

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

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

ROSEBUD SIOUX TRIBE'S
MOTION FOR RECONSIDERATION

HP14-001

Comes now, the Rosebud Sioux Tribe, by and through counsel, Matthew L. Rappold, pursuant to SDCL 1-26-18 the Administrative Procedure Act, ARSD 20:10:01:29 and requests the Public Utilities Commission to reconsider its order dated April 3, 2015, regarding the hearing held on March 31, 2015 on the Rosebud Sioux Tribe's Motion to Amend the Procedural Schedule. In support there in counsel states the following:

1. By Motion dated March 25, 2015 the Rosebud Sioux Tribe moved the PUC to amend its procedural scheduling order dated December 17, 2014 which established April 2, 2015 as the deadline to file and serve direct testimony.

2. The Rosebud Sioux Tribe alleged that the PUC requirement that the Rosebud Sioux Tribe file direct testimony prior to the resolution of on-going discovery disputes would violate the due process rights of the Rosebud Sioux Tribe under the Constitution and the laws of the State of South Dakota as well as the Constitution of the United States.

3. The Rosebud Sioux Tribe requested that the PUC amend its scheduling order to include a date certain for the resolution of all pre-trial discovery disputes. Rosebud also asked the PUC to then set a deadline to pre-file direct testimony which would allow sufficient and meaningful time to review all discovery prior to filing testimony.

4. Following hearing on the motion, the PUC found good cause to amend the schedule and to permit the Rosebud Sioux Tribe to file its direct testimony on April 10, 2015 rather than on April 2, 2015 like the rest of the parties. In its amended order the PUC also required motions to compel discovery to be filed and served by April 7, 2015. The PUC scheduled all outstanding prehearing motion for April 14, 2015. The amended order also required discovery responses to be served as a result of PUC actions on motions to compel on April 17, 2015 and that pre-filed rebuttal testimony to be filed and served by April 27, 2015. The amended scheduling Order did not change the date of the evidentiary hearing of May 5-8, 2015.

5. The PUC declined to amend the filing date for pre-filed testimony for any other party. That although the PUC gave the Rosebud Sioux Tribe an additional 8 days to file its pre-filed

testimony, that relief did nothing to satisfy the due process violations of the scheduling order which requires testimony to be filed before the discovery process is complete. As such, the scheduling order still violates the due process rights of the Rosebud Sioux Tribe as well as all of the parties.

6. In its application of the Rules of Civil Procedure, the PUC has acted arbitrarily and capriciously and in blatant disregard for the rights of the Rosebud Sioux Tribe as well as all of the parties. Furthermore, the PUC has erred as a matter of law and is continuing to err as a matter of law.

7. Appearing to be central to the PUC's decision was the prejudicial effect to Rosebud Sioux Tribe of Keystone's last minute disclosure of 34 documents to the Rosebud Sioux Tribe on March 30, 2015, just 3 days before direct testimony was due. The PUC also heard testimony that the Rosebud Sioux Tribe requested Keystone to provide access to these documents on February 20, 2015.

8. Although the PUC recognized that Keystone's disclosure of 34 documents 3 days before testimony was due was entirely unreasonable, the PUC did nothing to actually solve the due process concerns of the Rosebud Sioux Tribe by taking the action that it did.

9. At the hearing, counsel for the Rosebud Sioux Tribe informed the Commission that the Rosebud Sioux Tribe was engaged in ongoing discovery discussions with Keystone's attorneys and also acknowledged that motions to compel discovery would be filed with the Commission. Counsel for Keystone did not disagree with this assertion.

10. In the Rosebud Sioux Tribes second set of Interrogatories and Request for Production of Documents dated February 20, 2015, in Interrogatory 1a, the Rosebud Sioux Tribe asked Keystone to produce "for the most recent and accurate Project route (as described in ref (iii)) and facility locations, provide an approximate elevation profile of the proposed pipeline (elevation vs. pipeline milepost) capturing the segments from the nearest upstream pump station north of the state border to the nearest pump station just south of the state border."

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

12. That Keystone's answers and objections to the Rosebud Sioux Tribe's Second Set of Interrogatories and Request for Production of Documents dated March 10, 2015 is attached as Exhibit 1 and incorporated by reference as if reiterated in full herein.

13. Keystone objected to providing the requested elevation profiles from Interrogatory 1a of the current project on the grounds that “the request for an elevation profile seeks information that is confidential for security reasons,” and that the request for an elevation profile is “not relevant or likely to lead to the discovery of admissible evidence.” These objections are boilerplate and baseless.

14. That on April 7, 2015 the Rosebud Sioux Tribe filed its motion to compel Keystone to produce discovery with the PUC requesting that Keystone provide the elevation profiles along with other information that Keystone has refused to provide. The motion to compel is scheduled for hearing on April 14, 2014.

15. Also, on April 7, 2015, Keystone’s attorneys notified the Rosebud Sioux Tribe that they would be providing the elevation profiles to the Rosebud Sioux Tribe on Wednesday April 8, 2015 as they were requested to do on February 20, 2015.

16. That the Rosebud Sioux Tribe has retained the services of expert witnesses from the Goodman Group, Ltd., as well as the services of Richard B. Kuprewicz to provide testimony regarding Keystone’s application for certification.

17. The Goodman Group are expected to testify to changes in economic benefits and costs of the Keystone XL in South Dakota and are recognized as experts in their field and require the requested information to prepare their testimony.

18. Richard B. Kuprewicz specializes in gas and liquid pipeline investigation, auditing, risk management, siting, construction, design, operation, maintenance, training, leak detection, management review, emergency response, and regulatory development and compliance. Mr. Kuprewicz has consulted for numerous local, state and federal agencies, NGO’s, the public, and pipeline industry members on pipeline regulation, operation and design, with particular emphasis on operation in unusually sensitive areas of high population density or environmental sensitive areas and is recognized as an expert in his field.

19. That Richard B. Kuprewicz has indicated by letter dated April 7, 2015, that he is unable to prepare or file any testimony related to the proposed pipeline because Keystone has refused to provide the necessary information that they are required by law to provide. Said referenced letter is attached hereto as Exhibit 2 and is incorporated by reference as if reiterated in full herein.

20. The Rosebud Sioux Tribe will also be calling Syed Huq, the Director for the Rosebud Sioux Tribe Water Resources program which oversees the operation and distribution of water services to the Rosebud Sioux Indian Reservation through the Mni Wiconi Rural Water System.

21. That the U.S. Government has invested nearly half a billion dollars on the construction of the Mni Wiconi project that serves non-Indians in West River/Lyman Jones area, and Indians in Rosebud, Oglala and Lower Brule Reservations. Rosebud Rural Water System serves Tribal members in the communities of Ideal, Winner, Gregory and Milks Camp through the Tripp County Water User District (TCWUD). The Rosebud Rural Water System provided half a million dollars to the TCWUD to upgrade their water system and provide safe drinking water to the Tribal members in four communities and other scattered sites along the pipeline route. TCWUD derives the safe drinking water from the Ogallala Aquifer.

22. All of the requested information that has been purposefully and baselessly withheld from the Rosebud Sioux Tribe by Keystone is highly relevant and critical information associated with the elevation profile and is central to all of our witnesses ability to (i) evaluate the safety of the pipeline, (ii) assess the risks of the pipeline, (iii) determine worst case spill scenarios and (iv) evaluate the oil spill response plan.

23. That Keystone's purposeful withholding of highly relevant information for reasons that are baseless and not even arguably supported by law prejudices the Rosebud Sioux Tribe and their ability to fully and meaningfully participate and otherwise present evidence in this case.

24. Keystone's actions in purposefully withholding this information necessarily interferes with the Rosebud Sioux Tribe's protected due process rights to participate in this case as required by SDCL 1-26-18 which provides that "opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. A party to a contested case proceeding may appear in person or by counsel, or both, may be present during the giving of all evidence, may have reasonable opportunity to inspect all documentary evidence, may examine and cross examine all witnesses, may present evidence in support of his interest and may have subpoenas issued to compel attendance of witnesses and production of evidence in his behalf."

25. Had Keystone actually complied with the Rules of Civil Procedure and with the March 10, 2015 deadline to respond to discovery in a timely fashion, the Rosebud Sioux Tribe would have been able to comply with the original April 2, 2015 deadline to file testimony.

26. The existing schedule produces an absurd result – that upon receipt of critical information 2 days before testimony is due, our witnesses are forced to explain that they can't submit full testimony because they don't have all necessary information from Keystone and then be required to turn around and analyze new information from Keystone, followed by filing substantive testimony that is based on the new information, which should have been provided by March 20, 2015. There simply is not time and resources to do that. Keystone, as one of the largest multi-national corporations on the planet, may have those kinds of resources, but the Rosebud Sioux Tribe certainly does not.

27. This result is a classic example of “placing the cart before the horse” and should not be employed by agencies such as the PUC in deciding issues of such critical importance as the pipelines possible detrimental effect on limited quantities of existing safe drinking water among other critical issues and is in violation of the law.

28. The results of this schedule is that the Rosebud Sioux Tribe is actually punished because of Keystone’s bad acts in purposefully delaying the discovery process by refusing to provide requested information and also withholding the same. Our witnesses were planning on providing testimony by the April 2, 2015 deadline, but all of those efforts and resources have been thwarted by the tactics employed by Keystone and supported by the PUC.

29. That due to other commitments and the time and expertise required for analyzing the requested information, the earliest that the Rosebud Sioux Tribe could file pre-filed testimony is April 24, 2015 and that date is based on immediate and full compliance with the Rules of Civil Procedure, particularly the discovery provisions.

30. That due to the serious nature of the issues raised and presented in this Motion for Reconsideration the Rosebud Sioux Tribe is entitled to an immediate ruling on the motion prior to April 10, 2015 and requests the PUC to schedule an emergency meeting to address the same.

31. The Rosebud Sioux Tribe refers to its March 28, 2015 Memorandum of Law in Support of its Motion to Modify the Procedural schedule in full on file with the PUC for legal issues associated with the requirements that the PUC comply with due process requirements in its proceedings.

WHEREFORE, based on the above and foregoing, the Rosebud Sioux Tribe moves the PUC to schedule an emergency meeting to address the issues put forth in this motion and to reconsider its April 3, 2015 order amending the procedural schedule and for such further relief as just and equitable under the circumstances.

Dated this 8th day of April, 2015.

RESPECTFULLY SUBMITTED:

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

INTERROGATORIES

INTERROGATORY NO. 1: References:

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

Requests:

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

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

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

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

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

ANSWER:

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

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

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

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

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

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

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

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

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

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

INTERROGATORY NO. 2: References:

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

Preamble:

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

Requests:

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

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

ANSWER:

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

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

INTERROGATORY NO. 3: Reference:

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

Preamble:

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

Requests:

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

ANSWER:

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

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

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

INTERROGATORY NO. 4: References:

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

Preamble:

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

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

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

Requests:

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

ANSWER:

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

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

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

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

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

INTERROGATORY NO. 5: References:

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

Preamble:

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

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

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

Requests:

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

ANSWER:

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

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

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

INTERROGATORY NO. 6: Reference:

(i) Finding 107, Appendix C and Finding 108 in Amended Final Decision and Order; HP09-001

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- (ii) Response 59 to BOLD Nebraska IR No. 1
- (iii) Responses 107(a) and (b) to Paul Seamans' IR No. 1
- (iv) Responses 107 and 108 to Byron and Diana Steskal's IR No. 1
- (v) Steskal Documents, Keystone 0768-0773

Preamble:

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

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

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

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

Requests:

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

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

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

ANSWER:

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

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

6c) See answer to 6b).

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

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

INTERROGATORY NO. 7: References:

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

Preamble:

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

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

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

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

Requests:

- a) Indicate the general sites of critical oil spill response equipment storage (both pipeline company and contractor-owned).
- b) If this information (requested in (a) above) is confidential as indicated in IR no. 1 responses to other parties, please confirm (as per ref (ii) and the Preamble) that critical oil spill equipment owned by TransCanada relevant to spill response in SD is located in Valley City (North Dakota) at an external contractor site, in Brookings (South Dakota), Yankton (South Dakota) as per ref (ii). If not, please explain.
- c) Similarly, please confirm (as per ref (ii) and the Preamble) that National Response Corporation is the designated OSRO for SD and also can respond to discharges along the pipeline in SD. If not, please explain.
- d) Please provide the general sites of critical oil spill response equipment storage owned by National Response Corporation or any other OSRO in SD that would respond to spills along the pipeline route.

ANSWER:

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

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

Countermeasure Plan and Emergency Response Plan Appendix A Response

Equipment/Resources.

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

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

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

INTERROGATORY NO. 8: References:

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

Preamble:

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

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

Requests:

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

ANSWER:

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

INTERROGATORY NO. 9: References:

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

Preamble:

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

Requests:

Please provide:

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

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

ANSWER:

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

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

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

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

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

INTERROGATORY NO. 10: References:

(i) Amended Permit Conditions 45 - 49.

Requests:

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

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

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

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

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

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

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

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

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

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

h) Regarding the spill liability insurance, please describe:

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

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

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

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

ANSWER:

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

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

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

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

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subsidiaries.

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

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

10f).

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

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

10g). Our approach has not changed.

10h).

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

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

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

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

INTERROGATORY NO. 11: References:

(i) Amended Permit Conditions 45 - 49.

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Requests:

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

- a. operating cash flow projections that identify net income and other components of cash flow; and
- b. the estimated total asset and liability values and their main components.

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

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

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

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

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

ANSWER:

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

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

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

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

INTERROGATORY NO. 12: References:

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

Preamble

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

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

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

(b) A copy of Keystone's Securities and Exchange Commission Form 10-K and
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Annual Report. Keystone's Major Facilities Siting Act (MFSA) Certificate contains a similar requirement.

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

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

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

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

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

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

Requests:

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

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

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

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

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ANSWER:

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

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

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

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

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

ANSWER: July 13, 2014.

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

ANSWER: Yes.

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

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

Funding for Traditional Cultural Property studies was offered to every interested tribe.

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

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

ANSWER: No.

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

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

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

ANSWER: See answer to interrogatory 17, above.

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

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

INTERROGATORY 20: References:
{01844455.1}

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

Preamble:

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

Requests:

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

- d. 3 to 5 miles from Indian Country
 - e. 5 to 10 miles from Indian Country
- f) For each of the sections of the Project identified as being in 0-10 miles of Indian Country in the previous answer, please provide:
- a. in the case of a reservation, the name of the reservation (and associated tribe), or
 - b. in the case of off-reservation trust lands, the name of the nearest community and the tribe associated with the off-reservation trust land.
- g) For each of the sections of the Project identified as being in 0-10 miles of Indian Country in d), please identify these sections of Project using the aerial maps provided in Keystone 0470-0583 (provided in Response 17 to RST IR No. 1). Again in identifying Indian Country, in the case of a reservation, provide the name of the reservation (and associated tribe); or in the case of off-reservation trust lands, provide the name of the nearest community and the tribe associated with the off-reservation trust land.

ANSWER:

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

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

20c). Not applicable.

20d). Not applicable.

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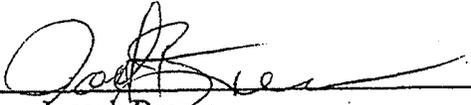
is aware of the following approximate distances from the proposed right of way to the tribally owned and/or properties held in trust for the Tribe in Tripp County: See responsive documents attached as Keystone 1926-1929. All properties are in proximity to the Rosebud Sioux Tribe's reservation.

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

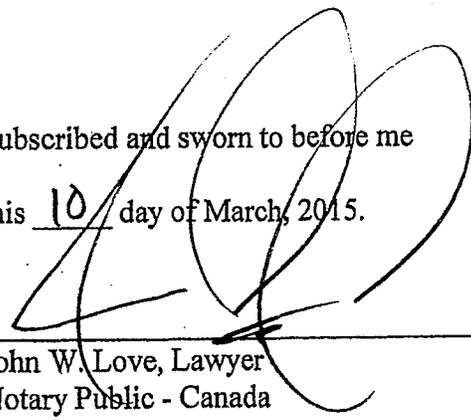
20g). Keystone objects to Interrogatory number 20(g) as burdensome. The known properties are identified by legal description in the exhibit supporting interrogatory answer 20(e) above.

Dated this 10 day of March, 2015.

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

By 
Joseph Brown
Its Director, Authorized Signatory

Subscribed and sworn to before me
this 10 day of March, 2015.


John W. Love, Lawyer
Notary Public - Canada

REQUEST FOR PRODUCTION OF DOCUMENTS

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

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

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

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

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

RESPONSE: See responsive documents attached as 1922-1925.

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

RESPONSE: See Keystone Documents 1312-1332.

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

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

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

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

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

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

RESPONSE: None located.

OBJECTIONS

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

Dated this 10th day of March, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By



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James E. Moore

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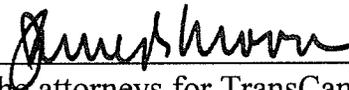
James.Moore@woodsfuller.com

Attorneys for Applicant TransCanada

CERTIFICATE OF SERVICE

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

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



One of the attorneys for TransCanada

Accufacts Inc.

“Clear Knowledge in the Over Information Age”

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April 7, 2015

To: South Dakota Public Utilities Commission

Re: Statement of Richard B. Kuprewicz, concerning the Keystone XL matter before the South Dakota Public Utilities Commission (“PUC”).

Because of TransCanada’s unwillingness to provide adequate information during discovery, especially as it relates to the Keystone XL elevation profiles and related additional requested information that should be included with this request and because pre-filed direct testimony is required to be submitted prior to the close and completion of discovery, I am advising my clients that I cannot adequately provide a proper evaluation of TransCanada’s proposed oil spill responses plans or worst-case discharges that can be independently verified.

This simple requested information that is core to a liquid pipeline’s operation is usually a matter of public record in Canadian NEB pipeline filings that are made public. Failure to provide this information in this proceeding raises serious questions as to the ability of the PUC to also make any informed decisions on oil spill response without the same information being provided to the PUC. There are simple methods to provide such information without making them fully public, if it were deemed sensitive, such as simple confidentiality or nondisclosure agreements



Richard B. Kuprewicz
President,
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Accufacts Inc.

003693

CERTIFICATE OF SERVICE

I certify that on this 8th day of April, 2015, the original of this Motion for Reconsideration on behalf of the Rosebud Sioux Tribe in Case Number HP-14-001 was filed on the Public Utilities Commission of the State of South Dakota e-filing website and also that on this day and a true and correct copy was sent via email and/or U.S. Mail first class postage prepaid to the following persons, as designated:

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