

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

0-0

IN THE MATTER OF THE APPLICATION :
BY TRANSCANADA KEYSTONE : DOCKET NUMBER HP09-001
PIPELINE, LP FOR A PERMIT UNDER :
THE SOUTH DAKOTA ENERGY :
CONVERSION AND TRANSMISSION :
FACILITIES ACT TO CONSTRUCT THE : **REBUTTAL TESTIMONY**
KEYSTONE XL PROJECT : **OF STEVE HICKS**
:
:

0-0

1. State your name and occupation.

Answer: My name is Steve Hicks. I am employed by TransCanada as
Manager for the US portion of the Steele City Segment of the Keystone XL Project.

2. Did you provide direct testimony in this proceeding?

Answer: Yes. I filed direct testimony dated October 19, 2009, adopting the
direct and supplemental testimony of John Phillips.

3. To whose testimony are you responding in rebuttal?

Answer: I am responding to the direct testimony of Ross Hargrove.

4. In his testimony, Hargrove included as Attachment 2 a summary of NRG's findings and recommendations to improve the CMRP. In paragraph 2.17, NRG recommends that Keystone coordinate with emergency responders regarding temporary road closures. What is your response?

{00553513.1}

Answer: Keystone is required to obtain permits for temporary road closures and consults with counties in obtaining necessary permits. Since emergency responders are part of local government, Keystone expects that its consultation with the counties will be sufficient to ensure coordination with respect to temporary road closures.

5. In paragraph 2.18 of Attachment 2, NRG recommends that the wet weather conditions in the CMRP apply to improved hay lands and pasture lands in addition to agricultural lands. What is your response?

Answer: Keystone agrees that the wet weather conditions should apply to all agricultural lands. The CMRP provides that the wet weather conditions apply to agricultural areas, not just “cultivated” agricultural areas as stated in paragraph 2.18 of Attachment 2.

6. In paragraph 2.18 of Attachment 2, NRG states that the CMRP does not provide specific performance measures to indicate when rutting would be considered excessive. What is your response?

Answer: The CMRP does provide performance standards, as reflected in condition 34 of the Keystone Final Order: “Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.”

7. In paragraph 3.0 of Attachment 2, NRG recommends that fuel storage and refueling activities be prohibited within 400 feet of private water wells. What is your response?

Answer: The industry standard for refueling and storage is 100 feet from surface water and known private water wells; 400 feet is not an industry practice. Keystone's spill protection containment plan is sufficient to protect private wells.

8. In paragraph 4.3 of Attachment 2, NRG recommends that Keystone work closely with landowners to address the best method for segregating topsoil, but that decompaction be repeated following replacement of topsoil. What is your response?

Answer: Keystone talks to each landowner about topsoil stripping and segregation, and each landowner decides how the topsoil will be stripped on his or her property—the full width of the right of way, the trench and spoil area, or the trench only. Double decompaction, or decompacting the topsoil after it is replaced, is unnecessary. The topsoil is not significantly compacted during stripping, storage, and replacement.

9. In paragraph 4.5 of Attachment 2, NRG recommends that Keystone install sediment barriers in the vicinity of delineated wetlands and waterbodies regardless of the presence of flowing or standing water. What is your response?

Answer: It is not standard industry practice to install sediment barriers if there is no topography that would require barriers to control erosion. Keystone agrees that it will not use liquid mulch binders within 100 feet of wetlands and waterbodies.

10. In paragraph 4.6 of Attachment 2, NRG recommends that stringing trucks use the proposed trench line for travel wherever conditions allow because they present the greatest potential for compaction. What is your response?

Answer: Although I do not agree that stringing trucks have the greatest potential to cause compaction, Keystone agrees that stringing trucks will use the proposed trench line for travel wherever conditions allow.

11. In paragraph 4.7 of Attachment 2, NRG recommends that Keystone triple strip soils in certain conditions. What is your response?

Answer: Although it is unclear under what conditions NRG recommends this practice, it is not standard industry practice to triple strip soils. It is impractical to identify layers of paralythic shale and sandstone in the field, there is no indication that these types of soils require triple stripping, the practice would require more workspace from landowners, and it would require significantly more time to complete construction operations on a landowner's property.

12. In paragraph 4.10 of Attachment 2, NRG recommends that final grading, topsoil replacement, and installation of erosion control structures be completed in

non-residential areas within 20 days after backfilling, and within 10 days in residential areas unless practically infeasible. What is your response?

Answer: A 20-day limit to complete final grading, topsoil replacement, and installation of erosion control structures is reasonable except when weather conditions, extenuating circumstances, or unforeseen developments beyond Keystone's control do not permit the work to be done within that time. Any limit needs to account for conditions beyond Keystone's control.

13. In paragraph 4.11.1 of Attachment 2, NRG recommends that Keystone prepare a winterization plan. What is your response?

Answer: Keystone has developed a winterization plan that can be submitted to the PUC.

14. In paragraph 4.11.2 of Attachment 2, NRG recommends that Keystone remove "excess" rock from at least the top 12 inches of soil in cultivated fields and pastures. What is your response?

Answer: Under the CMR Plan, Keystone will remove from the right of way rocks that are exposed on the surface due to construction activity before and after topsoil replacement. NRG's recommendation does not define "excess" rock. Moreover, Keystone can only remove rock that is apparent on top of the soil, which makes the reference to the top 12 inches of soil impractical.

15. In paragraph 4.11.5.3 of Attachment 2, NRG recommends that mulch be installed on slopes concurrent with seeding and prior to seeding if final grading would not be completed within 20 days. What is your response?

Answer: Landowners frequently object to the use of mulch because of concerns that it may introduce weeds into their fields. The PUC should not require the use of mulch without landowner concurrence. Any required timeframe must account for conditions beyond Keystone's control.

16. In paragraph 4.11.5.5 of Attachment 2, NRG recommends that erosion control fabric be installed on waterbody banks following stream restoration. What is your response?

Answer: The Keystone XL right of way will cross many dry drainages in South Dakota. The use of erosion control fabric should be limited to perennial waterbodies, and not required in dry draws as defined by statute in South Dakota.

17. In paragraph 4.12 of Attachment 2, NRG recommends that Keystone should leave gaps in the welded pipeline at specific intervals or areas of the pipeline for livestock crossings, and that Keystone periodically install ramps in the trench. What is your response?

Answer: Keystone addresses cattle with each landowner on a case-by-case basis. This is one of the issues that was addressed in the construction agreement that each

landowner signed for the Keystone Pipeline. The use of ramps in the trench is not practical because they will invariably not be where cattle might get into the trench. Keystone will pay for the loss of any livestock caught in the trench.

18. In paragraph 5.4 of Attachment 2, NRG recommends that Keystone employ only experienced drain tile contractors. What is your response?

Answer: Keystone is unaware of any union drain-tile contractors, and does not expect to encounter any significant amount of drain tile on the Keystone XL right of way.

19. In paragraph 5.6 of Attachment 2, NRG recommends that Keystone record the location of permanent drain tile repairs. What is your response?

Answer: This is required by South Dakota law.

20. In paragraph 6.2 of Attachment 2, NRG recommends that the construction right of way be reduced to 75 feet in wetlands, that extra work space be located a minimum of 50 feet back from wetland boundaries, and that Keystone should maintain at least 15 feet of undisturbed vegetation between the wetland and the construction right of way. What is your response?

Answer: Keystone's experience indicates that most wetlands construction requires a right of way of 85 feet. Locating extra work space a minimum of 50 feet from wetland boundaries in every instance would impair Keystone's ability to construct quickly in these areas, and so would increase the environmental impact of construction. Keystone

will maintain 15 feet of undisturbed vegetation between the wetland and the right of way where possible, which will not be every situation.

21. In paragraph 7.2 of Attachment 2, NRG recommends that extra work space be located a minimum of 50 feet back from waterbody boundaries wherever topographic conditions permit. What is your response?

Answer: Topographic conditions will not always permit a setback of 50 feet.

22. In paragraph 7.8 of Attachment 2, NRG recommends that spoil from waterbody crossing construction be stored at least 10 feet from the waters edge. What is your response?

Answer: In many cases this would be impractical and unnecessary. In many cases, instream sidecasting is appropriate depending on the width of the waterbody.

23. On pages 3-4 of his direct testimony, Hargrove recommends that the PUC require Keystone to provide the final Construction/Reclamation Units to the PUC before construction. What is your response?

Answer: Keystone addressed this issue in its Response to Staff's Fourth Data Request No. 4-4, in which Keystone indicated that the final Con/Rec Units itemized by milepost will be provided to the PUC before construction.

24. On page 4 of his direct testimony, Hargrove recommends that the PUC require Keystone to provide crop monitoring protocols for agricultural land that are more specific than those currently described in the CMRP. What is your response?

Answer: Keystone relies on landowners to advise when crop production is below yields that the landowner would expect. As provided in Keystone's Response to Staff's Fourth Data Request, No. 4-5, Keystone compensates landowners for three years on a declining basis for diminished crop production after construction.

25. On page 6 of his direct testimony, Hargrove recommends that the PUC require Keystone to use floating sediment curtains when the depth of non-flowing, standing water would exceed the height of straw bales or silt fence installation. What is your response?

Answer: Keystone has used floating sediment curtains only in flowing streams. If a heavy rainfall caused a deluge of non-flowing, standing water, I do not expect that floating sediment curtains would make any difference.

26. On page 7 of his testimony, Hargrove recommends that the PUC require Keystone to conduct post-construction operational noise assessments to confirm decibel levels at the pump stations. What is your response?

Answer: The PUC provided a similar condition for the Keystone Pipeline in ¶ 48 of the conditions contained in the Final Order. Keystone does not object to such a condition.

27. Does this conclude your rebuttal testimony?

Answer: Yes.

Dated this 16 day of October, 2009.



Steve Hicks