

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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HP 14-001

IN THE MATTER OF THE APPLICATION :
BY TRANSCANADA KEYSTONE :
PIPELINE, LP FOR A PERMIT UNDER THE :
SOUTH DAKOTA ENERGY CONVERSION :
AND TRANSMISSION FACILITIES ACT TO :
CONSTRUCT THE KEYSTONE XL :
PROJECT, :
:
:

KEYSTONE’S OBJECTION TO
COUP’S REQUEST FOR A TIME
CERTAIN AND MOTION TO
PRECLUDE WITNESSES

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Intervenor Intertribal COUP has filed a notice asking for a time certain for Dr. James Hansen to testify at the hearing. Because Dr. Hansen, like COUP’s other disclosed “rebuttal” witnesses, is not a rebuttal witness within the meaning of the Commission’s order dated April 23, 2015, Applicant TransCanada Keystone Pipeline, LP, asks that the request be denied and an order entered precluding the witnesses from testifying.

1. COUP failed to disclose prefiled testimony for Hansen, Seielstad, and Oglesby.

On April 2, 2015, COUP submitted a filing objecting to the submission of written prefiled testimony for Dr. James Hansen, Dr. George Seielstad, and Dr. Robert Oglesby. COUP objected that the requirement of prefiled testimony exceeded the Commission’s statutory authority, and joined in Dakota Rural Action’s similar objection. Despite its objection, COUP stated that it intended to call “three witnesses to testify with respect to three aspects of climate change.” (COUP Objection at 4.) On page 5 of its objection, COUP stated that it was offering

“the following direct testimony of” Dr. Seielstad, Dr. Oglesby, and Dr. Hansen. (*Id.* at 5.)

COUP did not submit prefiled direct testimony from them.

2. The Commission ordered that witnesses who did not disclose prefiled testimony may not testify at the hearing.

Keystone responded to COUP’s objection and failure to submit prefiled testimony for its witnesses with a motion to preclude from testifying any witness for whom prefiled testimony had not been disclosed. The Commission granted the motion by order dated April 23, 2015. The order states that “TransCanada’s Motion to Preclude Witnesses from Testifying at Hearing Who Did Not Prefile Testimony is hereby granted subject to the condition set forth above.” The condition is “that prefiled rebuttal testimony would be allowed to be filed by all parties until the April 27, 2015, deadline.” (Order, Apr. 23, 2015, at 2.)

3. COUP’s proposed testimony is direct, not rebuttal, testimony.

COUP apparently contends that the testimony of Dr. Seielstad, Dr. Hansen, and Dr. Oglesby is rebuttal testimony. It is not. First, COUP itself characterized the testimony as “direct testimony” in its objection submitted on April 2. Second, rebuttal testimony is testimony responding directly to the testimony of another witness. *See, e.g., State v. Phillips*, 489 N.W.2d 613, 618 (S.D. 1992) (stating that witness testimony was “improper rebuttal testimony as it did not rebut the evidence presented by” other witnesses who had offered direct testimony). COUP states that the subject matter of the testimony of all three experts is climate change. That is not an issue raised by the direct testimony of any Staff or Keystone witness, nor is it a relevant issue to the proceeding. It is irrelevant to whether Keystone can continue to meet the conditions on which the permit was granted. SDCL § 49-41B-27.

Conclusion

COUP's request is an attempt to circumvent the requirement of prefiled testimony and the Commission's order dated April 23, 2015, precluding witnesses from testifying who did not submit prefiled testimony. Keystone respectfully asks that COUP's request for a time certain be denied, and that the Commission preclude Dr. Hansen, Dr. Seielstad, and Dr. Oglesby from testifying based on their failure to timely submit prefiled testimony.

Dated this 27th day of April, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Objection to COUP's Request for a Time Certain, to the following:

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