

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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HP 14-001

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 PROJECT :

KEYSTONE’S MOTION IN LIMINE
TO RESTRICT TESTIMONY OF
LEONARD CROW DOG

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Applicant respectfully moves the South Dakota Public Utilities Commission to limit the testimony of Rosebud Sioux rebuttal witness Chief Leonard Crow Dog for the following reasons and grounds:

1. Mr. Crow Dog’s undated and unsigned statement filed June 26 does not comport to the Commission’s requirements for pre-filed testimony in that:
 - A. It does comport with the rules of practice before the Commission in that it only contains generalized statements and does not contain any statement of fact or foundation for any opinion Mr. Crow Dog makes, and
 - B. It contains nothing regarding the substance what Mr. Crow Dog asserts as rebuttal to the testimony of Cory Goulet.
2. The Commission has ruled that issues regarding aboriginal lands are not to be considered as part of these proceedings.

The Commission routinely orders, pursuant to SDR 20:10:01:22.06, that testimony be prepared in written form and filed with the Commission in advance of the hearing. The Commission entered an order to that end in this proceeding in November of 2014 and has periodically amended the order since. On May 5, 2015 the Commission ordered all rebuttal testimony be pre-filed by June 26. As the Commission has observed, pre-filed testimony serves to expedite the hearing, give all parties notice of matters in consideration, shortens discovery, and allows preparation for trial and cross-examination.

On June 26 the Rosebud Sioux Tribe filed an unsigned statement by Leonard Crow Dog in which he says he intends to testify at the hearing, both in Lakota and English, but does contain either a narrative or outline of his proposed testimony. Applicant acknowledges that Mr. Crow Dog is a respected Rosebud tribal member and elder, a Lakota speaker, and embraces the oral history traditions of the Tribe. That does not excuse the Rosebud Sioux Tribe from complying with the Commission's directive that rebuttal testimony be presented in writing and in a form that allows other parties to understand what the witness will say and offer as proof. The Tribe is perfectly able to interview Mr. Crow Dog, reduce his testimony to writing in English and timely submit it to the Commission and the parties for evaluation and study. Mr. Crow Dog's undated and unsigned submission does not afford the parties reasonable notice of the contents of his planned testimony, does not contain substantive evidence or foundation for the views expressed, is conclusory in nature, and is entirely improper in form and content. On those grounds alone, Mr. Crow Dog should not be allowed to testify.

Based on the Tribe's June 26 submission, it appears Mr. Crow Dog intends to raise issues related to aboriginal land rights in his proposed testimony. In a hearing on June 11, the Commission heard arguments on motions contending that matters concerning aboriginal land issues were not properly before the Commission in this proceeding. On June 15, 2015, in response to Applicant's motion, the Commission entered an order holding it did not have jurisdiction to consider aboriginal land title and usufructuary rights as part of this proceeding. Accordingly, any testimony offered by Mr. Crow Dog concerning aboriginal rights pertaining to the pipeline project is improper.

For those reasons, the Applicant respectfully requests the Commission enter its order prohibiting Mr. Crow Dog from testifying in the hearing on Applicant's certification petition.

Dated this 10th day of July, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Motion in Limine to Restrict Testimony of Leonard Crow Dog, to the following:

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