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 STRIKE PAULA ANTOINE'S REBUTTAL TESTIMONY

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Applicant respectfully moves the South Dakota Public Utilities Commission to enter its order striking the June 26 pre-filed statement of Paula Antoine from the record for the following reasons and on the following grounds:

- 1. The portion of Ms. Antoine's filing relating to the Spirit Camp near Winner, SD is irrelevant to any issue under consideration in this proceeding; and
- 2. The portion of Ms. Antoine's filing relating to Findings of Fact 107-110 is not testimony but rather is a combination of argument and legal conclusions; and
- 3. The portion of Ms. Antoine's filing relating to Dr. Madden's 2009 testimony in the underlying permit proceeding is an attempt to impeach the 2010 Order of the Commission.

The Rosebud Sioux Tribe filed seven unnumbered pages of what purports to be rebuttal testimony by Paula Antoine. The filing can be divided into three parts. The first, comprising pages 1 and 2, describes the Spirit Camp north of Winner. The second part, pages 3, 4, 5 and part of page 6, summarizes certain Keystone testimony and gives a legal opinion on certain evidentiary questions. The third, pages 6 and 7, argues that testimony given in the 2009 proceedings is insufficient. None of the filing is appropriate to this proceeding or legally admissible.

Part one of Ms. Antione's testimony is irrelevant to any matter in issue. The Spirit Camp is not transited by the pipeline right of way; rather, it is more than a mile distant. It is not part of {01982737.1}

the Rosebud Sioux Reservation. It is not Indian Country as that term is defined by federal law. Activities at the Spirit Camp are simply not relevant to any issue before the Commission in this proceeding. Accordingly, Ms. Antoine's testimony in that regard is irrelevant and should be stricken.

Part two of Ms. Antoine's filing is not testimony. Ms. Antoine first summarizes certain findings from the 2009 hearing. The findings speak for themselves. In essence, she is reciting her impression of what the findings mean. Her impressions of the findings are irrelevant and immaterial to this proceeding and are not evidence.

After summarizing the findings, Ms. Antoine summarizes the testimony of certain Keystone witnesses. Her summary of the testimony of other witnesses is incompetent as evidence. Her impressions of other witnesses' testimony are not evidence and are irrelevant and immaterial. She is then asked "Does it appear to you that Keystone has put in sufficient evidence and testimony regarding [certain findings]?" Her opinion of whether or not Keystone has met its burden of proof is simply argument, not a statement of fact, and is incompetent as evidence. It is not evidence of anything other than her opinion. The Commission is the trier of fact and decision maker. Ms. Antoine's opinion invades the province of the trier of fact and offers no value to these proceedings. Accordingly, it should be stricken.

Part three of Ms. Antoine's filing is a direct challenge to the final Order in the 2009 docket that underlies this proceeding. The soliloquy starts with the question "Have you reviewed Michael Madden's testimony and report. . .from the HP-09-001docket?" It then goes on to discuss her perceived failings in Madden's 2009 testimony and report. She concludes by linking those perceived failings to certain 2010 findings of fact, and then with a leap of logic, argues that Keystone cannot meet its 2015 certification burden because of the flaws identified in the 2009

Madden evidence. Her statements are a mix of argument, her perceptions of failings in testimony that can no longer be challenged, and legal conclusions. Her statements are not evidence, not statements of fact relevant to the proceedings in issue, but rather an argument based on her feelings and impressions. The statements are not competent as evidence and not relevant. The time to challenge the Madden testimony was 2009. Any attempt to do so now under the guise of linking it to recertification is inappropriate and should not be allowed.

For those reasons, Applicant respectfully requests the Commission enter its order prohibiting Ms. Antoine from testifying in the hearing on Applicant's certification petition and striking her pre-filed testimony from the record.

Dated this 10th day of July, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore
James E. Moore
PO Box 5027
300 South Phillips Avenue, Suite 300
Sioux Falls, SD 57117-5027
Phone (605) 336-3890
Fax (605) 339-3357
Email James.Moore@woodsfuller.com

- and -

William Taylor 2921 E. 57th Street, #10 Sioux Falls, SD 57108 Phone 605-212-1750 Bill.Taylor@williamgtaylor.com

Attorneys for Applicant TransCanada

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