

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

IN THE MATTER OF THE APPLICATION BY)
TRANSCANADA KEYSTONE PIPELINE, LP)
FOR A PERMIT UNDER THE SOUTH DAKOTA)
ENERGY CONVERSION AND TRANSMISSION)
FACILITIES ACT TO CONSTRUCT THE)
KEYSTONE XL PROJECT)

HP 14-001

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

COMES NOW, intervenors, the Standing Rock Sioux Tribe, Cheyenne River Sioux Tribe, Rosebud Sioux Tribe, Yankton Sioux Tribe, Dakota Rural Action, Indigenous Environmental Network, Intertribal Council on Utility Policy and Bold Nebraska, by and through undersigned counsel, and move for an order excluding the introduction of evidence and testimony by TransCanada, and striking its pre-filed testimony from the record in this docket.

On April 17, 2015, the Commission entered an *Order Granting in Part Keystone’s Motion for Discovery Sanctions*, precluding 17 intervenors from presenting evidence for failure to comply with discovery orders of the Commission. On April 17, 2015, the Commission entered *Order(s) Granting in Part and Denying in Part Motion(s) to Compel Discovery* by the Standing Rock and Yankton Sioux Tribes and Dakota Rural Action. The order required TransCanada to fully answer identified discovery requests.

TransCanada has failed to comply with those orders, as affirmed in the Affidavit of James White, general counsel for TransCanada. Exhibit A attached hereto. The White affidavit acknowledges that TransCanada’s due diligence and production of emails was incomplete. *Id.* at ¶¶4-5. TransCanada’s limited production of documents further violated the discovery orders by failing to provide existing background and support data for reports that were produced. *See also* Affidavit of Peter Capossela, ¶7, Exhibit B; and

Letter of Thomasina Real Bird to James E. Moore and William Taylor, dated April 23, 2015, Exhibit C.

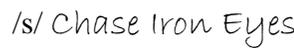
Accordingly, consistent with the precedent in this docket established by the Commission in the *Order Granting in Part Keystone's Motion for Discovery Sanction*, the intervenors are entitled to an order excluding testimony and the introduction of evidence by TransCanada, and striking its pre-filed testimony from the record.

The undersigned represent that it consulted with counsel for TransCanada in an attempt to avoid the need to file this motion. It is requested that this motion be heard by the Commission immediately prior to the commencement of the evidentiary hearing scheduled to begin on May 5, 2015. *Order For and Notice of Evidentiary Hearing* (April 17, 2015).

This motion is based upon SDCL §§15-6-34, 15-6-37; the *Order Granting in Part and Denying in Part Motion to Compel Discovery of the Standing Rock Sioux Tribe*; the *Order Granting in Part and Denying in Part Motion to Compel Discovery of the Yankton Sioux Tribe*; the *Order Granting in Part and Denying in Part Motion to Compel Discovery of Dakota Rural Action*; the *Order Granting in Part Keystone's Motion for Discovery Sanctions*; Exhibits A-C attached hereto and the papers and pleadings herein.

DATED this 24th day of April, 2015

By: 
Peter Capossela, P.C.
Attorney at Law
Post Office Box 10643
Eugene, Oregon 97440
(541) 505-4883
pcapossela@nu-world.com


Chase Iron Eyes
Iron Eyes Law Office, PLLC
Post Office Box 888
Fort Yates, North Dakota 58538
(701) 455-3702
chaseironeyes@gmail.com
S.D. Bar No. 3981

Attorneys for Standing Rock Sioux Tribe

/s/ Tracey Zephier
Tracey A. Zephier
FREDERICKS PEEBLES & MORGAN LLP
910 5th Street Suite 104
Rapid City, South Dakota 57701
Telephone: (605) 791-1515
Facsimile: (605) 791-1915
Email: tzephier@ndnlaw.com

Attorney for Cheyenne River Sioux Tribe

/s/ Matthew L. Rappold
Matthew L. Rappold
RAPPOLD LAW OFFICE
816 Sixth Street
P.O. Box 873
Rapid City, South Dakota 57709
(605) 828-1680
Matt.rappold01@gmail.com

Attorney for Rosebud Sioux Tribe

/s/ Thomasina Real Bird
Thomasina Real Bird
FREDERICKS PEEBLES & MORGAN LLP
1900 Plaza Drive
Louisville, Colorado 80027
Telephone: (303) 673-9600
Facsimile: (303) 673-9155
Email: trealbird@ndnlaw.com

Attorney for Yankton Sioux Tribe

/s/ Bruce Ellison

Bruce Ellison
518 6th Street #6
Rapid City, South Dakota 57701
Telephone: (605) 348-1117
Email: billi4law@aol.com

/s/ Robin S. Martinez

Robin S. Martinez, MO #36557/ KS #23816
MARTINEZ MADRIGAL & MACHICAO LLP
616 West 26th Street
Kansas City, Missouri 64108
816.979.1620 phone
888.398.7665 fax
Email: robin.martinez@martinezlawnet

Attorneys for Dakota Rural Action

/s/ Kimberly Craven

Kimberly Craven, AZ BAR #23163
3560 Catalpa Way
Boulder, CO 80304
Telephone: (303) 494-1974
Fax: 720.328.9411
Email: kimecraven@gmail.com

Attorney for Indigenous Environmental Network

/s/ Robert P. Gough

Robert P. Gough, SD SB#620
Secretary of, and Attorney for,
Intertribal Council on Utility Policy
P.O. Box 25, Rosebud SD 57570
605-441-8316
Bobgough@intertribalCOUP.org
Gough.bob@gmail.com

Attorney for the Intertribal COUP

/s/ Paul C. Blackburn

Paul C. Blackburn
South Dakota Bar No. 4071
4145 20th Avenue South
Minneapolis, MN 55407
612-599-5568
paul@paulblackburn.net

Attorney for BOLD Nebraska