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

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

**GARY DORR'S
MOTION TO JOIN JOINT
MOTION BY STANDING ROCK,
CHEYENNE RIVER, ROSEBUD,
AND YANKTON SIOUX TRIBES,
DAKOTA RURAL ACTION,
INDIGENOUS ENVIRONMENTAL
NETWORK, INTERTRIBAL COUP,
AND BOLD NEBRASKA TO
EXCLUDE EVIDENCE AND
TESTIMONY BY TRANSCANADA**

HP14-001

Gary Dorr ("Dorr"), *pro se*, joins the above named interveners to move for an order excluding the introduction of evidence and testimony by Keystone and striking its pre-filed testimony from the record in this docket. Dorr request this relief for the reasons asserted in the Joint Motion to Exclude Evidence Testimony by TransCanada, as well as for the following reasons:

1. Keystone failed to fully comply with Dorr's First and second Interrogatories and Request for Documents to TransCanada in violation of the South Dakot Rules of Civil Procedure. On 6 January 2015, Dorr requested "**3. Provide proof that the Rosebud Sioux Tribe was consulted about the results of the [cultural resources] survey.**" This question number 3 was in regards to amended permit condition 43(c) and the unanticipated discoveries plan and a cultural survey.

Keystone answered the question regarding amended permit condition 43(c) on February 5th, 2015 (Attachment D) with the reply "**Yes the Rosebud Sioux Tribe was consulted on**

numerous occasions” and then referred Dorr to a summary of government to government consultation with Indian Tribes that can be found at Attachment I of Appendix E and in Sections 3.11.4.3 of the Dept of State FSEIS. Keystone goes on further to state that Appendix E2 of the Dept of State FSEIS (2014) provides a thorough list of consultation dates. Upon reading these pages, there is no indication of any proof of consultation with the Rosebud Sioux Tribe about the results of the Cultural Survey. Attachment I of appendix E (Attachment C) lists several tribes, none of which is the Rosebud Sioux Tribe. Section 3.11.4.3 also lists several tribes, none of which is the Rosebud Sioux Tribe, and provides no indication of whether the subject of whether the subject of any of the consultations was a the cultural survey results. **“Figure 3.11.4-1 Indian Tribes Consulted”** (Attachment A) also shows a map of “Tribes Consulted: locations of Headquarters.” The South Dakota portion of the map appears to show Pine Ridge and possibly Lower Brule and Crow Creek and then possibly Yankton and Ponca tribes. There is a blank spot where Rosebud Sioux Tribe is located. None of the documents listed show that the Rosebud Sioux Tribe was consulted about the results of the Cultural Survey as part of Amended permit condition 43(c). When Dorr asked for proof that the Rosebud Sioux Tribe was consulted about the RESULTS of the Cultural Survey Keystone replied with an answer that is misleading when they said **“Yes,”** and implies without proof that they can continue to meet amended permit condition 43(c). In its answer TransCanada said “Appendix E2 of the Department of State FSEIS (2014) provides the most thorough list of consultation dates.” (Attachment B) TransCanada is right in that it is a thorough list of consultation dates. The list is just that, a list; it has no proof of what the subject of consultation was on any of the dates. TransCanada, by nature of the answer given, has again provided misleading information that leads to the false conclusion that proof of consultation with the Tribes (and specifically the Rosebud Sioux Tribe) about

cultural surveys exists. This would lead to a false determination that TransCanada has continued to meet Amended Permit Condition 43(c). Because the materials provided by Keystone are not responsive to this discovery request, Keystone failed to comply with this discovery request.

2. In request No. 1 of Dorr's Final Interrogatories and Request for Production of Documents, Dorr asked Keystone to "[p]rovide any and all documentation that TransCanada or Keystone complied with its publicly stated policy of consultation with the Tribes and met with the Rosebud Sioux Tribal Council." On 10 March, 2015 (Attachment E) Keystone responded by referring Dorr to attachments "Keystone 1122, 1129-30, 1135-40, 1145-46, 1148-50 and 1170-1181" as proof of consultation with the Rosebud Sioux Tribe. It was not until later that the documents were actually sent to Dorr. None of those documents actually provide proof of consultation with the Rosebud Sioux Tribe, rather they show Consultation with various departments or parts of Rosebud Sioux tribal council. Consultation with the Tribe itself cannot occur unless the full Tribal Council is present. Tribal departments and individual members of the Tribal Council do not have authority to act for the Tribe on these matters, any consultation that might have occurred with them does not constitute consultation with the Tribe. Therefore, the documents provided by TransCanada are not responsive to this discovery request. None of the documents, which were not even provided until a later date, show proof of consultation with the Tribe about the results of the cultural survey as was requested. It is inaccurate to say that these show proof of consultation. As shown by Rosebud Sioux Tribal Resolutions filed with TransCanada by Dorr, the Tribal Council is empowered to act on behalf of the Tribe. Dorr searched these documents for proof of consultation with the Rosebud Sioux Tribe about the results of the cultural survey in hopes that by some stretch of luck they might provide that. They do not. They allude to false conclusions that any type of consultation has occurred. One of the

documents is even from a third party talking about TransCanada to the Tribe. As a result, incorrect information has been provided that is not responsive to the request asked by Dorr.

3. In Dorr's Final Interrogatories and Request for Production of Documents submitted on February 19, 2015, Request No. 5 stated: "***Provide all easement agreements made by TransCanada or Keystone between TransCanada or Keystone and landowners on land where the Keystone XL pipeline will cross the Oglala Sioux Rural Water Supply System, otherwise known as the Mni Wiconi Waterline.***" To date, TransCanada has provided Easement Crossing agreements for (Attachment E) the Hostutler property in Haakon County, and the Iverson Property in Jones County. Dorr is aware and Keystone is aware that the Keystone easement for the Iverson property in Jones County is not where the Keystone XL pipeline will cross the OSRWSS waterline. Keystone has not provided any other easement agreement for any other place where the Keystone XL pipeline will cross any other part of the Oglala Sioux Rural Water Supply System. Dorr has obtained on his own means the **U.S. Easement Agreements** for the OSRWSS and Hostutlers' easement agreement with Keystone. TransCanada has avoided answering this question in its entirety. Dorr has been prejudiced by TransCanada withholding information that it has available to give to Dorr. After the recent hearing where the Motion to Compel by Dorr was denied, Mr. Taylor sat next to Dorr in the back of the room and stated very quietly, "***Gary I know we have those crossing documents somewhere, I'll get a copy of it to you.***" However, Keystone did not send me any crossing documents or any more easements where the Keystone crosses the OSRWSS after making this statement. Mr. Taylor also discussed with Dorr the fact that we agree that Dorr's usage of the term "branch" lines was consistent with Keystone's usage of the term "distribution" lines. Mr. Taylor said to Dorr he would provide Dorr with a copy of the easement crossing agreements for the "distribution lines," even though

the motion to compel was denied. I have not received any of those agreements. This leads me to believe that the documents exist as indicated by Mr. Taylor, but are not being provided to me. Again, the answer provided to Dorr leads to a false conclusion that the documents provided are the information in its entirety. This is a breach of the process of discovery and puts Dorr and the Public Utility Commission at a serious disadvantage to determining if Amended Permit Condition 16 can be met in its entirety.

In addition, Dorr in Question 6 of the same document on Feb 19 asked for proof that TransCanada received approval of crossing specifications from the Oglala Sioux Rural Water Supply System and the Bureau of Reclamation. TransCanada replied on March 10 (attachment E) with “*Keystone and the Bureau of Reclamation have agreed on crossing criteria. The Bureau of Reclamation has discussed the crossing criteria with both the executive and engineering staff of the Oglala Rural Water Supply System.*” That is all they did—just answer with no proof, and no documents were provided. This is not “proof” of any sort and is also a misleading answer. As a result of a completely different question posed by Dorr, TransCanada did provide me with documents about communications with Bureau of Reclamation and also the Oglala Sioux Rural Water Supply System. None of the documents provide proof of **approval** of crossing specifications. In fact in one of the communications between Keystone and Bureau of Reclamation, it talks about the fact that the Department of State will need to provide some sort of approval. TransCanada has provided an answer, however it is not the answer to the question posed by Dorr. The answer provided by TransCanada would be misleading in that it implies that proof has been gained some sort of agreement on crossing criteria with the Bureau of Reclamation. In reality the documents provided as part of a completely different question do not provide that proof. And the answer provided by TransCanada does not in any way provide proof that approval has been gained from anyone to cross the OSRWSS. This is again a matter that is

directly related to Keystone either continuing or not continuing to comply with amended permit Condition 16 and the answer cannot be ruled to be true until proof is provided otherwise. This is a very misleading answer and it is indicative of the fact that Dorr as a pro se intervener has been prejudiced in this process. To allow testimony regarding this evidence would be a serious breach of the rules regarding the discovery process.

4. At this time, there has been ample time for Keystone to provide the discovery requested of them. I have not asked for a great deal of information. I am therefore requesting that as a result of misleading information, denied information, and incomplete information that was provided to me by TransCanada, that TransCanada be excluded from offering Evidence and Testimony. Even after Dorr's motion to compel discovery was denied, Mr. Taylor indicated that evidence did exist and would be provided to Dorr. The late entry of the TransCanada documents 1122-1181 have also been reviewed by Dorr and are found to be misleading in nature and are void of proof that consultation with the Rosebud Sioux Tribe was conducted.

5. Dorr also moves to join the above listed interveners for the reasons listed on their motion to exclude TransCanada from offering evidence and testimony. I think it becomes obvious that there is a history of answers that are not compliant with the Discovery Process here in the South Dakota Public Utility Commission. To allow Keystone to participate by offering evidence and testimony without complying with the rules of discovery would be prejudicial both to the represented interveners and the pro se interveners in this process.

Dated this 1st day of May, 2015.

Gary F. Dorr
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