

October 27, 2014

REGARDING DOCKET HP 14-001

GARY DORR'S RESPONSE TO KEYSTONE AND TRANSCANADA'S CHALLENGE OF APPLICATIONS OF PARTY STATUS OF DALLAS AND TOM GOLDTOOTH, AND 350.ORG.

To members of the South Dakota Public Utilities Commission:

This letter is in regards to Case Number HP 14-001

1. In the Keystone response to the Goldtooth application for party status, TransCanada said:

"Tribal consultation under Section 106 is a federal issue administered by the Department of State in connection with Keystone's application for a Presidential border-crossing permit. It is not an issue before the Commission. While the Commission's Amended Permit Conditions require, in paragraph 3, that Keystone comply with the recommendations set forth in the Final Environmental Impact Statement issued by the DOS, including those relating to consultation under Section 106 of the NHPA. Compliance with Section 106 is a matter under the jurisdiction of the federal government and the responsibility of the Department of State. The Commission has no role in or jurisdiction over the process."

I could not agree more. TransCanada even admits that they are bound to comply by its use of the words *"...the Commission's Amended Permit Conditions REQUIRE, in paragraph 3 that Keystone comply with the recommendations set forth..."* TransCanada is duty bound to comply with a Federal regulation. While the Commission has no role or jurisdiction over the process of Section 106, they were astute enough to require that TransCanada comply with that Section 106 process in order to receive a permit from the State of South Dakota. This SD Commission never purported to be part of that process—only that as part of issuing a permit here, TransCanada would comply there at the Federal Government level so that, presumably, South Dakota would not be a liable party to any action less than legally executed by TransCanada. I think it becomes apparent then that the Goldtooth parties as advocates of the Section 106 process should be included as parties to this permitting certification, because they have subject matter expertise into how this tribal consultation has not happened at every single level for every pertinent treaty-signer of the 1868 Fort Laramie Treaty, along with other interested parties here.

TransCanada further goes on to state:

"The only other permit condition concerning cultural resources is found in paragraph 43 of the Amended Permit Conditions, which requires that Keystone follow the Unanticipated Discoveries Plan as reviewed by the State Historic Preservation Office and approved by the Department of State. Again the permit conditions require that Keystone must comply with the dictates of some other agency. That does not mean that establishing such dictates is within the Commission's jurisdiction."

Exactly! This is a true statement that further establishes that the Goldtooths should be admitted as intervening parties. They are witnesses that the "COMMISSION'S AMENDED PERMIT CONDITION" of

section 106 tribal consultation, agreed to by TransCanada, is not being adhered to and thus the certification of this permit must be denied.

That any consultation under Section 106 is outside the SD PUC Commission's jurisdiction, is not the question here today. The question here today remains has TransCanada complied with Section 106? And the answer which can be testified to by the Goldtooths is a resounding "No." We are not here to have this Commission decide how the Section 106 process goes, only if TransCanada "complied" with their duty to provide meaningful consultation as part of and prior to construction of the Keystone XL pipeline. The resounding answer again is no. This South Dakota permit is predicated upon TransCanada complying with certain federal regulations. TransCanada has so eloquently stated this in their response against the Goldtooths but then in the last sentence asked that the Goldtooths be disqualified for the issue being under the jurisdiction of the Federal Government. It's true. It is under the Federal jurisdiction, but before this commission certifies a permit, TransCanada must comply with it as part of the Commission's 50 Amended Conditions. If they have not complied, which these parties can attest to, then the permit must be denied with a resounding no. I'd like to thank TransCanada for making such eloquent statements that despite tribal consultation being a federal jurisdictional process they must comply with it as part of the "COMMISSION'S AMENDED PERMIT CONDITIONS," and prior to the issuance of any SD permit certification. I ask then as an interested party, and as a competent reader, that the Goldtooths be allowed as intervening parties about the Section 106 consultation process before the State of South Dakota precludes a Federal law with their own jurisdiction.

2. In the TransCanada response objecting to 350.org's application for party status:

TransCanada stated that 350.org's goal "is to reduce the amount of CO2 in the atmosphere to below 350 parts per million. 350.org opposes the Keystone XL Pipeline because the pipeline will transport oil produced from the Alberta oil sands, development of the oil sands being contrary to its CO2 reduction objective. Note that the pipeline does not play a role in CO2 produced by oil production, rather, it transports oil once produced".

TransCanada also stated:

*"Climate change is an issue addressed by the Department of State in the Final Supplemental Environmental Impact Statement. It is not an issue for the Commission." TransCanada also said, "The statute provides party status for nonprofit organizations formed to protect the environment, § 49-4 IB-17(3), but the statute cannot reasonably be construed to grant party status to any environmental group, without regard to the issues seeking to be raised by that group. Rather, only those groups with an agenda **related to the effects of the proposed project** on the environment within the jurisdiction of the Commission, i.e., within South Dakota."*

It does not state that. Rather it states:

- (3) *Any person residing in the area where the facility is proposed to be sited, any nonprofit organization, formed in whole or in part to promote conservation or natural beauty,*

*to protect the environment, personal health or other biological values,
to preserve historical sites,
to promote consumer interests, represent commercial and industrial groups,
or to promote the orderly development of the areas in which the facility is to be sited
(this is talking about keeping the development orderly where it is being built)
or any interested person, if timely application therefore is made as determined by the
commission pursuant to rule. A statement filed by a party to a permit proceeding shall become
part of the record and shall be available to the public.*

There is no language that the conservation organization shall be protecting the environment inside of the state of South Dakota. TransCanada has used un-codified language to mislead the public, the applicants, and the South Dakota Public Utilities Commissioners about the status of a venerated organization's eligibility to be admitted as an intervening party.

Further, TransCanada says that "*Climate change is an issue addressed by the Department of State in the Final Supplemental Environmental Impact Statement. It is not an issue for the Commission.*" And yet in paragraph 2 of the COMMISSION'S AMENDED PERMIT CONDITIONS of their original permit, TransCanada agreed that they "*shall obtain and shall thereafter comply with all applicable federal, state and local permits, including but not limited to: Presidential Permit from the United States Department of State.*" They didn't state that they "might" get the permit; they didn't agree that they would get the permit if they felt like it; TransCanada agreed to get the presidential permit as a requirement of the COMMISSIONS AMENDED PERMIT CONDITIONS.

The President clearly stated, "*I do want to be clear. Allowing the Keystone pipeline to be built requires a finding that doing so would be in our nation's interest. **And our national interest will be served only if this project does not significantly exacerbate the problem of carbon pollution.** The net effects of the pipeline's impact on our climate will be absolutely critical to determining whether this project is allowed to go forward. It's relevant.*"

As a condition of the South Dakota permit, TransCanada said they "shall obtain" the Presidential Permit. Clearly then from his own words, President Obama has made it relevant to address carbon pollution as part of deciding whether the pipeline can cross the border. The PUC does not have jurisdiction over the judgment, only to ensure that the permit does not get certified until it can be shown that TransCanada has received the Presidential Permit. 350.org is a subject matter expert organization that falls within the parameters of being a "*Nonprofit organization, formed in whole or in part to protect the environment,*" and has a great deal of knowledge that can show that the carbon pollution will increase from the development of the Keystone XL pipeline. 350.org's involvement as an intervening party is integral to refuting that this pipeline will receive a presidential permit, or more importantly why it will not have received a presidential permit in accordance with the COMMISSION'S AMENDED PERMIT CONDITIONS. 350.org is "relevant" to this proof.

In the publication, **Responsible Actions: A Plan for Alberta's Oil Sands** the Alberta government laid out a “*strategic plan for responsible development of this vast resource.*” Published February 2009. (http://www.energy.alberta.ca/pdf/OSSgoaResponsibleActions_web.pdf)

Page 44 of this same Canadian government plan says that “*diversify[ing] into international markets*” is a part of the oils sands development, and that they want to “*Investigate collaborative infrastructure contribution strategies.*” The reason is clear in Section 3.3.3 (page 26) as it states:

“Diversify Alberta’s oil sands-related products and services into other international markets.

3.3.1 Internationally market and promote Alberta’s energy and environmental expertise to realize a knowledge-based economy.

3.3.2 Identify and target key global markets that offer attractive opportunities for Alberta’s oil sands products to achieve a more diverse and resilient customer base.

3.3.3 Encourage the development of outbound pipeline systems to open new markets for Alberta’s oil sands products

When TransCanada said “*Note that the pipeline does not play a role in CO2 produced by oil production, rather, it transports oil once produced*” in their response objecting to 350.org’s involvement, TransCanada could not be more wrong. The “**development of outbound pipelines to open new markets**” for Alberta is taking unmistakable shape in one form as the Keystone XL pipeline transporting tar sands from the mines to Texas refineries and the tax free trade zone there. The Keystone XL pipeline is therefore inexorably tied to the oil production-- which is increasing carbon pollution.

This is why I believe that 350.org should be allowed to be admitted as a party to this permit certification process.

With respect for the process, the words attested to by TransCanada itself, and the Commissioners’ efforts at seeing the process through ethically, I ask that the Goldtooths and 350.org be granted party status.

Sincerely,

Gary F. Dorr