

BEFORE THE
PUBLIC UTILITIES COMMISSION
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

DOCKET HP14-001

PREFILED TESTIMONY OF DARREN KEARNEY
ON BEHALF OF THE COMMISSION STAFF
APRIL 2, 2015

1 **Q. State your name.**

2 A. Darren Kearney.

3 **Q. State your employer and business address.**

4 A. South Dakota Public Utilities Commission, 500 E Capitol Ave, Pierre, SD, 57501.

5 **Q. State your position with the South Dakota Public Utilities Commission.**

6 A. I am a Staff Analyst, which is also often referred to as a Utility Analyst.

7 **Q. What is your educational background?**

8 A. I hold a Bachelor's of Science degree, majoring in Biology, from the University of
9 Minnesota. I am also in the process of getting a Masters of Business Administration
10 degree from the University of South Dakota and I expect to be awarded that degree in
11 May of 2015.

12 **Q. Please provide a brief explanation of your work experience.**

13 A. I began my career in the utility industry working as contract biologist for Xcel
14 Energy, where I conducted biological studies around various power plants, performed
15 statistical analysis on the data collected, and authored reports in order to meet National
16 Pollutant Discharge Elimination System (NPDES) permit requirements.

17 After two years of performing biological studies, I then transitioned into an
18 environmental compliance function at Xcel Energy as a full time employee of the
19 company and became responsible for ensuring Xcel's facilities maintained compliance
20 with the Oil Pollution Act of 1990. This involved writing Spill Prevention Control and
21 Countermeasure (SPCC) plans and also ensuring Xcel facilities maintained compliance
22 with those plans. During this time I was also responsible for the company's
23 Environmental Incident Response Program, which involved training Xcel employees on

1 spill reporting and response, managing spill cleanups, and mobilizing in-house and
2 contract spill response resources. I was also responsible for aboveground storage tank
3 permitting during this time.

4 I was in that role for approximately three years and then I transitioned to a coal-
5 fired power plant at Xcel and became responsible for environmental permitting and
6 compliance for the plant. Briefly, my responsibilities involved ensuring that the facility
7 complied with all environmental permits at the plant, which included a Clean Air Act Title
8 V Air Permit, a Clean Water Act NPDES permit, and a hazardous waste permit. I also
9 submitted reports on the plant's operations to various agencies as required by permit or
10 law. After three years at the power plant, I left Xcel Energy to work for the South
11 Dakota Public Utilities Commission (SD PUC).

12 I have been at the SD PUC for just over two years now. During this time I
13 worked on a variety of matters in the telecom, natural gas, and electric industries. The
14 major dockets that I worked on were transmission siting dockets, pipeline siting dockets,
15 and energy efficiency dockets. I also attended a number of trainings on public utility
16 policy issues, electric grid operations, regional transmission planning, electric wholesale
17 markets, and utility ratemaking.

18 **Q. On whose behalf was this testimony prepared?**

19 A. This testimony was prepared on behalf of the Staff of the South Dakota Public
20 Utilities Commission.

21 **Q. Were you involved in the Keystone XL permitting docket, HP09-001?**

22 A. No.

23 **Q. Did you file prefiled testimony in HP09-001?**

1 A. No. However, I adopt the testimony of Staff witness Tim Binder in docket HP09-
2 001. (Exhibit____(DK-1))

3 **Q. Did you provide testimony at the evidentiary hearing in HP09-001?**

4 A. No.

5 **Q. Have you thoroughly reviewed all of the information filed in HP14-001?**

6 A. Yes. I also reviewed the following: relevant sections of the Department of State's
7 Final Supplemental Environmental Impact Statement; relevant background information
8 included in docket HP09-001; South Dakota Codified Laws and Rules applicable to the
9 Petition; and discovery requests and responses of all parties.

10 **Q. Were other Staff involved in the review of this petition?**

11 A. Yes. Other Staff members involved in the review consisted of Brian Rounds
12 (Staff Analyst) and Mary Zanter (Pipeline Safety Inspector).

13 **Q. Explain, in your words, the role of the SDPUC Staff in the Petition**
14 **proceedings.**

15 A. After initial review of the filing, Staff identified the findings of fact changes
16 provided by Keystone XL in Exhibit C of the petition that Staff believed could impact the
17 opinions of Staff's expert witnesses that were provided in docket HP09-001. Staff then
18 procured consultants, making a good-faith effort to utilize the same witnesses or
19 consultants used in docket HP09-001, to review the changes identified by Keystone XL
20 and determine the following: 1) if the changes identified in Exhibit C resulted in a
21 change to the professional opinion provided by Staff's witnesses in HP09-001, 2) if the
22 changes identified in Exhibit C comply with the rules and regulations that the witnesses
23 are subject matter experts of, and 3) whether any other Keystone XL project changes or

1 information in the witnesses' possession resulted in a change to their professional
2 opinion.

3 In regards to processing the Petition by the Commission, Staff made great efforts
4 to educate interveners on the process. Specifically, Staff responded to calls and emails
5 from interveners with questions on a number of matters, including: the role of an
6 intervener, the procedural schedule, the proper form of discovery, what laws and rules
7 are applicable to the proceeding, and other miscellaneous information requests.

8 Staff was also active in discovery, where Staff submitted interrogatories to
9 Keystone XL and responded to interrogatories submitted to Staff by Keystone XL and
10 other interveners. Upon closure of discovery, Staff reviewed all interrogatories and
11 responses communicated between all parties in order to understand the issues that
12 could potentially be contested during the proceeding.

13 **Q. What did Staff focus on during its review of the Petition?**

14 A. In accordance with the Commission's order in this docket to limit the scope of
15 discovery only to issues relevant to whether the proposed Keystone XL Pipeline
16 continues to meet the fifty permit conditions set forth in Exhibit A of the June 29, 2010,
17 Amended Final Decision and Order and the changes identified by Keystone XL in
18 Exhibit C, Staff focused its review on the fifty permit conditions and Exhibit C changes.
19 Moreover, Staff's experts focused their review on the project changes identified in
20 Exhibit C that fell within their areas of expertise.

21 **Q. How many parties were granted party status?**

22 A. The commission granted party status to forty-two parties. All individuals who
23 filed for party status were granted party status, however it is Staff's recollection that

1 during the hearing it was clarified that Jane Kleeb and Benjamin D. Gotschall had both
2 filed for party status on behalf of Bold Nebraska. Therefore, their applications for party
3 status were combined and the Commission approved one application of party status for
4 the Bold Nebraska organization.

5 **Q. How many parties withdrew as interveners?**

6 A. As of the date of writing this testimony, two interveners requested withdrawal of their
7 party status and the Commission so approved. These interveners were the South
8 Dakota Wildlife Federation and the Sierra Club.

9 **Q. Did Staff review the road repair indemnity bond amount required in the**
10 **Amended Final Decision and Order issued on June 29, 2010? If so, should the**
11 **amount change?**

12 A. Yes. In condition 23, subpart f, of the HP09-001 Amended Final and Decision
13 and Order, the Commission identified that “Keystone shall obtain and file for approval by
14 the Commission prior to construction in such year a bond in the amount of \$15.6 million
15 for the year in which construction is to commence and a second bond in the amount of
16 \$15.6 million for the ensuing year, including any additional period until construction and
17 repair has been completed...” This bond amount was set based on Staff witness Tim
18 Binder’s recommendation and was calculated as being ten percent of the estimated
19 construction cost in South Dakota of \$312 million and spread over two years.

20 According to revised finding of fact No. 23 in Exhibit C of the Petition, Keystone
21 XL identifies that the total estimated project cost in South Dakota increased from \$921.4
22 million to \$1.974 billion in South Dakota. Keystone XL states that the project cost
23 increased due to new technical requirements, inflation, and additional costs associated

1 with increased project management, regulatory, material storage, and material
2 preservation that resulted from the six year delay in starting construction. Staff believes
3 that not all of the project cost increases identified by Keystone XL would directly impact
4 that estimated construction cost in South Dakota. Staff does believe, however, that
5 inflation would have a direct impact on construction costs. Therefore, Staff
6 recommends the Commission increase the bond amount to account for inflation.

7 In order to determine the appropriate bond amount as a result of the six year
8 delay in starting construction, Staff used the 2009 estimated South Dakota construction
9 cost of \$312 million and escalated the cost to the year 2015 using a 2.5% inflation rate.
10 This resulted in an estimated construction cost of \$361.8 million for year 2015. Using
11 the same method established in docket HP09-001 to calculate the appropriate bond
12 amount, Staff determined that the bond should be set at \$18 million for two years.
13 Therefore, Staff recommends the Commission increase the bond amount identified in
14 finding of fact No. 88 and condition No. 23 in the Amended Final Decision and Order
15 from \$15.6 million to \$18 million. Should Keystone XL not agree with Staff's
16 methodology used for updating the bond amount, then Staff proposes that Keystone XL
17 should provide its most current estimate of South Dakota construction costs and then
18 recommend a bond amount in accordance with the methodology used in docket HP09-
19 001 in order to maintain consistency between the two dockets.

20 **Q. Does this conclude your testimony?**

21 A. Yes.