

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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HP 14-001

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, : : : :	: : : :	KEYSTONE’S RESPONSE TO YANKTON SIOUX TRIBE’S MOTION TO COMPEL
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The Yankton Sioux Tribe has moved to compel certain written discovery answers from Applicant TransCanada Keystone Pipeline, LP (“Keystone”). For the following reasons, Keystone respectfully requests that the motion be denied.

As a general matter, the Tribe attaches to its motion as Exhibit 2 Keystone’s initial objections to the Tribe’s discovery, which were made on January 23, 2015, in advance of the deadline for responding to discovery. Keystone wanted to allow ample time for the Intervenor to challenge its objections, and so stated objections early. (Moore Aff. ¶ 2.) The Tribe’s motion to compel refers to Keystone’s discovery responses dated February 6, 2015, but the only document attached as Exhibit 2 is Keystone’s objections, which is an error. Keystone has therefore attached its responses dated February 6 to counsel’s affidavit. (Moore Aff. ¶ 3.) Keystone also notes that the Tribe’s letter following up on discovery responses made on February 6 and March 10 was sent on April 1, a Wednesday, and asked for a response by April 5, Easter Sunday. Except for one, all of the Tribe’s concerns related to Keystone’s responses

provided on February 6. Keystone responded to the letter on April 7. (Moore Aff. ¶ 4.) The Tribe's letter was not intended as much to facilitate discovery as to set up a motion to compel.

1. Interrogatory No. 10. The Tribe seeks the identity of the people who have conducted civil surveys related to the Keystone XL Pipeline. Keystone objected that the information is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Keystone also answered by identifying the persons or entities who conducted the American Burying Beetle Habitat Assessment, the Biological Surveys, the Phase I ESA Sureys, the cultural resource surveys, and the paleontological surveys. (Moore Aff. ¶ 3, Ex. A.) The Tribe's motion entirely ignores the response that Keystone provided, and fails to explain how it is deficient. The Tribe argues only that the persons who conducted the surveys may possess evidence relevant to Keystone's compliance with the permit conditions. The Tribe does not argue any deficiency in the surveys that have been conducted, so there is no showing that the persons responsible would provide evidence of non-compliance. The Tribe has not established that it is entitled to any additional information.

2. Interrogatory No. 13. The Tribe seeks the identity of environmental inspectors "that Keystone has incorporated into the CMR." Keystone responded that "no Environmental Inspectors have been identified or hired, because the construction of the Project has not yet started." (Moore Aff. ¶ 3, Ex. A.) The Tribe does not acknowledge this response, so its motion fails to explain how it is insufficient or what more information Keystone could provide.

3. Interrogatory No. 15. The Tribe seeks information whether any contractors hired by Keystone to construct any pipeline owned or operated by Keystone have received any communication from any agency or regulatory body about safety concerns or violations regarding any United States pipeline. Keystone objected that the request was not reasonably

calculated to lead to the discovery of admissible evidence and that it sought information not in Keystone's custody or control. The Tribe argues that it wants to know what Keystone knows about contractor safety, but with respect to the Keystone XL Pipeline, there is no construction schedule and no contractors have been hired. The request therefore cannot be answered as to Keystone XL, and is otherwise not relevant.

4. Interrogatory No. 16. This is the same request as Interrogatory No. 15, but limited to pipelines in Canada. Keystone's objection is valid for the same reasons.

5. Interrogatory No. 21. The Tribe seeks detailed identifying information about the persons who conducted cultural surveys for the Keystone XL Pipeline. Keystone objected, but also responded by stating that SWCA Environmental Consultants performed the survey work, and the two principal investigators involved were Scott Phillips and Paul Murphey. (Moore Aff., ¶ 3, Ex. A.) Again, the Tribe fails to acknowledge the response, and so fails to explain why the identification provided was insufficient.

6. Interrogatory No. 32. The Tribe sought, among other information, the location of the construction camps in South Dakota. Keystone provided a detailed response to this interrogatory, which the Tribe fails to acknowledge in its motion. Nevertheless, Keystone agreed in response to the Tribe's letter dated April 1, to provide specific latitude and longitude information for the camps. This issue should be resolved.

7. Document Request No. 2. The Tribe seeks "all documents related to environmental and hydrological surveys." Keystone objected that the request is overbroad and burdensome. The Tribe narrowed its request to the Keystone XL project, but does not explain how its request for "all documents" related to the surveys is narrowly tailored and not overbroad and burdensome.

8. Document Request No. 3. The Tribe seeks “all documents relating to cultural and historic surveys, training, and response plans. In response to Keystone’s objection, the Tribe again narrowed the scope to the Keystone XL project, but the request for “all documents” is still overbroad and burdensome. The Tribe does not explain why the information publicly available in the FSEIS related to cultural and historic surveys is insufficient for its purposes.

9. Document Request No. 4. The Tribe seeks “all documents” relating to requiring permits, inside and outside South Dakota. Keystone objected that the request is overbroad and burdensome. The Tribe does not explain how “all documents” relating to permitting is a reasonable request. Moreover, there is a table of required permits in Table 1.9-1 of the FSEIS. It lists nine pages of required permits.

10. Documents Request No. 6. The Tribe seeks “all documents constituting Keystone’s emergency response plan.” Keystone objected on a variety of grounds, including that Keystone is not required to submit the emergency response plan to PHMSA until sometime close to when the Keystone Pipeline is placed into operation. The emergency response plan is addressed in Appendix I to the FSEIS, to which Keystone provided a link in its discovery response. (Moore Aff., ¶ 3, Ex. A.) In other words, Keystone does not yet have an emergency response plan for the Keystone XL Pipeline. A redacted version of its emergency response plan for the Keystone Pipeline is contained in Appendix I to the FSEIS, so the template for the emergency response plan is clear. The Tribe does not explain why this response is insufficient.

11. Document Request No. 7. The Tribe seeks “all documents” supporting the changes to the Findings of fact identified in Keystone’s tracking table filed with its certification. Keystone objected that the request was overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, and stated that many documents supporting the

changes were identified in the tracking table. The Tribe does not explain how its request is reasonable.

12. Document Request No. 8. This request was made in the Tribe's second round of discovery requests, but it is the same as Document Request No. 7 in the first round. Keystone's objection is valid for the same reasons.

Conclusion

The Tribe's motion to compel is without merit. Keystone provided substantial information to the Tribe in written discovery, and stands on its valid objections, which the Tribe has failed to refute. Keystone respectfully requests that the motion be denied.

Dated this 10th day of April, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Response to Yankton Sioux Tribe's Motion to Compel, to the following:

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