

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

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

AMENDED REBUTTAL
TESTIMONY OF
PAULA ANTOINE

HP14-001

Q1: What is your name and where do you live?

A: My name is Paula Antoine and I live in Mission, SD.

Q2: Are you currently employed? What is your occupation? Are you a member of the Rosebud Sioux Tribe?

A: I am an enrolled member of the Rosebud Sioux Tribe and am employed as the Director for the Sicangu Oyate Land Office.

Q3: How long have you been employed there?

A: I have been employed as the Director of the Sicangu Oyate Land Office (SOLO) since November, 2010.

Q4: What are your job responsibilities?

A: My current job responsibilities include a variety of responsibilities. As Director of SOLO I am responsible for the oversight of the day to day operations and functions of the Land Office. I report to Tribal Council and Committees on issues affecting the status of Tribally owned land. I am responsible for providing assistance with carrying out the Tribe's land use plan, assisting with land exchanges, title transfers, enforcement of tribal ordinances and assist with land leases. This is not intended to be an exhaustive list of responsibilities.

Q5: Does the Rosebud Sioux Tribe oppose the construction of the Keystone XL pipeline?

A: Yes, The Rosebud Sioux Tribe has passed resolutions to deny the KXL any access to our lands and in opposition of the pipeline. We view the KXL pipeline as the threat of "the black snake coming from the north" that was revealed to us through prophecy by our ancestors many years ago.

Q6: Have you reviewed any testimony by any other witness or other documents in preparation for this hearing?

A: Yes

Q7: Specifically what documents have you reviewed?

A: I have reviewed prefiled direct testimony of the following witnesses: Corey Goulet, Heidi Tillquist, Meera Kothari, Jon Schmidt, David Diakow, Brian Walsh, Derek Iles, Kim McIntosh, Daniel Flo, Christopher Hughes, Tom Kirschenmann, David Schramm, Darren Kearney, Jenny Hudson and Paige Olson.

I have also reviewed the Petition for Order Accepting Certification under SDCL 49-41B-27, dated September 15, 2014, Appendix A, B, and C as well as the accompanying Certification of Corey Goulet dated September 12, 2014. I have also reviewed the following portions of South Dakota Codified Laws 49-41B-1, 49-41B-11 and 49-41B-22 as well as the Amended Final Decision and Order and Exhibit A “Amended Permit Conditions.” I have also reviewed answers to Rosebud Sioux Tribes interrogatories provided by Keystone. I also reviewed Staff Exhibit 2 “Testimony of Michael Madden” from Docket HP09-001. South Dakota Codified Laws 49-41B-1, 49-41B-11 and 49-41B-22 are attached as Exhibit 17. The remaining materials referenced are located at the following website: <https://puc.sd.gov/Dockets/HydrocarbonPipeline/2014/hp14-001prefiledtestimony.aspx>

Q8: What is the purpose of your testimony today?

A: The purpose of my testimony today is to rebut certain portions of Keystone and PUC Staff witnesses direct testimony specifically as it relates to Keystone’s demonstrated ability to meet their burden of proof under SDCL 49-41B-27.

Q9. Are there specific findings of fact that your testimony will rebut?

A: Yes, my rebuttal testimony addresses Findings of Fact 107, 108, 109 and 110.

Q10: Please summarize Findings of Fact 107, 108, 109 and 110.

A: Findings of Fact 107, 108 109 and 110 address the Socio-economic Factor requirements of SDCL 49-41B-22. FOF No. 107 specifically finds that the evidence offered by Keystone and Staff overall demonstrated that the welfare of the citizens of South Dakota will not be impaired by the project and that the project, if operated in compliance with the “Special Permit” and the other conditions, the project would not, from a socio-economic standpoint (i) pose a threat of serious injury to the socioeconomic conditions in the project area; (ii) substantially impair the health, safety, or welfare of the inhabitants in the project area; or (iii) unduly interfere with the orderly development of the region. Finding 108 finds that the Project will pay annual property taxes to local governments. Finding 109 finds that the project will bring jobs to the State and Finding 110 finds that the project will have minimal effect in the areas of agriculture, commercial and industrial sectors, land values, housing, sewer and water, solid waste management, transportation, cultural and historic resources, health services, schools, recreation, public safety, noise and visual impacts.

Q11: Does Keystone’s Appendix C “Tracking Table of Changes” include reference to Finding of Facts 107, 108, 109 and 110?

A: Appendix C “Tracking Table of Changes” makes one reference to Finding of Fact 107. It does not include any information addressing Findings Numbers 108, 109 or 110.

Q12: What does Appendix C “Tracking Table of Changes” state about Finding 107?

A: Regarding Finding 107, Appendix C “Tracking Table of Changes” states that [“Keystone has withdrawn its Special Permit application but will comply with the 59 additional conditions set forth in the DOS Final SEIS, Appendix Z, which provide an enhanced level of safety equivalent to or greater than those that would have applied under the requested Special Permit.] “The increased cost of the Project reflected in updated Finding 23 is likely to result in increased tax revenue to the affected counties.”

Q13: Can you identify Keystone’s witnesses whose direct testimony addresses Findings of Fact 107, 108, 109 and 110?

A: Yes, Corey Goulet and Meera Kothari provide minimal testimony regarding Finding 107. No other Keystone witnesses offer any testimony regarding Findings 107, 108, 109 or 110.

Q14: What information does Corey Goulet provide in his direct testimony regarding Finding 107?

A: Corey Goulet in Direct Testimony Question No. 4 states that he is responsible for updated information for Finding of Fact 107 as contained in Appendix C.

Q15: What information does Meera Kothari provide in her direct testimony regarding Finding 107?

A: Meera Kothari states in Number 4 that she is individually or jointly responsible for Finding 107. In Question Number 12 of her direct testimony she states that to the extent that finding 107 referenced the application for a special permit, the request for a special permit was withdrawn. Her direct testimony further states that Keystone will comply with 59 Special Permit conditions.

Q16: Can you identify the PUC Staff witnesses whose direct testimony addresses Findings of Fact 107, 108, 109 and 110?

A: Of the 10 witness who offered direct testimony on behalf of the PUC staff, only Daniel Flo makes reference to Findings of Fact 107. There are no other Staff witnesses who offer evidence or testimony regarding findings 107, 108, 109 and 110.

Q17: What information does Daniel Flo provide in his direct testimony regarding Finding 107?

A: In response to Question No. 15 the answer provides “The updated project information provided by Keystone for Finding 107 is outside the scope of NRG’s 2009 review and testimony, and therefore results in no change to NRG’s original testimony.”

Q18: Is it your understanding that in the original permit proceeding Keystone was applying for a special permit from PHMSA, but has since withdrawn that application?

A: Yes, it is my understanding that at the time the original permit for construction, operation and maintenance was issued, Keystone was applying for a special permit from PHMSA.

Q19: Is it your understanding that the 59 PHMSA Special Permit Conditions referenced in Appendix C “Tracking Table of Changes” are new conditions that Keystone is required to comply with that were not a requirement of the Amended Permit Conditions?

A: Yes that is my understanding.

Q20: Is it your testimony that other than the information that you previously testified to regarding evidence presented regarding FOF 107, 108, 109 and 110, that no other witness offers any evidence or testimony regarding the socio economic factors from FOF 107, 108, 109 or 110?

A: Yes, that is my testimony.

Q21: Based on the review of all relevant materials and laws, does it appear to you that Keystone has put in sufficient evidence and testimony regarding FOF 107, 108, 109 and 110 to certify that the conditions of the permit are the same.

A: The testimony is not sufficient because it does not support a finding that Keystone has properly certified that the conditions upon which the South Dakota Public Utilities Commission granted the facility permit in Docket HP09-001 for the Keystone XL hydrocarbon pipeline (the "Project") under the Energy Conversion and Transmission Facilities Act continue to be satisfied. The applicant has an affirmative burden to meet the requirements under SDCL 49-41B-27. The applicant must do more than state that they will continue to meet the requirements. They must demonstrate the continuing ability to meet the conditions. The identified testimony does not offer any evidence to support Keystone's petition for certification. The testimony does not offer any evidence of how Keystone will actually demonstrate the ability to comply with the 59 PHMSA Special Conditions as they relate to Finding 107. None of the testimony offered by Keystone or the PUC Staff shows or attempts to even demonstrate that the welfare of the citizens of South Dakota will not be impaired by the project and that the project, if operated in compliance with the “Special Permit” (which was withdrawn and replaced by 59 new PHMSA conditions) and the other conditions, the project would not, from a socio-economic standpoint (i) pose a threat of serious injury to the socioeconomic conditions in the project area; (ii) substantially impair the health, safety, or welfare of the inhabitants in the project area; or (iii) unduly interfere with the orderly development of the region. There is no testimony that certifies the Finding 109 regarding the project bringing jobs to the State. None of the testimony offers any evidence on Finding 110 regarding whether or not the project will continue to have minimal effects in the areas of agriculture, commercial and industrial sectors, land values, housing, sewer and water, solid waste management, transportation, cultural and historic resources, health services, schools, recreation, public safety, noise and visual impacts.

Q22: Have you reviewed Michael Maddens testimony and report “Assessment of Socio-Economic Impacts Expected with the Keystone XL Pipeline Project” from the HP09-001 docket?

A: Yes I have reviewed those materials.

Q23: Is there any indication from Maddens testimony or report that indicates that the socio economic concerns or effects upon the Indian population located in and around the pipeline corridor was considered or examined in the Madden report?

A: There is no information in the Madden report that address impacts of the project relating to Tribal members located within the project area.

Q24: Is it your understanding that the project route traverses present day Tripp County South Dakota?

A: Yes, that is my understanding.

Q25: Are there any tribal communities within Tripp County that are under the jurisdiction of the Rosebud Sioux Tribe?

A: Yes, there are several tribal communities located in Tripp County including Ideal. There is also tribal housing located in Winner, South Dakota.

Q26: Will the proposed pipeline cross the White River near Rosebud Sioux Tribal land?

A: Yes, the pipeline crossing route on the White River is in close proximity to tribal land owned by the Rosebud Sioux Tribe.

Q27: Do you know how close the Ideal Community is to the project route?

A: Yes, the Ideal community is located 2 and one half miles from the pipeline project route.

Q28: Does any portion of the Madden report or any of the testimony reference Rosebud Sioux Tribal members or the Ideal community?

A: No, there is no portion of the Madden report or any testimony that makes reference to tribal members living within the project area, the Ideal community or Indian housing located in Winner. Additionally, there is no portion of the testimony or FOF 107, 108, 109 and 110 that references the Ideal Community or Tribal members living in Winner and the surrounding areas of Tripp County. There is nothing in the testimony or the record to indicate that the socio-economic concerns of the Rosebud Sioux Tribe and the impact of the pipeline was considered in Maddens report. There is no testimony or evidence offered to address law enforcement issues, emergency response plans or general public safety concerns. There is no evidence to demonstrate contact with the Rosebud Sioux Tribe Law Enforcement Services, which is necessary to show to determine appropriate socioeconomic concerns. The underlying socio-economic factors that were considered in the Madden report forms the basis for the initial finding of compliance regarding the socioeconomic factors. It does not take into account the unique jurisdictional landscape that exists in the areas nearby the Rosebud Sioux Indian Reservation.

Q29: How does this impact Keystone's ability to certify the conditions of the permit?

A: Without any showing that the conditions are the same regarding the Socio-Economic factors as required by FOF 107, 108, 109 and 110 and how those findings relate to continued compliance with Amended Permit Conditions 1 and 3 and in the absence of the proper consideration of the Rosebud Sioux Tribe as part of the socioeconomic consideration, Keystone cannot certify that the facility continues to meet the conditions upon which the permit was issued.

Q30: Does this conclude your testimony?

A: Yes.

Dated this 2nd day of August, 2015.