

1 MR. SMITH: And subject to the Commissioners'
2 ability to overrule me, I'm going to overrule with the
3 understanding that, you know, he can only answer to the
4 extent he knows.

5 MS. BAKER: Certainly.

6 A. Well, I really don't know. But I will tell you
7 this, that registered -- or sex offenders who have paid
8 their debt to society could possibly be hired as a
9 worker, and they have to register by law as a registered
10 sex offender in each county in which they live.

11 And they have to -- my knowledge, they have to
12 report that within a certain period of time. And if not,
13 they're in violation of their release.

14 So beyond that, I don't know.

15 Q. Thank you. And that leads into my next question.
16 Are you aware that federal law requires sex offenders to
17 register when they move to a new location?

18 A. I understand that, yes.

19 Q. Does the code of conduct require registered sex
20 offenders living in a camp to notify local communities of
21 the presence of registered sex offenders?

22 A. The code of conduct does not address registered sex
23 offenders in any way.

24 Q. Not in any way at all?

25 A. No, ma'am.

1 Q. What does Target Logistics do to assure that sex
2 offender laws are adhered to?

3 A. Well, they comply -- I've asked the question if they
4 know that they have registered sex offenders living in
5 their camps, and they said not always. But periodically
6 they will get a list from the local sheriff, and they
7 will review that list and respond immediately to whether
8 or not that person is living at that location.

9 Q. Did you say you asked them?

10 A. Target Logistics, I have asked them before if they
11 know whether or not they have registered sex offenders
12 living in their camps.

13 Q. Okay.

14 A. And they said no.

15 Q. Do you recall when you asked them?

16 A. I've asked them a couple of times, but within the
17 last year.

18 Q. Okay. Do you recall what prompted you to make that
19 inquiry?

20 A. Sure. A lot of the discussions that we have in
21 public meetings. Because this subject does come up. So
22 we've been asked this --

23 You're not the first to ask me that. Let me just
24 say that. So we've had discussions with Target Logistics
25 about this.

1 Q. Do you know why sex offender concerns come up so
2 often?

3 A. I'm a parent. You may be a parent. I'm concerned
4 about it. I don't want to live necessarily next to a sex
5 offender with children. I have the same concerns that
6 you probably do.

7 Q. I don't frequently have people come and inquire to
8 me what I do to prohibit sex offenders from violating
9 their duties to register or from committing any kind of
10 criminal acts in the community.

11 So what specifically has prompted you to engage in
12 these conversations?

13 A. Just trying to answer the public's questions when we
14 have public meetings.

15 Q. Public meetings. Are these meetings that Target
16 Logistics called?

17 A. No. In the state of Montana, specifically, we had
18 gone through a series of meetings relative to a Permit
19 that we had required, a subdivision permit for our camps
20 in that state. And one of those meetings was an open
21 meeting to the public, and we typically get those type of
22 questions.

23 Q. What project was that permit for?

24 A. This project.

25 Q. Thank you. Is visitation allowed at the camps?

1 A. No.

2 Q. What measures are taken to ensure that no visitors
3 come into the camps?

4 A. Every person entering a campground has to show
5 proper I.D. that they are a resident. No one can bring a
6 visitor into the camp, period. A man who is married and
7 living in the camp by himself cannot even bring his wife
8 as a visitor to see the camp. They will not allow that.

9 Q. What about law enforcement? Is law enforcement
10 allowed into the camp?

11 A. Sure. Yes, ma'am.

12 Q. Who else is allowed into the camp?

13 A. Contractors delivering supplies. Maybe Target
14 Logistics may have a visitor that they want to show the
15 camp to, but it would be a tour. That's the only thing I
16 can think of.

17 Q. And what stops visitors from coming in? Is there
18 like a gate?

19 A. There's a guard shack at the gate.

20 Q. There's a gate. Is the entire camp gated in?

21 A. It's fenced in, yes, with security fencing, and that
22 was required to keep primarily wildlife out of the camp.

23 Q. Who mans the gate?

24 A. A security guard.

25 Q. Is that security guard an employee of Target

1 Logistics?

2 A. They are. And it's 24/7.

3 Q. And what does that guard at the gate check for?

4 A. Well, there's a card that is given to every
5 resident, much like a hotel key card. And if they don't
6 recognize the person, they will make them use the card to
7 show that they are a resident.

8 But the guard usually knows some of the folks, and
9 he does not always ask them to show the card. But if so,
10 they have to show proper identification of the card or an
11 I.D.

12 Q. And what does the guard do to ensure that there's no
13 unauthorized personnel or property somewhere in the
14 vehicle?

15 A. Well, they don't search the vehicle. The vehicles
16 are typically pickup trucks, and they walk up to the
17 window and ask. They don't just sit in the guard shack,
18 but they'll walk up to the vehicle, take a look.

19 And, you know, somebody conceivably could be hiding
20 in the back under some kind of cover. But I've just
21 never heard of that happening.

22 Q. Well, if they weren't spotted by the guard, how
23 would you have heard of it?

24 A. Well, they would have never -- they would have told
25 me it was an issue. But it's never come up. Let me just

1 put it like that.

2 Q. You just haven't known of instances where people
3 have been snuck into the camp?

4 A. Right. And I'll tell you this. If that happens,
5 they would be gone. The person doing it would be gone.
6 It's just not allowed. It is a -- it is one of the code
7 of conducts that says no visitors are allowed, and they
8 would be gone.

9 Q. Does the guard at the gate receive any training on
10 sex trafficking?

11 A. Not that I know of.

12 Q. What about prostitution?

13 A. Not that I know of.

14 Q. Do they receive any kind of specialized training?

15 A. They receive security training by Target Logistics,
16 the extent of which I am not fully aware of.

17 Q. Is their purpose primarily to maintain the safety
18 and security of the camp or to enforce the code of
19 conduct?

20 A. Oh, probably both, but I'd say the safety of the
21 camp more than anything.

22 Q. Can you tell me who is Bud Anderson?

23 A. He's one of our stakeholder relations employees.

24 Q. And forgive me. I'm not familiar with that term,
25 stakeholder relations.

1 A. Well, let me just kind of explain what Bud does.
2 Bud will go out and meet folks like county commissioners,
3 local sheriffs. Bud has helped me tremendously in terms
4 of my contacts with sheriffs and other officials.

5 So it's his job to stay in touch in all the counties
6 where we're at with local officials. And his duties
7 probably go beyond that, but that's what I can speak to.

8 Q. And what's his formal title with TransCanada?

9 A. I don't know, to be honest with you.

10 Q. And you mentioned that he facilitates making
11 contacts. Can you describe any other of his job duties?

12 A. Well, one of the things that he's done, he made a
13 contact with Windie Lazek because he read an article
14 about this lady. She's a victim of trafficking. She was
15 a prostitute.

16 He reached out to her and actually attended one of
17 her speaking sessions just to hear what she had to say.
18 So he gets involved in numerous items and interest -- you
19 know, community type relations. He keeps his ear to the
20 ground. That's probably the best way I can explain his
21 job.

22 Q. His job is to keep his ear to the ground?

23 A. Yes, ma'am.

24 Q. And who is Travis Kelly?

25 A. He is vice president of Target Logistics, and he's

1 responsible for all of Target Logistics' North Dakota
2 operations.

3 Q. Did TransCanada employees receive any type of
4 training in the prevention of sex trafficking?

5 A. Not that I'm aware of.

6 Q. Are you aware of whether Target Logistics employees
7 received any type of training in the prevention of sex
8 trafficking?

9 A. I am not.

10 Q. Does TransCanada believe that sex trafficking is a
11 reality that must be addressed?

12 MR. TAYLOR: I'm going to object to that
13 question. Number one, it's not really a question that's
14 relevant to anything that goes on in this hearing.
15 Number two, it calls for speculation. Number three, it's
16 well beyond the scope of the direct examination of this
17 witness.

18 MR. SMITH: Sustained.

19 MS. BAKER: Excuse me.

20 Nothing further. Thank you.

21 MR. SMITH: Dakota Rural Action.

22 MR. MARTINEZ: We have no questions of this
23 witness.

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CROSS-EXAMINATION

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BY MS. CRAVEN:

Q. Good afternoon. Kimberly Craven of the Indigenous Environmental Network, and I have just about three questions for you.

I'm curious how the water will be -- what's the plan for utilizing water for these 1,400 people?

A. Well, 1,200 maximum.

Q. Okay.

A. 1,200 people in the camps maximum. Each camp is a little bit different. However, in South Dakota two of the three camps we use well water that has been predrilled by the landowner that we're leasing the property from.

In Tripp County the Colome camp will take water, municipal water, from Tripp County Water District.

Q. And then what about the sewage? What's the plan for disposing of the sewage?

A. All three camps -- again, everyone of our camps, they have a life of their own, but in South Dakota I can say that all of three camps will have a portable waste water treatment plant installed at the camp.

Q. And then where do you take the -- where does that get dumped, the portable --

A. Well, actually very high-tech equipment. It treats

1 the waste water, and it actually -- the water ends up in
2 an evaporation pond and just evaporates.

3 Q. And what about garbage?

4 A. Garbage, we have contracts or will -- Target
5 Logistics will have contracts with licensed landfills.

6 Q. And who's responsible for getting the permits for
7 the man camps? Is it you or the subcontractor?

8 A. It's Target Logistics.

9 Q. Target Logistics. And then I think my final
10 question is what is the plan for decommissioning them?

11 A. Our agreement with Target Logistics says that upon
12 90 days of our notification to them in writing that we
13 are completed with the camp, they shall start and
14 immediately undertake the decommissioning or reclamation
15 of the camp.

16 MS. CRAVEN: Okay. I think that's all my
17 questions. Thank you.

18 MR. SMITH: Mr. Gough.

19 MR. GOUGH: I have no questions. Thank you.

20 MR. SMITH: Mr. Dorr.

21 CROSS-EXAMINATION

22 BY MR. DORR:

23 Q. My name is Gary Dorr. I'm an Individual Intervenor.
24 How would sexual harassment be reported at the
25 camp?

1 A. I assume the same way it would be reported in --
2 outside of a camp. The police would be notified or the
3 sheriff would be notified.

4 You said sexual harassment; correct?

5 Q. Yes.

6 A. Probably not sexual harassment. It might be
7 reported to Target Logistics who would probably talk to
8 us, and we'd determine whether or not we need to contact
9 local law enforcement. Sexual harassment.

10 Q. How many police officers are there in Colome, the
11 City of Colome, South Dakota?

12 A. I'm not sure. I suspect it's a very small force.
13 Sheriff Pettit is -- he may be one of one. I don't know.
14 He probably has a very small staff for Colome. Probably
15 no more than a half a dozen max.

16 Q. Would two sound correct?

17 A. I wouldn't be surprised. Yep.

18 Q. Okay. How many residents are planned for the Colome
19 man camp?

20 A. Well, all our camps are maximum 1,200. It kind of
21 depends as to, you know, when those contractors come on
22 board. But 1,200 is the maximum. Some of our camps
23 probably won't ever reach that. Maybe 900 to 1,000. But
24 they've all been designed to accommodate 1,200.

25 Q. What is the ratio of security officers on duty to

1 residents in the camp?

2 A. Well, at night there are two full time roving
3 security guards. I say roving. One is always at the
4 guard shack, and then there's a roving guard at night.
5 And then during the day they increase that to three or
6 four, depending on what they feel like the need are.
7 12-hour shifts.

8 Q. What level of force are these security officers
9 trained -- or what level of force are they authorized to
10 enforce rules inside the camp?

11 A. Well, again, they are not licensed peace officers.
12 They do not carry weapons.

13 If there is someone who has violated a camp rule
14 that calls for their expulsion from the camp, then they
15 would turn that over to the management, Target Logistics,
16 who would in turn take the steps to have the worker
17 removed from the camp.

18 Q. So if there's a big fight that broke out, your
19 security officers would be there writing a report?

20 A. Yes. We would get a report from them. And fighting
21 is against camp rules and would more than likely cause
22 the expulsion of that particular individual. Or
23 individuals.

24 Q. My concern with the --

25 In the Colome man camp if you have 1,200 workers, do

1 you know, is there a number of approximately how many
2 sexual offenders are at any given camp?

3 A. I don't think -- I don't know of any. I mean, I
4 don't have any reason to think there will be any.

5 Q. You don't have a reason to believe there's going to
6 be any sexual --

7 A. I don't have any reason to believe there will be
8 any. I just don't know.

9 Q. Are you aware that when sexual offenders move to a
10 certain area they have to register, and there are
11 compliance checks?

12 A. Yes, sir. I am aware of that.

13 Q. Okay. So how does that -- let me rephrase that.

14 What steps are being taken then with a two-man
15 police force in Colome to theoretically perform residence
16 checks on sex offenders?

17 A. I don't know the process, Mr. Dorr. I'm sorry. I
18 don't.

19 MR. DORR: That's all I have. Thank you.

20 MR. SMITH: Thank you, Mr. Dorr.

21 Mr. Harter.

22 MR. HARTER: I would like to just state for the
23 record that to my best knowledge the City of Colome does
24 not have any full-time officers in it.

25 Mr. Pettit lives in Winner, South Dakota, and

1 last that I knew there was not a full-time officer. Just
2 for your knowledge.

3 THE WITNESS: Okay. Thank you.

4 CROSS-EXAMINATION

5 BY MR. HARTER:

6 Q. The man camp, I've driven by the area several times
7 by Colome so -- with a little bit of wondering exactly
8 which side of the fence line.

9 But that's approximately half a mile south of the
10 football field road; true?

11 A. Well, it's a half mile south. I'm not sure of the
12 football field road, but it's a half-mile south of town.
13 It's on the east side, by the way.

14 Q. Yes. I had that figured out.

15 So you are basically within a mile of the Colome
16 school.

17 A. Yes, sir.

18 Q. Okay.

19 A. Well, I shouldn't say yes, sir. I don't know
20 exactly where the Colome school is, but Colome's pretty
21 small so I'm going to assume that's probably a correct
22 statement.

23 Q. Just don't blink.

24 If a worker loses their camp privileges, does that
25 mean that they're usually terminated by TransCanada

1 also?

2 A. Well, we get asked that at every public meeting, and
3 let me explain. These workers do not work for
4 TransCanada. They work for the pipeline construction
5 contractor.

6 Because we can kick them out of camp, that's our
7 call. We cannot take them off the job. They have work
8 rules. They are protected by a protective bargaining
9 agreement. They have to violate those work rules before
10 they can be removed from the job once they're hired.

11 Q. But TransCanada does have a code of their work rules
12 basically within their contracts?

13 A. No. We do not, to my knowledge. Our construction
14 contracts do not specifically set out any work rules.
15 But the -- well, Keystone XL has negotiated with the
16 pipeline labor unions a project-specific labor agreement.

17 But, again, that is not necessarily the same work
18 rules that the workers have to live by while they're on
19 the job.

20 Q. Okay. Thank you.

21 TransCanada has had a massive media campaign. It's
22 all in the news and such. Would you agree with that?

23 MR. TAYLOR: Objection.

24 MR. HARTER: It's just leading into the next
25 question.

1 MR. TAYLOR: Well, it's also beyond the scope of
2 this witness's direct examination.

3 MR. HARTER: He said he reads the newspapers.
4 A. Yeah. I don't know about massive. I know there's
5 something.

6 MR. SMITH: Sustained.

7 Q. Will the code of conduct be advertised in all the
8 public newspapers so that the public has a standard that
9 they know that these people are going to have to adhere
10 to?

11 A. We have no plans to do that, Mr. Harter.

12 Q. Might be something to think about.

13 MR. HARTER: That's all I have. Thank you.

14 MR. SMITH: Thank you, Mr. Harter.

15 I think, Ms. Bardaglio, do you have any
16 questions?

17 MS. BARDAGLIO: No, sir. I don't.

18 And Ms. Lone Eagle asked me to allow her a
19 question when she comes back. She had an emergency.

20 MR. SMITH: Well, she also asked me if
21 Mr. Seamans could go ahead of her. Is that why?

22 MS. BARDAGLIO: No. She had an emergency.

23 MR. SMITH: Oh, really? Okay. Why don't we go
24 to Mr. Seamans then.

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CROSS-EXAMINATION

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BY MR. SEAMANS:

Q. My name is Paul Seamans, and I'm a landowner on the proposed Keystone XL route.

What percentage of jobs created by the Keystone XL will go to the local population in South Dakota?

MR. TAYLOR: I'd object to that as beyond the scope of this witness's direct examination.

MR. SMITH: Sustained.

Q. Are you aware that there's a construction camp in Murdo, South Dakota?

A. Murdo. No. I was not aware of that.

Q. When workers leave for work in the morning do they go directly to the job site?

A. Workers leave the camp. They walk through a gate to the contractor yard. The contractor yard is adjacent to the camp. So there's no driving out of the camp. They don't have to do that.

They walk through a gate and go through a safety meeting each morning. And then a large majority of those workers climb onto school buses or school type buses where they are transported to the job site.

Q. I guess that was my next question was -- Murdo has a contractor's yard, and it's about 90 miles away.

Do many workers like, say, drive from Colome to

1 Murdo? Do they drive their own vehicles?

2 A. I'm not aware of -- of the work camp in Murdo so I'm
3 sorry.

4 Q. Oh, okay. Thank you.

5 You said that workers get quite a few benefits by
6 staying at the contractors camp such as free room and
7 board?

8 A. Yes, sir.

9 Q. Do many workers stay in small towns like Murdo?

10 A. Yes. Some of them will, particularly those that for
11 whatever reason decide to bring their families with them.
12 Some workers are just -- they're not camp people. They
13 don't want to live in a camp so they will seek out other
14 type of lodging, even if they have to drive 70 miles
15 every day or whatever it is to get to the contractor
16 yard.

17 Q. Okay. Thank you. Kind of leads into my next
18 question.

19 Will there be any children going to the local
20 schools for part of the year?

21 A. You know, our camps are not going to prohibit
22 children. But children, if they are there, have to live
23 in the RVs with their parents.

24 We have no reason to think there's going to be any
25 children in the camps.

1 Q. Okay.

2 A. However, should there be, we think it will be a very
3 small number. Probably less than 10 children ever. And
4 we don't think it will be that.

5 This is the first project in the United States that
6 I'm aware of, pipeline projects, that have not -- that
7 have not prohibited children from being in a camp.

8 Of course, there haven't been that many camps,
9 pipeline camps in the United States anyway, but there's
10 really no history. We've asked the pipeline construction
11 contractor if they think that parents will come, workers
12 will come live in the camps with children. Every time we
13 ask the question they say we have no reason to think
14 that's going to happen.

15 Mr. Seamans, if I can continue, just give me a
16 minute to explain, that the pipeline industry has changed
17 significantly in the last 30 years in terms of families
18 being -- this is my term, and I don't mean any
19 disrespect, drug from one pipeline project to another.
20 Okay.

21 I grew up with a welder, and he took his family all
22 across the United States, and it was tough. Those times
23 have pretty much stopped. People, they may have their
24 children for a bit during the summer, their summer break,
25 but most families now are separated geographically during

1 the winter months with children living at home with one
2 of the parents and the other parent being on the
3 pipeline.

4 Q. If you do have families staying in say like Murdo,
5 do you notify the school districts if they're going to --
6 the kids are going to go to that school?

7 A. You know, we have not talked to the superintendent
8 yet of the Murdo schools. And we will do that at some
9 point. I really thought probably the Colome and the
10 Winner schools would be who we need to talk to. But if
11 there's a camp environment in Murdo, we may need to do
12 that as well.

13 Q. That would be nice.

14 Have all road agreements been reached with most
15 local jurisdictions?

16 A. It is my understanding -- although that is not my
17 responsibility, I'll answer the question. It's my
18 understanding most of those route agreements have been
19 finalized.

20 Q. You mentioned that you knew Bud Anderson; correct?

21 A. Yes, sir.

22 Q. Is Bud employed directly by TransCanada?

23 A. He's not. He's a consultant.

24 Q. He kind of like contracts with them?

25 A. He is. He has his own company, and he's a

1 consultant to us.

2 Q. Okay. Does Bud still work with TransCanada?

3 A. As of today, but understand his contract may be
4 coming to an end soon.

5 Q. Well, you answered my next question.

6 A. Yeah. Yeah.

7 MR. SEAMANS: Thank you. I guess that's all I
8 have.

9 MR. SMITH: Ms. Lone Eagle, I can't see you.

10 MS. LONE EAGLE: I have no questions.

11 MR. SMITH: Oh, you have no questions. Okay.

12 Staff. Pardon me.

13 CROSS-EXAMINATION

14 BY MS. EDWARDS:

15 Q. Thank you. Good afternoon. This is Kristen Edwards
16 for Staff. Just one question for clarification purposes.

17 You testified that no spouses would be allowed
18 inside the camps, but you also referenced children at the
19 camps. So are children allowed but not spouses?

20 A. No. If in the RV section of -- the RV campground,
21 if a family wants to be there, we will allow that. But
22 no spouse can live in the residential portion of the
23 modular camp structures. Okay. They'd have to be in an
24 RV.

25 MS. EDWARDS: Thank you. No further questions.

1 MR. SMITH: Commissioner questions.

2 CHAIRMAN NELSON: Just one. We've had some
3 discussion here about the fact that the Cheyenne River
4 Sioux Tribe has banned anyone associated with Keystone
5 from their property. Ms. Spotted Eagle indicated she
6 would encourage the Yankton Sioux Tribe to have the same
7 type of ban, which obviously would prohibit any of those
8 employees from patronizing restaurants and other
9 businesses.

10 Who do you anticipate would inform the employees
11 of those bans so they're aware of them and wouldn't
12 violate them?

13 THE WITNESS: Well, I think we'd handle that
14 probably in -- in morning safety meetings we would
15 deliver that kind of message.

16 Safety meetings are not always totally about
17 safety aspects of the job. We talk about all sorts of
18 things that is of interest and we feel like the workers
19 and -- should know about.

20 CHAIRMAN NELSON: Thank you.

21 MR. SMITH: Commissioner Hanson.

22 COMMISSIONER HANSON: No.

23 MR. SMITH: No questions.

24 Okay. Are there any questions in response to
25 the Commissioner question?

1 Yes, sir. Mr. Gough.

2 MR. GOUGH: I guess I would just like to have
3 the record show that safety issues do go to the safety of
4 the community, and that's the reason for the concern and
5 the bans from the Tribes.

6 So thank you.

7 MR. SMITH: Mr. Dorr.

8 RE-CROSS-EXAMINATION

9 BY MR. DORR:

10 Q. Gary Dorr.

11 Has the camp, whoever the camp administrators are,
12 requested permission from the Oceti Sakowin to live
13 within the treaty territory?

14 A. Not that I'm aware of. No, sir.

15 Q. Do you plan on doing it?

16 A. I'm just not sure why they would do that. I mean,
17 honestly, I would think they would want to live in the
18 camp, if I'm understanding your question correctly.

19 Q. No. I'm asking have you received permission from
20 the Tribes to have these people living inside the treaty
21 territory, in accordance with the 1868 Treaty?

22 A. Sorry. I misunderstood. No, sir. We have not.

23 Q. And do you plan on doing that?

24 A. Well, I think that's something that we'll have to
25 talk about. I'm just not familiar enough, and I

1 apologize for that, of the law relative to our needing to
2 do it.

3 Q. Do you know that the laws are ratified under
4 15 Stat 635?

5 A. No, sir.

6 Q. And that the treaty is part of that statute?

7 A. I'm sorry. I'm not.

8 MR. DORR: All right. Thank you, sir.

9 THE WITNESS: Yes, sir.

10 MR. SMITH: Any other questions following up on
11 Commissioner Nelson's question?

12 I don't see any. So redirect?

13 MR. TAYLOR: No redirect. Thank you.

14 MR. SMITH: You may step down.

15 Yes, sir.

16 MR. CAPOSSELA: Mr. Smith, I have a proposal to
17 try to save us some work. May I approach the table?

18 MR. SMITH: Sure.

19 MR. CAPOSSELA: The Standing Rock Sioux Tribe,
20 the Cheyenne River Sioux Tribe, the Rosebud Sioux Tribe,
21 the Yankton Sioux Tribe, IEN, InterTribal COUP, Dakota
22 Rural Access, and Bold Nebraska hereby move for an
23 immediate order denying certification of the Permit for
24 the Keystone XL Pipeline in South Dakota.

25 The motion is based on the -- TransCanada's

1 failure to provide substantial evidence of compliance
2 with the Amended Conditions. They haven't met their
3 burden of proof. They haven't proved their case.

4 Moreover, as a matter of law, the recent federal
5 regulations under the Clean Water Act have been revised,
6 and the environmental studies that are in place conducted
7 by TransCanada were conducted under a less stringent
8 regulatory regime.

9 So as a matter of fact, they haven't proved
10 their case. As a matter of law, the laws have changed,
11 and so consequently if TransCanada wants a permit to
12 cross South Dakota, in order to comply with the Clean
13 Water Act, new environmental surveys are required to
14 demonstrate compliance with the more stringent
15 regulations.

16 With respect to the requisite factual basis for
17 certification, TransCanada's failed to meet its burden of
18 proof. Under Section 36 of the South Dakota
19 Administrative Procedures Act substantial evidence is
20 required for -- that they meet the Amended Conditions in
21 the Permit.

22 Now TransCanada, of course, has filed their
23 Tracking Table of Changes. So Standing Rock has prepared
24 its own Tracking Table of Non-evidence.

25 The amended -- there are 50 Amended Permit

1 Conditions to be incorporated into the current Permit.
2 But actually many of those conditions have sub
3 conditions. So there are 107 requirements in those 50
4 Conditions. And so in our Tracking Table of Non-evidence
5 we've divided it into three parts.

6 The column on the left is the Amended Condition.
7 The column in the middle is just a summary of the Amended
8 Condition. The column -- the third column from the left
9 is a list of TransCanada witnesses that have touched upon
10 that Condition. And the column to the far right is the
11 Staff testimony that's touched upon The conditions.

12 And what we see is testimony has been presented
13 by TransCanada touching upon six of 50 Conditions or 6 of
14 107 requirements in those conditions.

15 Now the Commission has rightfully admonished the
16 Intervenors throughout this process to focus on the
17 Amended Conditions and we've earnestly tried to do so.
18 Inexplicably, TransCanada has not offered -- has not
19 followed the same directive as our Table of Non-evidence
20 indicates.

21 The witness testimony that has been presented is
22 largely opinion evidence of compliance by witnesses who
23 do not qualify as experts to give opinions in their
24 testimony.

25 Some opinion testimony is permitted under the

1 Rules of Evidence by nonexperts, but what we have in this
2 proceeding is that's pretty much all of the testimony
3 that's been given.

4 Of course, for its part -- well, let me say that
5 the Amended Conditions for which the TransCanada
6 witnesses have offered some testimonial evidence are
7 Amended Conditions 1, 2, 6A, 13, 15, and 31. That's six
8 of 107 requirements.

9 Staff testimony has addressed Amended Conditions
10 1, 13, 15, and 31. A total of six Conditions out of 107.
11 That's just not substantial evidence.

12 Substantial evidence is the burden of proof in
13 this administrative proceeding under the Administrative
14 Procedures Act. They didn't meet their evidentiary
15 burden so we seek an immediate order denying
16 certification.

17 We had extensive discussion yesterday about
18 posthearing briefing and the need to go through all the
19 transcripts. And, in fact, there have been a lot of
20 words spoken in the last two weeks. There's been a lot
21 of stuff.

22 But there has not been a lot of factual stuff.
23 Many of the witnesses, in fact, have acknowledged they
24 have not looked at documents on their own accord. They
25 have merely reviewed documents provided by TransCanada.

1 In any event, when we look at -- when we look
2 at -- the evidence that's in, that's in the record that's
3 been supplied by TransCanada, TransCanada will
4 obviously -- has contended in their Petition that many of
5 the Conditions are prospective, that they will comply in
6 construction. And with some of the Conditions that's a
7 fair position.

8 But when we look at things like emergency
9 response plans, integrity management plans, winterization
10 plans, there really -- in order to certify the Permit
11 there needs to be something rather than we promise we're
12 going to do it in the future.

13 The statute doesn't provide for promises that
14 they're going to do it in the future. If that were the
15 case, Section 27 of the statute under which the
16 proceeding is taking place wouldn't exist. If a permittee
17 who did not begin construction within four years could
18 merely come in and say we promise we're going to do it
19 later on, that section would have no meaning.

20 An agency is never permitted to read its
21 authorizing legislation out of the South Dakota Codified
22 Laws. All of these promises for future action, if this
23 Commission were to accept on face value without any
24 actual factual evidence -- let's see a draft emergency
25 plan, a Draft Integrity Management Plan. Let's see some

1 actual evidence that the Commission can bite its teeth
2 into to show that this permittee is serious about
3 complying with South Dakota Law. We don't have it. We
4 merely have promises.

5 There is no compliance. And compliance are the
6 words that are in the Amended Condition. Without that,
7 if the Permit is certified, Section 27 becomes
8 superfluous.

9 If the Commission were to deny this motion,
10 that's exactly what it would be doing. It would be
11 reading Section 27 right out of SDCL, and that's
12 impermissible.

13 They have the burden of proof to show that they
14 are in compliance with 107 requirements, and instead
15 their testimony references six of 107 requirements.

16 They failed to -- they failed to prove their
17 case. They failed to meet their burden of proof.

18 So on the last two columns of our Tracking
19 Tables of Non-evidence they're empty. There's nothing
20 there. And that's -- that reflects the fact that they
21 didn't meet their burden of proof.

22 Certification must also be denied as a matter of
23 law because of changes in federal law that are very
24 recent. On June 26, 2015, the Federal Government
25 promulgated new regulations under the Clean Water Act

1 that has the effect of significantly expanding the waters
2 that are covered under the act. More waters of
3 South Dakota are protected by the Clean Water Act than
4 were protected prior to June 26, 2015. That regulation
5 is codified in 40 CFR 230.3.

6 The existing environmental surveys are outdated.
7 They no longer apply because the rules have changed at
8 the federal level. TransCanada is relying on outdated
9 environmental surveys before this Commission. For that
10 reason, as a matter of law, they're not entitled to
11 certification of the Permit.

12 TransCanada's weak effort to establish
13 certification in this proceeding -- there's just not --
14 with respect to the facts, there's just not enough beans
15 on the scale to constitute substantial evidence.

16 As a matter of law, the rules have changed. If
17 TransCanada wants a Permit to cross South Dakota, they
18 must be required to redo the environmental surveys for
19 compliance with the Clean Water Act because the law has
20 changed.

21 Certification under Section 27 of the
22 South Dakota Energy Conservation and Transmission
23 Facilities Act must be denied.

24 There's nothing to brief. The Intervenors are
25 entitled to an order denying certification this

1 afternoon, and we respectfully request that the
2 Commission enter that order.

3 With that, I'm happy to turn it over for any
4 rebuttal for counsel by TransCanada.

5 MS. LONE EAGLE: Elizabeth Lone Eagle. I join
6 the motion.

7 MR. CLARK: Mr. Smith, I'm not sure what the
8 precise rules are, but just for clarification, the
9 Cheyenne River Sioux Tribe through its own counsel joins
10 the motion for reasons stated by Standing Rock Sioux
11 Tribe.

12 COMMISSIONER HANSON: Mr. Capossela, could you
13 tell me the specific -- you said Section 27 of the
14 Administrative Procedures Act.

15 Is there a specific cite, or is it the entire
16 section?

17 MR. CAPOSSELA: Section 26 of the APA governs
18 the requirements for agency action on judicial review.

19 And the South Dakota Supreme Court has
20 interpreted Section 36 of the APA to require substantial
21 evidence backing up an agency order.

22 Kind of the standard case or a lead-in case on
23 that is Therkildsen v. Fisher Beverage, which is in the
24 Reporter at 535 N.W.2d 834. It's a 1996 South Dakota
25 Supreme Court case. The citation, there's just a line of

1 cases of which Therkildsen is one of the more recent
2 cases.

3 Cited in Therkildsen is Helms v. Lynns, which is
4 in the Reporter at 542 N.W.2d 764. It's a 1991
5 South Dakota Supreme Court case.

6 TransCanada and any Petitioner in an
7 administrative proceeding in South Dakota in order to
8 prevail in the proceeding must demonstrate by substantial
9 evidence that it's entitled to the order that's
10 requested.

11 And the fact of the matter is, is we don't have
12 that here, as is demonstrated by Standing Rock's table of
13 evidence that's been provided and not provided in this
14 case.

15 They simply haven't proven their case.

16 COMMISSIONER HANSON: Thank you.

17 At one juncture I thought I heard you say
18 Section 37, and at another time Section 27. So I was
19 trying to figure out --

20 MR. CAPOSSELA: I appreciate that, Commissioner
21 Hanson. Because what we have here is an evidentiary
22 burden under the Administrative Procedures Act. That's
23 under the APA.

24 COMMISSIONER HANSON: I'm familiar with that.

25 MR. CAPOSSELA: Section 27 is the section in the

1 Energy Conversion Transmission Facilities Act for this
2 proceeding. So we have a burden of proof under the APA,
3 and then we have a certification under the Energy Act.

4 Those are the two statutes that are at issue
5 here. They haven't met their burden of proof for what
6 they must certify in this proceeding. And that's the
7 reason really when we look at the evidence in the record,
8 the evidence under the APA, the evidentiary burden under
9 the APA has not been met for the certification of the
10 Permit under Section 27 of Energy Transmission Facilities
11 Act.

12 So there are two statutes that are at issue
13 here. The motion that is really -- is based upon the
14 burden of proof. They haven't proven their case
15 factually. Moreover, as we're contending, the rules have
16 changed under the Clean Water Act.

17 That may not be TransCanada's fault. But if the
18 Permit is certified, the project would be in violation of
19 the Clean Water Act because the rules have changed. If
20 they want a Permit, they've got to go back and resurvey
21 the pipeline route to comply with the new regulations
22 under the Clean Water Act.

23 That's the two bases on which our motion is
24 grounded. It's a meritorious motion, and we respectfully
25 request that our motion be granted and there be an order

1 denying certification this afternoon.

2 MR. SMITH: On this one do you, Chairman, want
3 to -- I just asked the Chairman, since we've left the
4 evidentiary portion of the hearing, which is usually all
5 that I preside over, that we go to our normal thing,
6 which when we're talking about an actual motion for
7 Commission action usually the Chairman himself chairs
8 that. If that makes any sense.

9 So I'm just asking him if he would rather have
10 me do that or him.

11 CHAIRMAN NELSON: I will do it. Let me go to
12 TransCanada for response.

13 MR. TAYLOR: Thank you. With respect to the
14 motion that Mr. Capossela just made, first of all, I'd
15 like a clear understanding of who the parties are that
16 have joined in this motion.

17 CHAIRMAN NELSON: Thank you. If you'd repeat
18 that, I'd appreciate it also.

19 MR. CAPOSSELA: The motion is made by the
20 Standing Rock Sioux Tribe on its own behalf and on behalf
21 of the Cheyenne River Sioux Tribe, the Rosebud Sioux
22 Tribe, the Yankton Sioux Tribe, the Indigenous
23 Environmental Network, InterTribal COUP, Dakota Rural
24 Action, and Bold Nebraska.

25 MR. TAYLOR: And then -- excuse me. Were there

1 oral joinders also?

2 MR. SMITH: There were.

3 MS. LONE EAGLE: This is Elizabeth Lone Eagle.
4 I also joined the motion for the reasons stated.

5 MR. HARTER: John Harter joins the motion.

6 MS. REAL BIRD: And, Mr. Chairman, the Yankton
7 Sioux Tribe joins the motion through its own counsel of
8 record for the reasons stated by Mr. Capossela.

9 MR. TAYLOR: I'd also note that I have not seen
10 the table that the Intervenors have presented for the
11 Commission's view. Obviously wasn't given to us in
12 advance, and we couldn't see it because it was facing you
13 instead of us. And I can't read backwards on the
14 television screen.

15 MR. CAPOSSELA: For clarification -- excuse me.
16 For clarification, we're not seeking -- we have not moved
17 to introduce -- it's a visual aid. We are not seeking to
18 introduce it into the record, and we're happy to permit
19 TransCanada to view the visual aids that we've prepared
20 for the Commission.

21 MR. TAYLOR: If the Commission should choose not
22 to act today by way of motion granting certification, and
23 if the Commission should choose to provide a briefing
24 schedule, on behalf of TransCanada, I'd be happy to
25 stipulate that this can be -- the transcript of this

1 motion can be the brief that the parties who have joined
2 the motion intend to submit, and we will respond to it in
3 due course.

4 The other option is to hear arguments on it.
5 And if you'd like to hear arguments on the motion, I'd
6 like the courtesy of a few minutes to consult with my
7 colleagues and work through our arguments.

8 CHAIRMAN NELSON: Yeah. I think we do want to
9 resolve this motion at this time. So how many minutes
10 would you like?

11 MR. TAYLOR: I think we could use 15 minutes.

12 CHAIRMAN NELSON: Okay. We will come back at
13 20 minutes to 4:00. We're in recess.

14 MR. TAYLOR: And can we have a copy of your
15 visual aid?

16 CHAIRMAN NELSON: Do you have a paper copy,
17 Mr. Capossela?

18 MR. CAPOSSELA: No, we don't, Mr. Chairman. We
19 could attempt to come up with one in the next 15 minutes.

20 CHAIRMAN NELSON: Would you prefer that, or
21 should we just spread them out here for you?

22 (A short recess is taken)

23 CHAIRMAN NELSON: We will reconvene. Keystone,
24 your response.

25 MR. TAYLOR: Thank you, Commissioners.

1 I'll address three things. First, the
2 procedural reasons why this motion should not be
3 considered at this time. Second, the Clean Water Act
4 contentions that have been made. And, third, the merits
5 of our case.

6 We have just concluded a nine-day hearing. This
7 is clearly a legal argument, and it's a legal argument
8 that should properly be briefed. There should be written
9 submissions by both sides so that the Commission has a
10 clear understanding of what the contentions are that the
11 Intervenors make and what the counter arguments are that
12 Keystone makes.

13 Third, this really is a motion for a directed
14 verdict. The argument, the contention is is that we have
15 failed to meet our burden of proof. So it's really a
16 motion for a directed verdict.

17 When do you make and argue a motion for a
18 directed verdict you make an argument for motion for
19 directed verdict when the plaintiff concludes their case.
20 There is no reason to offer defense if you think you've
21 got a meritorious motion.

22 Unfortunately, the Intervenors have chosen to
23 make their motion for directed verdict at the end of the
24 case. By virtue of making the motion now they concede
25 there are sufficient facts in evidence to make a contest.

1 The Clean Water Act contention is a boogeyman.
2 Condition 1 of your Permit issued in 2010 requires that
3 Keystone obtain all necessary permits as a precondition
4 to construction of the pipeline. Remember, that the
5 Pipeline Act in South Dakota says you must issue a permit
6 as a precondition to construction. That's the fundament
7 and the genesis and the basis for this entire proceeding
8 starting back in 2009 when we first applied.

9 One of the permits that we must obtain is the
10 necessary permission, permissions that are required by
11 the Clean Water Act, typically a Corps of Engineers
12 issued 404 Permit.

13 As Dr. Schmidt testified, in the course of
14 surveying for this project every water body crossed by
15 the pipeline was surveyed and assessed. We have not yet
16 applied for the Federal 404 Permit or made an Application
17 under General Permit 12, that may be -- will also be
18 available for summary of water body crossings.

19 If there is effective June 26, 2015, a Clean
20 Water Act amendment, no doubt when we go to the Corps of
21 Engineers and say we are here, here is our Application,
22 here is the supporting material for our Application, they
23 will say your Application is complete and sufficient or
24 your Application is not complete and sufficient under
25 626-15 regulations, go do it over.

1 And, of course, we will go do it over because we
2 cannot commence construction in the State of South Dakota
3 under a Permit unless we have all required state and
4 federal permits which would include the Corps of
5 Engineers' approval of any water body crossings as
6 required by the Clean Water Act.

7 Your jurisdiction does not include the issuance
8 of permits to cross water bodies in the State of South
9 Dakota. That is federal jurisdiction. So the Clean
10 Water Act contention made here today is a boogeyman.

11 We can and will comply with the requirements of
12 an Application for all necessary federal, state, local,
13 governmental permits as required by Condition No. 1.

14 Final point. The merits of what's gone on over
15 the last nine days. The Applicant met its burden of
16 proof -- met its burden for certification in the written
17 submissions that were filed nearly one year ago. An
18 officer of the company certified to the Public Utilities
19 Commission that the project could be constructed in
20 compliance with the 50 Conditions that are imposed in the
21 Permit despite changes of circumstances that have
22 occurred in the intervening four, now five -- now nearly
23 five years.

24 The certification contained appendices that laid
25 out expressly the basis on which that certification could

1 be made and would be made. Signed by an officer of the
2 company.

3 Under the statute, we could have said we certify
4 and at that moment the burden of proof shifts to anyone
5 who wants to contest that certification to come forward
6 with affirmative proof that there are Conditions in our
7 Permit issued in 2010 that we cannot meet. And they have
8 to provide permanent proof of that.

9 I don't want to argue the merits of the case at
10 this hour, but I will tell you that we met our burden of
11 proof. We offered our witnesses who supported each
12 allegation made in our Certification Petition,
13 certificate of certification, whatever you choose to call
14 it.

15 There has been no affirmative case presented in
16 these last nine days to demonstrate that we cannot comply
17 with those Conditions. And the argument that somehow the
18 Public Utilities Commission cannot issue a Permit that
19 contains prospective Conditions is bogus.

20 You'd never build a railroad if you had to walk
21 in here and say we have now met every Condition in order
22 to construct our pipeline because some of the Conditions
23 that are considered -- that are imposed by the Permit
24 that you issued in 2010 are inherently prospective in
25 nature and can't be complied with or conformed to until

1 the project is either underway or completed.

2 The reclamation Conditions, for example. You
3 can't reclaim it before you build it. So the logic of
4 that argument is bogus.

5 In short, if there is any merits to the
6 contentions made by the Intervenors who have joined in
7 this motion, it should be briefed. It should be
8 presented to the Commission for its careful
9 consideration, the law in question laid out, the relevant
10 facts attached to it.

11 We're prepared to do that. We've been prepared
12 to do that since the day we started this hearing.

13 Thank you.

14 CHAIRMAN NELSON: Staff.

15 MS. EDWARDS: Thank you. This is Kristen
16 Edwards for Staff. Just a few points.

17 On the statute that was cited in the
18 Administrative Procedures Act 1-26-36 that statute is an
19 appellate statute so I have no doubt that we will be
20 arguing that statute at some point, but I'm not sure it's
21 the appropriate statute for consideration at this time.

22 As far as the judgment -- or the request for a
23 directed verdict, the South Dakota Supreme Court --

24 MR. GOUGH: Objection. There was no request for
25 a directed verdict. We asked for dismissal.

1 CHAIRMAN NELSON: Please continue.

2 MS. EDWARDS: Anyway the South Dakota Supreme
3 Court has addressed this issue and has held that if
4 sufficient evidence exists so that reasonable minds could
5 differ, then a directed verdict is not appropriate and
6 would likely not be upheld on appeal.

7 So while Staff doesn't take a position at this
8 time because we haven't had a chance to weigh the
9 evidence on which way the Commission should ultimately
10 rule, if in your mind you think it could go either way
11 and reasonable minds could differ, then I suppose parties
12 should be given the opportunity to brief and decide at a
13 later date.

14 Thank you.

15 CHAIRMAN NELSON: Mr. Capossela, brief rebuttal.

16 MR. TAYLOR: May I make one more point before
17 Mr. Capossela rebuts?

18 CHAIRMAN NELSON: Briefly.

19 MR. TAYLOR: By virtue of the three poster
20 boards, they've conceded that the evidence has to be
21 reviewed anyway for this Commission to make a decision.
22 I mean, they've laid out in four columns what they
23 believe to be this and this and this and that.

24 Thank you.

25 CHAIRMAN NELSON: Mr. Capossela.

1 MR. CAPOSSELA: Thank you, Mr. Chairman. I do
2 appreciate the need to be brief and to work through this.
3 The motion has been made on behalf of numerous
4 organizational Intervenors.

5 And if it's appropriate, I would appreciate
6 getting some feedback from the co-motion makers, if
7 that's appropriate, and if anybody has anything to say on
8 this side of the room.

9 MR. TAYLOR: I don't think -- I don't think it
10 works that way.

11 CHAIRMAN NELSON: I was under the understanding
12 you were making the motion on their behalf. I'm giving
13 you an opportunity to rebut, if you wish.

14 MR. CAPOSSELA: I do. And I will be brief.

15 If I was the Applicant and I proffered evidence
16 on six of 107 requirements, I'd want to put a decision
17 off also.

18 With respect to the -- Staff was correct. The
19 section of the Administrative Procedures Act that we
20 cited does govern the appeal of an agency decision. And
21 the South Dakota Supreme Court has interpreted that
22 statute in the cases that we've cited as requiring
23 substantial evidence. And that kind of gets us to the
24 argument that we've made.

25 With respect to the contention that the burden

1 of proof has shifted, there's no authority cited for
2 that, and that's not the case. The Applicant has the
3 burden of proof to demonstrate by substantial evidence
4 that it can meet all of the Amended Conditions and all of
5 the requirements in those Amended Conditions by
6 substantial evidence.

7 Now I'd like to point out a piece of testimony
8 that was given to the Commission that I really think gets
9 to the nub of our argument that there simply is not
10 sufficient evidence in the matter that's been presented
11 by TransCanada.

12 And the Risk Assessment that was conducted was
13 conducted in such a manner as to estimate the spill
14 frequency for one mile -- for any one mile of pipeline
15 running through South Dakota. And the testimony was
16 presented by TransCanada that the probability of a spill
17 from any single mile of the pipeline in South Dakota is
18 extremely small. You know, once in every 10 million
19 years or something.

20 And then in cross-examination the person,
21 Ms. Tillquist, who offered that assessment was asked if
22 that was -- if that was an appropriate means of assessing
23 risk to South Dakota, to assess the probability of a
24 spill from any single mile of pipeline, and her response
25 was it's a start.

1 And I think that's really where we're at here.
2 It's a start. Not a substantial evidence of compliance.

3 The Intervenors are in no position to tell
4 TransCanada how to spend its time and money. They've
5 chosen to spend their time and money on public relations
6 and other things, not on risk assessments. Not on
7 emergency plans. Not on integrity management plans.
8 That's their decision, and they should live with the
9 consequences of that decision this afternoon.

10 Now the argument that Mr. Schmidt testified that
11 every water body has been surveyed and assessed also
12 really gets -- really gets to the point here. I think
13 that argument really suggests that the motion should, in
14 fact -- must, in fact, be granted.

15 Because what's a water body under the Clean
16 Water Act when those surveys were conducted is different
17 today. There are many more water bodies under the Clean
18 Water Act today than there were when those surveys were
19 conducted because the definition of a water body has
20 changed.

21 And the changed definition was published in the
22 Federal Register. The notion that if there's a new rule
23 under the Clean Water Act, then maybe it's something that
24 needs to get dealt with by some other agency at some
25 other level later on -- the fact of the matter is there

1 is a new rule.

2 It's a controversial rule. It's been in the
3 works for a long time. And the waters of South Dakota
4 have a higher level of protection today than they had
5 prior to June 26. And because of that, the contentions
6 that TransCanada is making not to the Corps of Engineers,
7 not to the Federal Government, but to the Public
8 Utilities Commission that its in compliance no longer
9 holds water because the rules have changed.

10 So what TransCanada is telling the Commission
11 with respect to compliance with the Clean Water Act is
12 wrong because it's outdated.

13 And we're not saying they shouldn't get the
14 opportunity to update their surveys. What we're saying
15 is they should not get the Permit certified. The rules
16 have changed. The law has changed. As a matter of law,
17 they can't be certified.

18 But also all of those blanks on the third and
19 fourth columns of our tables that we've printed up, they
20 just -- there's not enough beans on the scale. They've
21 not met their burden of proof. TransCanada's contending
22 that the burden of proof somehow shifted, but they cite
23 no legal authority for that because it's not.

24 They need to provide substantial evidence that
25 they're in compliance with those Conditions which are not

1 prospective. And what we have conceded is that some of
2 them are. They can't do the reclamation until after they
3 do construction. Fair enough.

4 Now their promises that they can do reclamation
5 I think we've heard from the Sibsons about how that goes.
6 But the fact of the matter is there's just not enough
7 beans on the scale. There's just not enough evidence
8 relating to specific conditions.

9 The Commission has told all of us, keep to the
10 Conditions. TransCanada didn't do so, so we ask that
11 certification be denied on those bases.

12 CHAIRMAN NELSON: Thank you.

13 Motions from the Commission.

14 COMMISSIONER HANSON: I always forget that you
15 want motions before you have discussion.

16 I do have a considerable amount of discussion, a
17 lot of notes here. I'd make a motion to deny the motion
18 for dismissal, and I would like to address that.

19 CHAIRMAN NELSON: Discussion.

20 COMMISSIONER HANSON: Thank you, Mr. Chairman.

21 It's an interesting motion. And I do agree that
22 we need to go through the process at this juncture and
23 examine all of the evidence that's been presented and
24 make a decision pertaining to the fact itself.

25 And this basically is asking us to do that, only

1 to bench it at this juncture rather than to go through
2 all of that process of hearing the final discussion and
3 receiving the final written testimony that we had decided
4 that we wanted to.

5 But, more specifically, I'd like to go over a
6 number of things. First of all -- and I offer this as an
7 opportunity in your final writings to us so that you can
8 attempt to refute what I'm saying or clarify more for
9 that purpose.

10 First of all, when you say that -- when you
11 contend the substantial evidence needs to be presented,
12 in my view substantial evidence was originally presented,
13 a Permit was granted and it survived objections and it
14 was approved. A certification for the Permit was
15 granted -- for the pipeline was granted.

16 Secondly, the argument that rules have changed,
17 certainly we know that EPA and federal regs are as
18 volatile as the price of oil. They do change.

19 Conditions require, however, XL must comply with
20 the federal law, as XL argues. And so they must meet
21 that challenge, that hurdle.

22 All of the blanks are -- there's too many
23 blanks. That's an interesting argument. It's one that I
24 heard some folks argue in their opening remarks, that the
25 burden is on the shoulders of XL.

1 And so I did some reading on that because I
2 wanted to be totally comfortable with where we were
3 going. I'll go over some statutes and give you an idea
4 of where I'm coming from.

5 First of all, for obtaining a Permit you're
6 correct there is a significant burden of proof as shown
7 in 49-41B-22. It spells out that burden of proof. It
8 has four items there, one of which has been interpreted
9 by the Supreme Court and changed. It does not appear
10 exactly the same way in statute.

11 That burden of proof, though, is required in
12 order to receive the Permit. When you turn to 49-41B-27
13 it refers to the requirement for certification. If
14 construction, expansion, or improvement commences more
15 than four years after a Permit has been issued, then the
16 utility must certify to the Public Utilities Commission
17 that such facility continues to meet the Conditions upon
18 which the Permit was issued.

19 It does not restate 49-41B-22 as Applicant's
20 burden of proof to certify. It simply states that they
21 must certify. And if the Legislature desired for the
22 Permit holder to go through all of the processes of
23 49-41B-22 from scratch, it would have stated -- it would
24 have required it and directed it to do so.

25 And to clarify that even more, if you turn to

1 49-41B-22-1, it further clarifies it by stating that --
2 and this deals with when a Permit is denied. It states
3 the Applicant shall have the burden of proof to establish
4 only those criteria upon which the original Permit was
5 denied.

6 So in the event that we deny a Permit, they only
7 have to come back and show those -- that one or two items
8 that -- the reason that it was denied, within a
9 three-year period they have the right to do that. So
10 even in these hearings if we denied it, my interpretation
11 is at least that they would have three years to come back
12 with those specific areas and cleanse those in order to
13 receive the Permit.

14 And that's -- again, in 49-41B-22-2 it actually
15 goes so far as to say if a second or subsequent
16 reapplication. So they could have several shots at this
17 on a basis that the Public Utilities Commission may in
18 its discretion decide if an Applicant shall have the
19 burden of proof to establish all criteria required in an
20 original Application.

21 So clearly certification for an approved project
22 should not require a burden of proof greater than a
23 project that was denied. And if they had to come back
24 and prove all of those issues, that would be considerably
25 greater burden than which would have been placed upon

1 a -- an Applicant whose Application had been denied on
2 several occasions.

3 So clearly the discretion there is given to the
4 Commission, and clearly the Applicant has met their
5 certification requirement, unless proof to this
6 Commission is shown that they do not meet one or more of
7 the Conditions that were set forth in our original order
8 granting the Permit.

9 So that's where I'm coming from, Mr. Chairman.

10 CHAIRMAN NELSON: Thank you.

11 Additional discussion.

12 While I hadn't done the depth of research into
13 the statute that Commissioner Hanson had, I concur with
14 his comments. But I want to go just a little bit
15 further.

16 In preparing for this hearing I put together
17 this notebook. And the front of the notebook has the
18 Conditions, the Tracking Table of Changes. The back of
19 the notebook I put empty sheets. And my intention was
20 that as testimony was given I would be able to categorize
21 that testimony by Condition.

22 The sheets are empty. I took a lot of notes,
23 but these sheets are empty. And while you all may be
24 able to pigeonhole some of this testimony to particular
25 Conditions, it wasn't provided nearly as clearly as I

1 anticipated.

2 I anticipated that questions of the witnesses
3 would be driven at particular Conditions to try to prove
4 that the Applicant could no longer meet those. And, as I
5 said, at this point I don't have that categorization.

6 And so I'm going to support the motion to deny
7 with the anticipation that when you all take a very, very
8 careful look at all of the testimony that has been given,
9 that you can then drive that in your arguments to
10 particular Conditions that you feel can't be met.

11 And I think, as I said yesterday, I want to give
12 you all the opportunity to make the best argument you
13 can, and that's going to take you a little bit of time to
14 pull all of that together.

15 And so I'm going to support the motion today and
16 look forward to your arguments upcoming.

17 Further discussion.

18 Commissioner Hanson.

19 COMMISSIONER HANSON: Just one last thing, and
20 I'll piggyback on what you just said because all three
21 Commissioners leading up to this hearing made statements
22 about we want to see arguments pertaining to those
23 Conditions. We want you to come up and say Condition
24 No. 2, here -- now in some cases I feel you did that.
25 But really there was so much testimony in which it could

1 have been directed much better towards those Conditions.

2 And I look forward to hearing from the -- I
3 should be speaking to the Chair since this is a motion
4 before it, but I'm looking forward to the members, both
5 sides, presenting their arguments and having that
6 opportunity.

7 Thank you, Mr. Chairman.

8 CHAIRMAN NELSON: Seeing no further discussion,
9 all in favor of denying the motion will say aye. Those
10 opposed, nay.

11 Commissioner Hanson.

12 COMMISSIONER HANSON: Aye.

13 CHAIRMAN NELSON: Nelson votes aye. The motion
14 is denied.

15 MR. CAPOSSELA: Thank you, Commissioners.

16 CHAIRMAN NELSON: Thank you. At this point we
17 are going to take any of the Individual Intervenors'
18 closing statements. At the conclusion of -- and as we
19 have noted yesterday, if an Individual Intervenor wants
20 to submit a closing statement in writing instead, that's
21 certainly permissible.

22 At the conclusion of the Individual Intervenor
23 closing statements then we will determine what our
24 briefing schedule will be before we conclude.

25 Any of the individuals wish to -- you want me to

1 just go -- I'll go in the order that we have been.

2 Mr. Dorr, would you like to make an oral
3 closing?

4 MR. DORR: I have a question before I do. If I
5 do an oral, I can't submit written?

6 CHAIRMAN NELSON: We'll take the written too.
7 Certainly.

8 And let me just say we're not going to set a
9 time limit, but please be cognizant of the time we have
10 left today.

11 Mr. Dorr.

12 MR. DORR: I'll be very, very brief.

13 The Keystone XL Permit must be denied. The
14 first Amended Permit Condition requires them to comply
15 with all applicable laws. 15 Stat 635 in black and white
16 declares that only a government agency in obvious duty to
17 the Tribes have exclusive privilege to live in the treaty
18 territory. 15 Stat 635 also declares plainly that the
19 Tribes get to say who travels through the territory.

20 TransCanada's witness Ms. Hudson testified that
21 if TransCanada had broken a federal law, the Permit
22 probably should be denied. 15 Stat 635 will be violated
23 because the Tribes have not consented to man camps with
24 the residents living in the treaty territory, and they
25 have not consented to TransCanada passing through the

1 territory or the pipeline.

2 Thank you.

3 CHAIRMAN NELSON: Thank you.

4 Mr. Harter.

5 MR. HARTER: I'm going to pass and attempt a
6 written one.

7 Thank you.

8 CHAIRMAN NELSON: Ms. Bardaglio.

9 MS. BARDAGLIO: I would like to make a
10 statement.

11 My name is Wrexie Bardaglio. I'm a fifth
12 generation Nebraskan living in the Finger Lakes of
13 Upstate New York. I still have family in Hastings, and I
14 had ancestors here in South Dakota, although I no longer
15 have blood kin here.

16 TransCanada doesn't want us to talk about the
17 weather. We aren't supposed to talk about the weather.
18 But in Nebraska and South Dakota that's all we talk about
19 from the time we first open our mouths.

20 When we call up our friend the first thing we
21 ask is What's the weather like over there? When we make
22 plans to go out or take a trip we always ask What's the
23 weather doing? You don't tell a Nebraskan or a South
24 Dakotan not to talk about the weather. People who live
25 close to the land talk about the weather all the time.

1 TransCanada doesn't want us to do that. They
2 didn't want the foremost guy in the world who knows about
3 what the weather is doing to come and talk to us.

4 We talk about the weather because that's who we
5 are. But the weather doesn't look so good for us, my
6 kids, our kids, and the next seven generations. It
7 doesn't look so good for the TransCanada families either.

8 We're not supposed to talk about the weather
9 because apparently that isn't germane to whether
10 TransCanada can continue to meet the Conditions of the
11 2010 Permit.

12 Well, things aren't the same as they were in
13 2010. In fact they're not the same as they were in 2012
14 or even 2014.

15 We're also not supposed to talk about the fact
16 that the safest pipeline ever built would cross the
17 treaty territory of the signatories to the Fort Laramie
18 Treaty of 1868 without their consent.

19 TransCanada seems to think we're not supposed to
20 talk about that, even though it's a legally binding
21 agreement between the United States and the signatories
22 to that treaty, the nine sovereign nations of the Great
23 Sioux Nation.

24 The reason the Tribes retain treaty rights is
25 because they had to have access to those resources they

1 knew they needed to sustain themselves, hunting and
2 fishing and water. Water is life, and everybody knows
3 that. If you contaminate water, you destroy life. This
4 whole thing is about life. It's about the rights that
5 protect water.

6 TransCanada isn't happy that we want to talk
7 about the fact that a 36-inch pipeline, if TransCanada is
8 able to have the Permit recertified, will bifurcate the
9 United States north to south right straight down through
10 the Ogallala to the Gulf to carry tar sands and bitumen.
11 That's what it is is bitumen, the main ingredient in
12 asphalt.

13 What is the benefit of putting a risky, unsafe
14 pipeline down through the United States? It isn't really
15 going to materially benefit Nebraska and South Dakota
16 citizens. In fact, we've heard before the tax benefits
17 to the State being grossly overstated.

18 It's not going to benefit the citizens of all
19 the other states that the waters of the Ogallala nourish.
20 No. It's for the benefit of TransCanada's investors.

21 I really don't understand how TransCanada can
22 maintain they have a safe pipeline that won't contaminate
23 our water when there's an accident, not if but when, when
24 evidence shows that the corroded walls in some places are
25 thinner than a dime, among other flaws and weaknesses.

1 If the pipeline was so safe, TransCanada
2 wouldn't be so determined to minimize their liability to
3 practically nothing by making sure they are exempt from
4 paying into the Oil Spill Liability Fund because that
5 dilbit is not oil.

6 On the other hand, TransCanada and other
7 Canadian tar sands companies are waging a systematic and
8 relentless campaign to have us think of tar sands as oil
9 sands; it's a little more sanitary. They're trying to
10 have it both ways, but you can't have it both ways.

11 We don't need Canadian tar sands for energy
12 independence. What we need is to put our efforts into
13 clean technologies. And oil and gas are always going to
14 be part of the tool kit, mind you. I understand that.
15 But we need a healthier and cleaner future if we're going
16 to have one at all.

17 TransCanada has worked really hard to make sure
18 the issues where the truth lies aren't allowed. If
19 you're not afraid of the truth, you're not afraid of a
20 frank discussion. But the truth is TransCanada has a lot
21 to be afraid of.

22 Their safety record has been revealed to be
23 appalling. They have a product that's not going to do
24 anybody any good in South Dakota or anywhere else unless
25 they are investors or exporting to other nations.

1 Our daughter was married in Maine last week, and
2 I drove three days to get here. That's a lot of carbon,
3 I know. I drove out here to talk about the water, to
4 talk about the retained treaty territory rights of
5 sovereign tribal nations, to talk about the kinds of
6 people I know who I grew up with who always talk about
7 the weather.

8 I drove out here to talk about our newly married
9 daughter and our children and our grandchildren and what
10 kind of a future they're going to have on a planet that's
11 drying up, on a planet that's already short on water.

12 I drove out here because I wanted to look you
13 Commissioners in the eye, I wanted to look TransCanada in
14 the eye, and I wanted to shake the hands of all the
15 people who are making such a difference in this fight for
16 many, many years to keep this project from happening.

17 I'm going to close by sharing with you a very
18 short exchange I had with my 11 granddaughter Lilly.
19 During a particularly terrifyingly bad storm she said to
20 me, Nana, I'm really afraid of the weather. And I said
21 to her Don't be afraid, Lilly. Learn all you can because
22 the more you know, the less afraid you'll be. It might
23 not be easy and it might not be pretty, but you won't be
24 so afraid.

25 I ask the Commissioners to search their hearts

1 and ponder the legal arguments made here by the
2 intervenors, legal arguments stemming from a place of
3 passion and truth and in some cases extraordinary
4 generosity, as I learned yesterday.

5 My e-file opening statement and this closing
6 statement represent the universe of what I felt I had to
7 offer these proceedings. But as of everything else that
8 has been offered by the intervenor group, my remarks are
9 heartfelt and come with my request that you deny
10 TransCanada's Application to recertify the 2010 Permit.

11 I thank you for your time.

12 CHAIRMAN NELSON: Thank you.

13 Ms. Lone Eagle.

14 MS. LONE EAGLE: I had discussed with Mr. Smith
15 earlier, Mr. Seamans is actually going to make his
16 statement before I make mine.

17 CHAIRMAN NELSON: Very good.

18 Mr. Seamans.

19 MR. SEAMANS: My statement is awful short so --
20 I would like to further expand on the discussion of
21 property taxes that I had with Corey Goulet during his
22 testimony and on how much property taxes that TransCanada
23 will pay on the Keystone XL route.

24 Mr. Goulet has testified that TransCanada has
25 estimated that 4.3 million dollars in taxes will be paid

1 in the year 2014, 2015 along the Keystone I route.

2 I am willing to accept that estimate in good
3 faith. Adding this 4.3 million estimate to the taxes
4 paid the four previous years yields a five-year total of
5 17.8 million. The five-year average is around 3.5
6 million dollars in taxes paid to counties along the
7 Keystone I route.

8 TransCanada had estimated that they would pay
9 9.1 million a year. For the five years from 2011-2012 to
10 2014-2015 TransCanada paid 39 percent of what they had
11 told the counties that they would receive.

12 Taking into account that the 36-inch Keystone XL
13 is 44 percent larger than the 30-inch Keystone I and
14 taking into account that the Keystone XL is 315 miles in
15 length and the Keystone I is 220 miles, it is an easy
16 matter to calculate that the Keystone XL -- if the
17 Keystone XL had been in operation during the past five
18 years, it would have paid 7.7 million in taxes rather
19 than the 20 million that TransCanada has been reporting
20 in their current media ads.

21 TransCanada is quoting this inflated 20 million
22 dollar figure in their ads in an attempt to influence
23 South Dakota citizens to support the Keystone XL
24 Pipeline. I am disappointed that TransCanada is not more
25 forthcoming than what they tell the South Dakota public.

1 That's the end of my testimony. But I would
2 like to thank John Smith, Commissioner Nelson, and
3 Commissioner Hanson in bearing with us Individual
4 Intervenors. You treated us real well, and I thank you
5 for that.

6 CHAIRMAN NELSON: Thank you. This wasn't
7 Mr. Smith's first rodeo with taking testimony from
8 individuals, and so we appreciate that.

9 Ms. Lone Eagle.

10 MS. LONE EAGLE: Greetings from behind enemy
11 lines. I had originally timed out my statement so that
12 it would only take a few minutes, but I'm going to ask
13 you to indulge me with a few more.

14 And I'm sorry. I kind of had a real emotional
15 afternoon. But there's a reason why I want to share this
16 with you. So I'm trying to calm down from the stress
17 because it's actually a pretty good turnout.

18 Just after we started this afternoon I got a
19 call from my sister-in-law asking me if I had heard from
20 my husband. And the reason why is because there was a
21 large contingent of emergency vehicles on their way to
22 Bridger, and my husband had just been discharged from the
23 hospital yesterday.

24 Included in that contingent was a request for
25 assistance from the state patrol, which you may or may

1 not be aware when a call goes out from that from the
2 Tribe it's because something extremely serious has
3 happened.

4 Now Sergeant Steve was gracious enough to
5 indulge me and try to see if he could find out what was
6 going on, and I was able to learn that my husband was not
7 involved. So, like I said, it's kind of relieving that
8 stress.

9 But what I did find out is that there was two
10 children, two boys, that were swimming in the Cheyenne
11 River, and the reason that the call had went out is
12 because one of them had disappeared.

13 He was found, and he's okay, which is the good
14 part of the story. However, we've had discussion over
15 the strength of the current and how fast the Cheyenne
16 River flows. The point at which this boy was found was
17 quite a ways down river from where he started.

18 And the reason I bring this up is because we've
19 heard in testimony that the benzene which is a very light
20 substance, you know, no odor, no anything gets into the
21 water and floats and we've been told several times by
22 TransCanada witnesses that, oh, nothing could ever
23 happen.

24 But the distance that this boy who is much
25 heavier than benzene was found at is testament to me how

1 fast that river flows and the fact that he disappeared as
2 quickly as he did. Thank (speaks Lakota) was found and
3 that he's okay.

4 But it makes me extremely scared of this
5 pipeline coming through. If that boy at his weight
6 traveled that fast down the river, how fast are those
7 contaminants going to flow?

8 So to me that impeaches all the testimony we
9 heard about how safe this is.

10 Now at the onset of these proceedings last fall
11 one of the first things that was impressed on us as the
12 Intervenors was that the burden of proof was on the
13 Applicant. As shown by Mr. Capossela, it is incredibly
14 obvious that TransCanada has not met the burden of proof
15 that they are able, willing, and capable of continuing to
16 meet all 50 Conditions set forth in their original
17 Permit.

18 In fact, what has been shown is the opposite, to
19 the point of violation of the very first Condition. For
20 example, Corey Goulet testified that TransCanada through
21 its tribal relations department utilizes community
22 investment programs to develop relationships with
23 indigenous nations.

24 Mr. Goulet testified that TransCanada expects
25 nothing in return for these programs. However, the very

1 terminology that TransCanada uses is an impeachment of
2 Mr. Goulet's testimony.

3 Dictionary.com defines investment as the
4 investing of money or capital in order to gain profitable
5 returns as interest income or appreciation in value.
6 Money, gain, and returns are the key words. TransCanada
7 invests money in indigenous nations, attempts to here in
8 South Dakota, specifically Lakota, in order to gain
9 something. They expect a return on their investment.
10 Simply because they do not call it a bribe doesn't mean
11 it isn't one.

12 This is a clear violation of federal law, and as
13 such, a violation of Condition 1.

14 Next is a question that has been perplexing me
15 since the testimony of Meera Kothari. Why would
16 TransCanada appoint someone with so few qualifications
17 and lack of experience to a position with the
18 responsibility as tremendous as the Keystone XL Pipeline?

19 I listened to Ms. Kothari's testimony and sat
20 behind TransCanada's legal team and realized that isn't
21 what they did at all. Ms. Kothari was not the original
22 engineer for the project. She was brought in later when
23 TransCanada needed a marketable face.

24 I looked around and saw a bunch of old men
25 looking at retirement. They are men whose knowledge and

1 experience could only lead them to the conclusion that
2 there is something seriously flawed with the Keystone XL
3 Pipeline.

4 Ms. Kothari was tapped to be the lead project
5 engineer because she is young, attractive, and does what
6 she's told. Unfortunately, she is being groomed to
7 become the scapegoat when the pipeline fails.

8 The South Dakota Public Utilities Commission has
9 the opportunity to save a career in spite of the
10 overwhelming political pressure from Governor Daugaard,
11 Senator Rounds, and others. I realize that with such
12 overwhelming pressure it is difficult to be unbiased,
13 balanced, and neutral as demonstrated by the unsika case
14 put by the TransCanada Staff. TransCanada has lead us
15 all down a path of promises and kept none of them. So we
16 all need to find a way out of this.

17 Once again, the Oceti Sakowin have risen to the
18 occasion to rescue Ina Maka and Mni Wiconi from the jaws
19 of the Uncekila Sapa.

20 As stated by my ate` John Clifford before this
21 Commission on July 6, 2015, "While I am here to speak to
22 you, what I am telling you with the confidence of the
23 Constitution and force of our treaty rights is that you
24 have no jurisdiction to rule on anything that could
25 potentially affect Indian land on the reservation or

1 those lands that are federal Indian trust lands and most
2 certainly not to grant a Permit to any entity, foreign or
3 domestic, that would encroach in any way by crossing,
4 spilling, or causing any disturbance to these lands which
5 afford financial support and homesteads to the Native
6 American Indian tribal membership.

7 "Any ruling you make which would have any effect
8 on Indian lands is in direct violation of Article VI of
9 the U.S. Constitution whereby treaties are deemed the
10 supreme law of the land and in particular treaties made
11 with Lakota nations. Therefore, as a member of the
12 Rosebud Sioux Tribe, I hereby assert sovereignty and deem
13 any granting of an easement or Permit through my land as
14 null and void and as inherently an unconstitutional
15 invasion of my rights and resources.

16 "Also incumbent upon the PUC is the
17 responsibility to ensure that you avoid the same
18 disastrous results that the oil spills of the Exxon
19 Valdez and the BP Gulf disaster produced. That extensive
20 damage has yet to be adequately cleaned up and the
21 victims to be equitably compensated. I am holding you
22 accountable for even considering this lawless act of
23 granting a Permit to this foreign entity which is using
24 the precious lands and waters of this country to
25 profiteer for themselves and which in the end fail to

1 benefit our country in any significant way."

2 In addition to this testimony, you have had the
3 testimony of two additional experts, Doug Crow Ghost and
4 Wayne Frederick, both of whom have experience working
5 with the Winters Doctrine.

6 The Winters Doctrine acknowledges tribal
7 ownership of the water. When asked whether or not the
8 PUC has the authority to make decisions that will affect
9 water and waterways, clearly under the authority of the
10 Standing Rock and Rosebud Sioux Tribe both experts
11 answered no. The PUC does not have the authority to make
12 decisions affecting their water resources.

13 Evidence provided not only by the -- not only
14 the Tribes but other Intervenors as well clearly proves
15 tribal water resources will be affected by the Keystone
16 XL Pipeline.

17 Because TransCanada cannot prove it can even
18 meet the first Condition set out in the 50 required by
19 the Permit, let alone any of the other 49, coupled with
20 the fact that you have no authority to make any decision
21 regarding tribal resources, water in particular, you have
22 no other option than to deny HP14-001.

23 I conclude with the same statements I made at
24 the outset of this hearing.

25 (Speaks Lakota.)

1 These proceedings are illegal.

2 (Speaks Lakota.)

3 My participation in these proceedings is under
4 duress.

5 CHAIRMAN NELSON: Thank you.

6 I believe that is it for the Individual
7 Intervenors. Appreciate those comments.

8 Let's now talk about a briefing schedule. And
9 the first step in talking about a briefing schedule is to
10 ask the court reporter when transcripts might be
11 concluded.

12 (Discussion off the record)

13 CHAIRMAN NELSON: Staff, do you have a
14 recommendation on a briefing schedule?

15 MS. EDWARDS: I do. Thank you.

16 And I calculated this out looking at three weeks
17 from today, August 26. And then if we allowed for four
18 weeks after that, it would be September 23. So I guess I
19 would ask that briefs be due September 23. That would
20 give the parties about a full month to brief after
21 transcripts are received.

22 CHAIRMAN NELSON: Would you propose time for
23 rebuttal briefs or not?

24 MS. EDWARDS: I guess I presume that the parties
25 will want to do rebuttal briefs. And I'm assuming that a

1 lot of us are not going to want to be working on those
2 the last week of September and the first week of October.
3 Nor will the Commission probably be reading them.

4 So I would ask for rebuttal briefs to be due the
5 23rd of October which is a Friday.

6 MS. LONE EAGLE: Excuse me. Elizabeth Lone
7 Eagle. I just have a quick question.

8 CHAIRMAN NELSON: Yes.

9 MS. LONE EAGLE: I'm anticipating due to the
10 motion that was made earlier that I would be
11 participating in some of this. And given what happened
12 so far because I have to receive everything by postal,
13 I'm requesting that I be allowed at least an extra week
14 to be able to have my stuff in.

15 CHAIRMAN NELSON: Other feedback on these dates?
16 Mr. Ellison.

17 MR. ELLISON: I can only speak to my own
18 schedule. I am in Nuclear Regulatory Commission
19 hearings. I think starting the 24th of August I am out
20 of the country really through the first half of
21 September.

22 So realistically I could not begin to look at
23 transcripts until after that period of time. I guess I'd
24 like to propose at least -- and I don't know the day of
25 the week it is, but I was going to suggest October 1,

1 which is approximately perhaps a week after has been
2 suggested by Staff for opening briefs. And I think the
3 idea of four weeks at least for rebuttal briefs.

4 CHAIRMAN NELSON: Thank you.

5 MR. ELLISON: Okay. It's been suggested
6 October 1 for briefs and, again, I don't know what day of
7 the week that is and then November 1 perhaps for --

8 CHAIRMAN NELSON: It's a Thursday, and then
9 October 30 would be a Friday.

10 MS. REAL BIRD: Mr. Chairman, those of us that
11 represent parties in the Dakota Access case before you
12 were finishing up discovery, doing all the prefiled and
13 witness lists, and then the actual hearing starts
14 September 29. So I would -- on the 23rd, you know, we're
15 going to be wrapping up for the evidentiary hearing in
16 that case, and I would just ask that that be considered.

17 CHAIRMAN NELSON: Do you have a proposal?

18 MS. REAL BIRD: I don't have proposed dates, but
19 I believe that hearing is set to conclude October 8. And
20 so I think two weeks after that would be safe. I know it
21 extends it a little bit further than what we wanted
22 but --

23 CHAIRMAN NELSON: It extends it about six weeks
24 from the original proposal.

25 MS. REAL BIRD: Well, I mean, that's like a

1 nine-day trial as well and it's pretty intense and it
2 will be an original Permit trial rather than a
3 certification.

4 CHAIRMAN NELSON: I'm realizing that.
5 Mr. Rappold.

6 MR. RAPPOLD: Ms. Real Bird articulated my
7 concerns. And I just wanted to ask the Commission to be
8 cognizant of the parties that are participating in Dakota
9 Access and the timeliness of that case and its
10 preparations and finishing up this case. And I don't
11 have a proposal.

12 CHAIRMAN NELSON: TransCanada? Any comment?

13 MR. TAYLOR: We're good with September 23 and
14 October 23. The plain facts are everybody who's ever
15 done this before knows the older it gets the staler it
16 gets and the more difficult it is to write the brief. So
17 I would vote for the shorter rather than the longer
18 schedule.

19 I'm a brand new solo practitioner. I've waited
20 43 years and six months to say that as a solo
21 practitioner I can get this done.

22 MR. RAPPOLD: I thought he was working with his
23 son.

24 MR. TAYLOR: Well, that's true, but he's kind of
25 busy doing other stuff.

1 MR. RAPPOLD: So you're not solo.

2 MR. TAYLOR: Fair enough.

3 MR. HARTER: But I am.

4 MR. RAPPOLD: I am too.

5 CHAIRMAN NELSON: Let me go back to Staff. I
6 mean, I think we've heard some legitimate concerns about
7 the Dakota Access schedule.

8 Thoughts on whether we should move it past that
9 or not?

10 MS. EDWARDS: So the request is for the first
11 round of briefing to not be due until after Dakota
12 Access? Is that what I'm understanding?

13 CHAIRMAN NELSON: That's what I heard.

14 MS. EDWARDS: I guess my only -- I mean, in the
15 end it doesn't really matter to me, but my only concern
16 is I don't want to be writing this the same time I'm
17 writing Dakota Access because that one's on a time line.

18 And I don't know if anybody wants to be writing
19 the orders for both.

20 CHAIRMAN NELSON: I guess, given what I've
21 heard, I'm not sure we're going to come to a meeting of
22 the minds on this. But I guess I would be inclined to
23 take the middle ground, and, Commissioner Hanson, I'm
24 going to ask for your input, but going with the October 1
25 and the October 30 dates. Realizing October 1 is right

1 in the middle of Dakota Access, but anybody that's
2 involved in that is just going to have to get it in
3 before that begins.

4 Commissioner Hanson, any thoughts?

5 COMMISSIONER HANSON: Thank you. I'm not going
6 to be writing any so, I mean -- any of the briefs. I'm
7 going to be reading them. And I'm -- that's a challenge
8 in and of itself with the evidentiary hearing that we're
9 going to be receiving information on too.

10 So regardless of where it lands, it's just going
11 to mean a lot of hours on top of hours.

12 How I would want to do it personally is I guess
13 I'll say subservient to how the others want to do it
14 simply because they're the ones that have to write.

15 And I would just think that you'd want to do
16 it -- have it done on September 23 so you can get it out
17 of the way and then have an extended period of time after
18 that, like go September 23 and October 30 so that you
19 have that additional time frame to work on the other.

20 But that's where I would come from.

21 MR. ELLISON: The only thing I might respond at
22 least again is I had mentioned that basically gives me
23 one week.

24 And I also am cognizant too that Commissioner
25 Hanson has some surgery coming up so I can understand why

1 he -- that's not an insignificant thing by any means.
2 But with all due respect, that's why I'd like to push it
3 back at least a week.

4 COMMISSIONER HANSON: Well, I can deliver it to
5 you while you're in Europe if you'd like me to.

6 MR. ELLISON: I won't be in Europe. And it's
7 actually a working trip, not a vacation but -- that's --
8 because a week I know would be very difficult for me. I
9 know Mr. Martinez is a very busy attorney. And we need
10 to try and help each other, and that additional week
11 would be significant.

12 And really again we are still so far from before
13 TransCanada can actually begin even if the
14 recertification was granted, with the existing federal
15 situation and the Nebraska situation.

16 CHAIRMAN NELSON: I will move that we establish
17 October 1 as the deadline for original briefs and October
18 30 as the deadline for reply briefs.

19 Discussion on the motion. Given what I've
20 heard, again, I don't think we're going to come together
21 with an agreement that everybody's happy with, but I
22 think this is as close to middle ground and yet still
23 moves us forward at a reasonable pace.

24 Further discussion?

25 Seeing none, all those in favor will vote aye.

1 Those opposed, nay.

2 Commissioner Hanson.

3 COMMISSIONER HANSON: Aye.

4 CHAIRMAN NELSON: Nelson votes aye.

5 Motion carries.

6 I do have some closing comments. Is there
7 anything else for the good of the order before my closing
8 comments?

9 Mr. Ellison.

10 MR. ELLISON: You know, Chairman Nelson, I just
11 thought of this. And I have no way of knowing. You
12 know, we have expressed our hopes for Commissioner Fiegen
13 and from what we've heard everything is going faster than
14 had been originally thought.

15 I just wanted to mention her and her healing
16 processes to be taken into consideration, but with an
17 October 1 date perhaps that would give her enough time to
18 be able to review the transcripts as well.

19 CHAIRMAN NELSON: Yeah. I think so. I talked
20 to her the other -- Sunday night I talked to her, and,
21 yeah, things are going very, very well. Very encouraging
22 conversation. And so I think that will probably work
23 well for her also.

24 MR. ELLISON: Thank you.

25 CHAIRMAN NELSON: I appreciate that.

1 Anything else that anybody else has?

2 I guess if not, in closing, I know we've got a
3 couple of outstanding issues. There's a couple of issues
4 that were raised that we didn't rule on that Keystone's
5 going to brief on, and we'll have an opportunity for
6 response on that.

7 I think Dakota Rural Action also has the issue
8 of the worst-case spill data that was confidential, and
9 you had some concerns about that. We may hear about that
10 issue again. That may be in front of us.

11 Beyond that, let me just say, I mean, the last
12 nine days has not been without its bumps, but we've made
13 it. And I want to say thank you to each of you for your
14 participation, for your bearing with us as we've gone
15 through this, for your flexibility as we've had to move
16 between our witnesses, and all of that. I appreciate
17 that greatly.

18 I want to say thank you to some people that
19 without them this would not have been possible. Tina
20 Douglas is down here on this end and she's the lady that
21 has made sure that all of this has gotten properly
22 recorded and that the world has been able to listen to
23 this on the internet without interruption. And at the
24 same time she's the one that posts all of your documents
25 out on the website so the world can read those. Tina,

1 very, very hard working lady. Thank you.

2 Katlyn Gustafson down on this end is the one
3 who's kind of kept all of the audiovisual going and been
4 the person who's turned the air up and turned the air
5 down and kind of monitored all of that and been just the
6 go-to person. Katlyn, thank you very much.

7 We have a couple of people that are not -- that
8 haven't been up here. Our executive director Patty
9 Van Gerpen and our deputy executive director Leah Mohr.
10 They are the ones that did a huge amount of just the
11 background planning and logistics to allow us to
12 transform this committee meeting room into a -- hopefully
13 what proved to be an appropriate hearing room. And so I
14 want to say thank you to them for the tremendous amount
15 of work that they've done in the background.

16 Two more thank yous. Brian Rounds, I think
17 we've indicated he's our audio guy. And so this room
18 they learned was not set up to accommodate the number of
19 microphones that we needed. And he's the guy that
20 figured out how to patch everything together and make it
21 work. And so, Brian, thank you for that.

22 And, lastly, Mr. Smith who has guided us through
23 these proceedings. This will probably be the last
24 proceeding that he's going to lead, but, Mr. Smith, thank
25 you.

1 MR. ELLISON: Commissioner Nelson, could I also
2 add the court reporter. I personally thanked her
3 already, but in the years that I've been doing this in
4 courtrooms rather than administrative proceedings, she is
5 one of the best I've ever seen.

6 CHAIRMAN NELSON: Absolutely. And we have the
7 privilege of working with her on many, many occasions,
8 and she is topnotch. As a matter of fact, I call her our
9 star court reporter, and you have to put the word in
10 there "star" court reporter.

11 With that, anything else for the good of the
12 order?

13 Seeing none, we are concluded.

14 (The hearing is concluded at 5 o'clock p.m.)
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1 STATE OF SOUTH DAKOTA)

2 :SS

CERTIFICATE

3 COUNTY OF SULLY)

4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter, Certified Realtime Reporter and
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 5th day of
11 August, 2015, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 30th day of
14 August, 2015.

15

16

17

18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21 Certified Realtime Reporter

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