

**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**

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* **STAFF’S RESPONSE TO JOINT MOTION**
* *IN LIMINE* **TO EXCLUDE EVIDENCE**
* **PERTAINING TO KEYSTONE’S**
* **CHANGES TO FINDINGS OF FACT**
*
* **HP14-001**
*

COMES NOW, Staff (“Staff”) of the Public Utilities Commission (“Commission”) and files this Response to the Joint Motion *in Limine* to Exclude Evidence Pertaining to Keystone’s Changes to Findings of Fact (“Motion”). On July 10, 2015, the Commission received the Motion from Yankton Sioux Tribe, Cheyenne River Sioux Tribe, Bold Nebraska, Rosebud Sioux Tribe, Indigenous Environmental Network, and Dakota Rural Action (“Movants”).

The pivotal question here is whether or not Keystone, by filing or making reference to a Tracking Table of Changes, has proposed changes to the findings of fact. If such a proposal is made, Staff agrees, as previously argued, that it should be denied. However, if the Tracking Table of Changes is merely a tool to demonstrate compliance or ability to meet conditions, then testimony related to the Tracking Table of Changes is relevant, and this Motion should be denied. Staff views the Tracking Table of Changes as the latter.

When reviewing the testimony of Keystone’s witnesses, if one looks at substance over form, the relevancy of the questions is clear. For example, Movants request question number four from Heidi Tillquist’s testimony to be stricken. That question would likely elicit the same answer if she had been asked “Based on the withdrawal of the Special Permit application, will the design and route changes affect Keystone’s ability to meet the conditions upon which the permit was granted?”


Another example of a question that could be reworded is question five in David Diakow's testimony. The question could be restated to ask, "Is there still demand for the project?"

Assumedly, that question would elicit the same answer as currently provided.

Movants argue that the parties are prejudiced by the consumption of time to hear this testimony. However, if references to the Tracking Table of Changes were stricken, Keystone would have the opportunity to rephrase the questions in a manner similar to the example provided by Staff, ultimately consuming more time. While the question may be of greater value when rephrased, it is unlikely worth the extra time.

Staff notes that Keystone is tasked with continuing to meet the conditions, not findings of fact, set forth in the original permit. The Commission may hear this testimony and find that too much has changed or that a condition was too closely linked to a finding to accept the changed finding, but the Commission should be given the opportunity to consider the testimony and give it the weight it deserves. Upon previous numerous requests, the Commission has had occasion to determine if submission of a Tracking Table of Changes was fatal to Keystone's case and has declined to do so. Staff recommends the Commission maintain its previous decisions and deny this Motion.

Dated this 17th day of July, 2015.



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IN THE MATTER OF THE PETITION OF)
TRANSCANADA KEYSTONE PIPELINE, LP)
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OF PERMIT ISSUED IN DOCKET HP09-001)
TO CONSTRUCT THE KEYSTONE XL)
PIPELINE)

CERTIFICATE OF SERVICE

HP14-001

I hereby certify that true and correct copies of Staff's Response to Joint Motion *in Limine* to Exclude Evidence Pertaining to Keystone's Changes to Findings of Fact and Certificate of Service were served electronically to the Parties listed below, on the 17th day of July, 2015, addressed to:

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