
**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

**YANKTON SIOUX TRIBE'S
RESPONSE TO KEYSTONE'S
MOTION TO RESTRICT
TESTIMONY OF YANKTON
SIOUX WITNESSES SPOTTED
EAGLE AND UN-NAMED
MEMBER OF THE B&C
COMMITTEE**

HP14-001

COMES NOW Yankton Sioux Tribe (“Yankton”), by and through Thomasina Real Bird and Jennifer S. Baker with Fredericks Peebles & Morgan LLP, and hereby responds to *Keystone’s Motion to Restrict Testimony of Yankton Sioux Witnesses Spotted Eagle and Un-named Member of the B&C Committee* (“*Motion*”) as follows:

1. Contrary to the assertion made by TransCanada Keystone Pipeline, LP (“Keystone”) in the *Motion*, Questions 24 through 29, 32, and 33 do not address aboriginal title and usufructuary rights. See relevant excerpts from *Prefiled Testimony of Faith Spotted Eagle*, attached hereto as **Exhibit A** (exhibits omitted). Yankton agrees with Keystone that the Public Utilities Commission (“Commission”) has prohibited testimony regarding aboriginal title and usufructuary rights. However, because the afore-numbered questions do not address aboriginal title or usufructuary rights, Keystone has presented no grounds to exclude Faith Spotted Eagle’s testimony in response to these questions.

2. Keystone has cited no valid basis for the Commission to strike the rebuttal testimony for Faith Spotted Eagle or Jason Cooke.

3. The rebuttal testimonies for Ms. Spotted Eagle and Mr. Cooke were filed in accordance with the Commission's deadline for pre-filed rebuttal testimony and comply with all applicable rules of procedure. ARSD 20:10:01:22.06 governs written testimony ordered by the Commission. The only requirements provided by the rule are that the written (or prefiled) testimony be served on all parties on the date prescribed by the Commission and that the front page show the docket number, docket name, and name of the witness. The testimonies of Ms. Spotted Eagle and Mr. Cooke meet these requirements. *See Prefiled Rebuttal Testimony of Faith Spotted Eagle*, attached hereto as **Exhibit B**, and *Prefiled Rebuttal Testimony of Member of the Yankton Sioux Tribe Business & Claims Committee*, attached hereto as **Exhibit C**.

4. Keystone cites no law, rule, or regulation to support its allegation that the rebuttal testimony is somehow deficient.


5. The rules of practice before the Commission do not prohibit a party from filing rebuttal testimony containing generalized statements. In fact, Keystone prompted Yankton to submit generalized rebuttal testimony due to the generalized nature of the direct testimony Keystone itself provided. Aside from irrelevant and inadmissible statements regarding the Findings of Fact and the Tracking Table of Changes (which are not at issue in this proceeding), the rebuttal testimony submitted by Keystone consists almost entirely of generalized statements that do not contain any statements of fact or foundation for any opinion. The sole basis on which Keystone's case relies, looking only to its prefiled direct testimony, is the unfounded opinion of its five direct witnesses that they know of no reason the permit should not be certified. Keystone provided nothing to which Yankton's rebuttal witnesses could respond because it provided nothing concrete that is relevant to this proceeding.

If Keystone wishes to meet its burden of proof, it will have to address each of the fifty conditions contained in the original permit. Because it has failed to do so in its pre-filed direct testimony, it is impossible for Yankton's rebuttal witnesses to specifically rebut Keystone's arguments through its rebuttal testimony. Yankton's rebuttal witnesses have therefore provided as much information as possible, given Keystone's generalized pre-filed direct testimony, and identified the subject areas about which they will provide testimony "as appropriate based on the testimony offered by the Applicant." See **Exhibit B**, response to Question 8; see also **Exhibit C**, response to Question 5.

6. As shown above, Keystone has cited no valid basis for its request to strike the portion of Ms. Spotted Eagle's prefiled direct testimony referenced herein or either Ms. Spotted Eagle's or Mr. Cooke's prefiled rebuttal testimony.

WHEREFORE, Yankton respectfully requests that the Commission deny Keystone's motion with respect to Questions 24 through 29, 32, and 33 of Faith Spotted Eagle's direct testimony and all of Faith Spotted Eagle's and Jason Cooke's rebuttal testimony.

Dated this 17th day of July, 2015.



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