

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

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IN THE MATTER OF THE PETITION OF	)	
TRANSCANADA KEYSTONE PIPELINE,	)	Docket 14-001
LP FOR ORDER ACCEPTING	)	
CERTIFICATION OF PERMIT ISSUED IN	)	<b>DAKOTA RURAL ACTION'S</b>
DOCKET HP09-001 TO CONSTRUCT THE	)	<b>MOTION TO SUPPLEMENT</b>
KEYSTONE XL PIPELINE	)	<b>ADMINISTRATIVE RECORD</b>
	)	
	)	

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Dakota Rural Action (“**DRA**”), by and through counsel, hereby moves the South Dakota Public Utilities Commission (the “**Commission**”) for an order supplementing the administrative record in these proceedings with an additional relevant document issued by the US Pipeline and Hazardous Safety Materials Administration (“**PHMSA**”) on November 20, 2015, subsequent to the evidentiary hearing held in this case.

**Background**

During the course of the proceedings, DRA has consistently argued that TransCanada Keystone Pipeline, LP’s (“**TransCanada**”) petition for certification should be denied because, for among other reasons, TransCanada ignored pipeline safety regulations in the course of constructing its pipelines (see, *Hearing Transcript*, p. 1627). During the evidentiary hearing, TransCanada’s president for the Keystone pipeline system, Corey Goulet, was questioned concerning incidents occurring with respect to serious corrosion on base Keystone pipeline within two years of that pipeline being placed in service (see, *Hearing Transcript*, p. 362, *et seq.*). Goulet testified that one segment of the base Keystone pipeline, near St. Louis, Missouri, suffered 96.8% corrosion of the pipeline wall (see, *Hearing Transcript*, p. 370, and DRA Exhibit No. 153).

At the time of the hearing, DRA had no knowledge of any proposed action by PHMSA against TransCanada relating to the matters Goulet testified about. Subsequent to the hearing, on November 20, 2015, PHMSA issued a Notice of Probable Violation, Proposed Civil Penalty, and Proposed Compliance Order to TransCanada (“*PHMSA Notice*”). See attached **Exhibit A**.<sup>1</sup> The PHMSA Notice is explicit in referencing the matters to which Goulet testified about in the evidentiary hearing:

“In October 2012, Keystone reported to PHMSA four significant metal loss anomalies from an in-line inspection (ILI) requiring immediate pressure reduction and verification digs in the Salisbury, Missouri to Patoka, Illinois segment (MP 868 to 1083). The digs validated that stray current D.C. interference from foreign pipelines near MP 995 had caused four metal loss features over sixty percent deep (97%, 69%, 74%, 61%). The 97% deep anomaly left a remaining wall thickness of 0.0120 inch, which is less than 1/64 inch. Keystone conducted a close interval survey in December 2011 which had identified cathodic protection potentials that were below criteria, along with the existence of interference from other pipeline operators in the vicinity. A report, Corrosion Anomaly at MP 995 KS9 Salisbury to Patoka on Keystone Pipeline (Report), issued on November 21, 2012, identified the primary cause of the pitting mechanism as the inadequacy of the original CP design. The secondary cause identified was the timeliness of corrective actions that could have been accelerated to mitigate the corrosion.

“As a result of the inspection, **it appears that TransCanada has committed probable violations of the Pipeline Safety Regulations**, Title 49, Code of Federal Regulations.”

**Exhibit A**, p. 2 (emphasis added).

Because the PHMSA Notice is directly related to Goulet’s testimony at the evidentiary hearing and because it had not been issued by PHMSA prior to the evidentiary hearing, DRA submits that it is appropriate to supplement the Commission’s administrative record in these proceedings by including the PHMSA Notice as an exhibit of which it takes administrative notice. The PHMSA Notice is relevant to contentions made by the parties.

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<sup>1</sup> Available online from PHMSA at: [http://primis.phmsa.dot.gov/comm/reports/enforce/documents/320155010/320155010\\_NOPV%20PCP%20PCO\\_11202015\\_text.pdf](http://primis.phmsa.dot.gov/comm/reports/enforce/documents/320155010/320155010_NOPV%20PCP%20PCO_11202015_text.pdf)

## **Procedural Basis**

The Commission's Administrative Rules specifically permit the introduction of documentary evidence subsequent to evidentiary hearings. "Documentary evidence may be submitted subsequent to the closing of the hearing upon stipulation of the parties or order of the commission or presiding officer." ARSD § 20:10:01:24.03. Of note, counsel for DRA has been unable to find any cases discussing the standard to be used by the Commission for accepting the submission of additional evidence subsequent to the close of hearing. However, in discussing Circuit Court review of administrative decisions, SDCL § 1-26-34 contemplates that a Circuit Court may order an administrative agency, such as the Commission, to take additional evidence:

If, before the date set for hearing, application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

Hence, SDCL § 1-26-34 would appear to establish the criteria the Commission should use in supplementing its administrative record with the PHMSA Notice. Those factors are (1) whether the additional evidence is material, and (2) if there were good reasons for failing to present it during the proceedings before the Commission. DRA suggests both these rationales are present. First, the PHMSA Notice is material to Goulet's testimony at the hearing in that it evidences PHMSA's view that TransCanada violated pipeline safety regulations – a key contention raised by DRA and other intervening parties. Second, a good reason exists for not presenting the PHMSA Notice at the evidentiary hearing for the simple reason that PHMSA did not issue the document until November 20, 2015, well after the close of the hearing.

For these reasons, DRA requests that the Commission take administrative notice of the PHMSA Notice and supplement the administrative record in these proceedings with the PHMSA Notice.

Respectfully submitted,

/s/ Bruce Ellison

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