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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PETITION HP14-001  
OF TRANSCANADA KEYSTONE PIPELINE,  
LP FOR ORDER ACCEPTING CERTIFICATION  
OF PERMIT ISSUED IN DOCKET HP09-001  
TO CONSTRUCT THE KEYSTONE XL  
PIPELINE

=====

Transcript of Proceedings  
April 9, 2015  
3:30 p.m.

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BEFORE THE PUBLIC UTILITIES COMMISSION

CHRIS NELSON, CHAIRMAN  
KRISTIE FIEGEN, VICE CHAIRMAN (by telephone)  
GARY HANSON, COMMISSIONER (by telephone)

COMMISSION STAFF

John Smith  
Kristen Edwards  
Greg Rislov  
Brian Rounds  
Darren Kearney  
Katlyn Gustafson

Reported By Cheri McComsey Wittler, RPR, CRR

1                   TRANSCRIPT OF PROCEEDINGS, held in the  
2 above-entitled matter, at the South Dakota State Capitol  
3 Building, Room 413, 500 East Capitol Avenue, Pierre,  
4 South Dakota, on the 9th day of April, 2015.

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1           CHAIRMAN NELSON: I'm going to call the Public  
2 Utilities Commission meeting to order.

3           This is Chairman Nelson. It's about 3:30 p.m.  
4 on April 9. This is an Ad Hoc Meeting of the Public  
5 Utilities Commission. Commissioners Fiegen and Hanson  
6 are with us on the telephone, along with a number of  
7 other parties.

8           We are dealing with the issue of Docket  
9 HP14-001, In the Matter of the Petition of TransCanada  
10 Keystone Pipeline, LP for Order Accepting Certification  
11 of Permit Issued in Docket HP09-001 to Construct the  
12 Keystone XL Pipeline.

13           And in particular the only issue that we are  
14 going to deal with today is the Rosebud Sioux Tribe's  
15 Motion for Reconsideration. And I just want to say at  
16 the outset, we've got a lot of other motions we're going  
17 to deal with on Tuesday. I do not want to get into those  
18 today. We are only taking up Rosebud Sioux Tribe's  
19 Motion for Reconsideration.

20           With that, I'm just going to go back through the  
21 rollcall again and see if we've got anybody else that's  
22 joined us.

23           Bruce Ellison?

24           Not hearing Mr. Ellison.

25           Nancy Hilding?

1 MS. HILDING: Yeah. I'm on.

2 CHAIRMAN NELSON: Thank you, Nancy.

3 Thomasina Real Bird?

4 Not hearing Thomasina.

5 So I think we've got everybody else who said  
6 they were going to call in.

7 And with that, I'm going to turn it over to  
8 Mr. Rappold to make your case.

9 MR. RAPPOLD: Thank you, Commissioners.  
10 Appreciate the opportunity that you've taken to visit  
11 this issue today. Without rehashing everything that we  
12 discussed last week, we're pretty much in the same  
13 situation as we were last week when we met in Pierre.

14 And that's why we're asking -- discovery hasn't  
15 been completed, and there are, as you said, a number of  
16 discovery issues on the table for Tuesday coming up the  
17 14th. It's not our intention to get into those today.

18 Mr. Taylor and I earlier today through e-mail  
19 correspondence discussed this a little bit further. And  
20 as you can tell from his response, he has not objected to  
21 the requested April 24 deadline for consideration to file  
22 Rosebud's testimony.

23 There's certain things that we're in the process  
24 and hoping to get fully disclosed from Keystone. It's  
25 necessary for our witnesses to provide testimony in this

1 case.

2 So with that said, it's my understanding that we  
3 had basically agreed and stipulated, as long as the  
4 Commission accepts that agreement, to move the date for  
5 Rosebud to April 24 to file its prefiled testimony, which  
6 should leave our witnesses ample time to review  
7 everything following anything that may be required to be  
8 compelled following the hearing on the 14th for our  
9 purposes.

10 Mr. Taylor, can you -- did I state everything  
11 that we spoke about earlier through e-mail to your  
12 understanding?

13 MR. TAYLOR: Commissioners, William Taylor.

14 We said yesterday at 3:30 or something, shortly  
15 after the Motion was filed, we have no objection to an  
16 extension of the Rosebud Sioux's opportunity to file its  
17 expert witness prefiled testimony on the 24th, provided  
18 that we don't have to file our rebuttal testimony until  
19 the 5th of May, the day the hearing starts.

20 MR. RAPPOLD: And I confirmed with Mr. Taylor  
21 that we don't have any objection to their request to  
22 May 5 for rebuttal.

23 CHAIRMAN NELSON: So it appears that both of  
24 you -- this is Commissioner Nelson. It appears that both  
25 of you are in agreement on extending those two dates; is

1 that correct?

2 MR. RAPPOLD: Yes.

3 MR. TAYLOR: Yes. As to expert witnesses.

4 MR. RAPPOLD: And just for clarity, we're asking  
5 for all of our witnesses. There may be some additional  
6 information that could be received from TransCanada  
7 following the Tuesday hearing that would be necessary for  
8 our other testimony as well.

9 CHAIRMAN NELSON: But, Mr. Rappold, and I wanted  
10 to ask this question anyway, my understanding of the  
11 Order that we issued last week is that any of that  
12 information would be able to be included in your rebuttal  
13 testimony filing by the 27th.

14 Is that your understanding?

15 MR. RAPPOLD: That's my understanding of the  
16 Order that issued last week, your Honor.

17 But, sir, the issue here, and I don't want to  
18 get into the discovery portion of all of this, is one of  
19 the things -- but I need to say a little bit in order to  
20 properly address your question.

21 One of the documents that we've been waiting for  
22 is an elevation profile from TransCanada. We were sent  
23 something I believe it was shortly after I filed the  
24 Motion yesterday purporting to be elevation profiling.  
25 We're reviewing that. Not certain at this time that

1 we're satisfied with the response.

2 And so, you know, that's a main issue here is  
3 that we need, you know, an accurate elevation profile  
4 consistent with what we've asked for in their  
5 Interrogatories in order to file the testimony.

6 So it's not something that would, you know, lend  
7 itself good to filing testimony on Friday and then having  
8 to go back and redo and extend those additional resources  
9 to incorporate testimony based on the elevation profiles.  
10 That's why we did it this way.

11 CHAIRMAN NELSON: And I understand that. But  
12 just so that I am clear and we're on the same page, if  
13 that elevation information proves not to be sufficient  
14 and if -- and I'm making a lot of hypotheticals here --  
15 on Tuesday we were to issue a -- we were to agree with  
16 you and issue a Motion to Compel and that information was  
17 ultimately provided to you by the 17th, you would be able  
18 to utilize that as part of your rebuttal testimony by the  
19 27th; correct?

20 MR. RAPPOLD: I think it will be part of our  
21 direct testimony. Yeah. It would be part of our direct  
22 testimony.

23 CHAIRMAN NELSON: And based on what you've asked  
24 for today, that would certainly be workable. But I think  
25 in the alternative, based on our Motion from last week,

1 you'd also be able to include it in your rebuttal.

2 Now I'm going to go to Mr. Taylor and ask him is  
3 what I have stated your understanding also?

4 MR. TAYLOR: Excuse me. I don't have much of a  
5 voice today, Mr. Nelson.

6 Our proposition is is that if Mr. Rappold has  
7 expert witness testimony that he needs more time to file,  
8 we're agreeable to give him until the 24th to file his  
9 expert witness testimony, experts being persons who have  
10 scientific or some other special knowledge,  
11 qualifications, and who want to render an opinion as to  
12 an issue. So we're amenable to him having until the 24th  
13 to file expert witness testimony.

14 If he has lay persons who he wants to file  
15 testimony on, that's a different story. So expert  
16 witness testimony by the 24th. We'll supply our rebuttal  
17 to the expert witness testimony on or before the day the  
18 hearing starts.

19 Any issues that are resolved on the 14th, issues  
20 that relate to lay discovery or -- I said that wrong.  
21 I'm sorry.

22 Issues that relate to discovery on the 14th  
23 we'll just have to address those on the 14th when they  
24 play out.

25 CHAIRMAN NELSON: Okay. That's fair enough.



1           Mr. Rappold, is there anything else that you  
2 want to bring to our attention before I go through the  
3 list of Intervenor attorneys?

4           MR. RAPPOLD: No. I think we've addressed the  
5 issues here, and I would just encourage the Commission to  
6 work with both myself and Mr. Taylor in our resolution of  
7 this problem, as far as extending the deadline for expert  
8 testimony to the 24th.

9           CHAIRMAN NELSON: Thank you. I appreciate  
10 that.

11           I'm going to go to Staff first.

12           Ms. Edwards.

13           MS. EDWARDS: Thank you. Kristen Edwards from  
14 Staff.

15           Staff has nothing to add and takes no position,  
16 but as always we are very familiar with the Docket and  
17 are willing to provide any input the Commission  
18 requests.

19           CHAIRMAN NELSON: Thank you.

20           Ms. Craven.

21           MS. CRAVEN: I have nothing further to add.

22           CHAIRMAN NELSON: Thank you.

23           Ms. Hilding.

24           MS. HILDING: Sorry. I was on mute. Nothing.

25 Thank you.

1           CHAIRMAN NELSON: Thank you.

2           Mr. Blackburn.

3           MR. BLACKBURN: Bold Nebraska speaks in support,  
4 and will support, of Rosebud Sioux Tribe's Motion.

5           Thank you.

6           CHAIRMAN NELSON: Thank you.

7           Mr. Clark.

8           MR. CLARK: Yes, sir. It looks like they worked  
9 it out. But I would say, like Mr. Blackburn, said we  
10 support Rosebud Sioux's Motion and hope you grant it.

11          Thank you, sir.

12          CHAIRMAN NELSON: Thank you. I'm going to go  
13 around to the top.

14          Bruce Ellison, have you joined us?

15          MR. ELLISON: Yes, sir. I have nothing further  
16 to add.

17          CHAIRMAN NELSON: Thank you.

18          And, Ms. Real Bird, have you joined us?

19          MS. REAL BIRD: Yes, sir. For the Yankton Sioux  
20 Tribe, we are in support of Rosebud's Motion. Glad to  
21 see the parties have seemingly worked it out, and nothing  
22 further to add.

23          CHAIRMAN NELSON: Very good.

24          With that, I'm going to go to questions from  
25 Commissioners.

1 COMMISSIONER HANSON: None from me, Chris.

2 CHAIRMAN NELSON: Thank you, Gary.

3 Commissioner Fiegen.

4 COMMISSIONER FIEGEN: None.

5 CHAIRMAN NELSON: Thank you.

6 Is there a Motion?

7 I will move in HP14-001 that the Commission  
8 grant Rosebud Sioux Tribe's Motion to the extent that the  
9 deadline for Rosebud to file their expert prefiled  
10 testimony be moved to April 24 and that the deadline for  
11 Keystone to file their responsive testimony to that be  
12 moved to May 5.

13 Before I go to discussion, I'm just going to ask  
14 both Mr. Rappold and Mr. Taylor if you're both  
15 comfortable with that Motion.

16 Mr. Rappold.

17 MR. RAPPOLD: Yes, sir. I am comfortable with  
18 that Motion.

19 CHAIRMAN NELSON: Thank you.

20 MR. Taylor.

21 MR. TAYLOR: Same. Excuse me. Yes.

22 CHAIRMAN NELSON: Thank you.

23 Discussion from the Commission.

24 I will simply say I appreciate both Mr. Rappold  
25 and Mr. Taylor getting together earlier today to work

1 this out. I know this is just the tip of an iceberg of  
2 the issues that we're going to deal with over the next  
3 few days, but I appreciate your amicably working through  
4 this one for us.

5 Other discussion on the Motion.

6 Hearing none, all those in favor will vote aye.  
7 Those opposed, nay.

8 Commissioner Hanson.

9 COMMISSIONER HANSON: Aye.

10 CHAIRMAN NELSON: Commissioner Fiegen.

11 COMMISSIONER FIEGEN: Fiegen votes aye.

12 CHAIRMAN NELSON: Nelson votes aye.

13 The Motion carries.

14 That is the only issue that we have today.

15 Is there a motion to adjourn?

16 COMMISSIONER HANSON: Move to adjourn.

17 CHAIRMAN NELSON: Moved to adjourn.

18 All those in favor will vote aye. Those  
19 opposed, nay.

20 Commissioner Hanson.

21 COMMISSIONER HANSON: Aye.

22 CHAIRMAN NELSON: Commissioner Fiegen.

23 COMMISSIONER FIEGEN: Fiegen votes aye.

24 CHAIRMAN NELSON: Nelson votes aye.

25 We are adjourned.

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Thank you, everyone.

(The hearing is concluded at 3:44 p.m.)

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY )

4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 9th day of April,  
11 2015, and that the attached is a true and correct  
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 27th day of  
14 April, 2015.

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Cheri McComsey Wittler,  
Notary Public and  
Registered Professional Reporter  
Certified Realtime Reporter

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<b>1</b>	<p><b>adjourn</b> [3] - 12:15, 12:16, 12:17</p> <p><b>adjourned</b> [1] - 12:25</p> <p><b>agree</b> [1] - 7:15</p> <p><b>agreeable</b> [1] - 8:8</p> <p><b>agreed</b> [1] - 5:3</p> <p><b>agreement</b> [2] - 5:4, 5:25</p> <p><b>alternative</b> [1] - 7:25</p> <p><b>amenable</b> [1] - 8:12</p> <p><b>amicably</b> [1] - 12:3</p> <p><b>ample</b> [1] - 5:6</p> <p><b>anyway</b> [1] - 6:10</p> <p><b>appointed</b> [1] - 14:8</p> <p><b>appreciate</b> [4] - 4:10, 9:9, 11:24, 12:3</p> <p><b>April</b> [8] - 1:9, 2:4, 3:4, 4:21, 5:5, 11:10, 14:10, 14:14</p> <p><b>attached</b> [1] - 14:11</p> <p><b>attention</b> [1] - 9:2</p> <p><b>attorneys</b> [1] - 9:3</p> <p><b>Avenue</b> [1] - 2:3</p> <p><b>aye</b> [8] - 12:6, 12:9, 12:11, 12:12, 12:18, 12:21, 12:23, 12:24</p>	<p>14:19</p> <p><b>CERTIFY</b> [1] - 14:8</p> <p><b>Chairman</b> [1] - 3:3</p> <p><b>CHAIRMAN</b> [26] - 1:12, 1:13, 3:1, 4:2, 5:23, 6:9, 7:11, 7:23, 8:25, 9:9, 9:19, 9:22, 10:1, 10:6, 10:12, 10:17, 10:23, 11:2, 11:5, 11:19, 11:22, 12:10, 12:12, 12:17, 12:22, 12:24</p> <p><b>CHERI</b> [1] - 14:5</p> <p><b>Cheri</b> [2] - 1:24, 14:18</p> <p><b>Chris</b> [1] - 11:1</p> <p><b>CHRIS</b> [1] - 1:12</p> <p><b>clarity</b> [1] - 6:4</p> <p><b>Clark</b> [1] - 10:7</p> <p><b>CLARK</b> [1] - 10:8</p> <p><b>clear</b> [1] - 7:12</p> <p><b>comfortable</b> [2] - 11:15, 11:17</p> <p><b>coming</b> [1] - 4:16</p> <p><b>Commission</b> [7] - 3:2, 3:5, 5:4, 9:5, 9:17, 11:7, 11:23</p> <p><b>COMMISSION</b> [3] - 1:1, 1:11, 1:14</p> <p><b>Commissioner</b> [6] - 5:24, 11:3, 12:8, 12:10, 12:20, 12:22</p> <p><b>COMMISSIONER</b> [8] - 1:13, 11:1, 11:4, 12:9, 12:11, 12:16, 12:21, 12:23</p> <p><b>Commissioners</b> [4] - 3:5, 4:9, 5:13, 10:25</p> <p><b>Compel</b> [1] - 7:16</p> <p><b>compelled</b> [1] - 5:8</p> <p><b>completed</b> [1] - 4:15</p> <p><b>concluded</b> [1] - 13:2</p> <p><b>confirmed</b> [1] - 5:20</p> <p><b>consideration</b> [1] - 4:21</p> <p><b>consistent</b> [1] - 7:4</p> <p><b>construct</b> [1] - 3:11</p> <p><b>CONSTRUCT</b> [1] - 1:6</p> <p><b>correct</b> [3] - 6:1, 7:19, 14:11</p> <p><b>correspondence</b> [1] - 4:19</p> <p><b>COUNTY</b> [1] - 14:3</p> <p><b>Craven</b> [1] - 9:20</p> <p><b>Craven</b> [1] - 9:21</p> <p><b>CRR</b> [1] - 1:24</p>	<p>14:7, 14:13</p> <p><b>DAKOTA</b> [2] - 1:2, 14:1</p> <p><b>Darren</b> [1] - 1:17</p> <p><b>date</b> [1] - 5:4</p> <p><b>Dated</b> [1] - 14:13</p> <p><b>dates</b> [1] - 5:25</p> <p><b>days</b> [1] - 12:3</p> <p><b>deadline</b> [4] - 4:21, 9:7, 11:9, 11:10</p> <p><b>deal</b> [3] - 3:14, 3:17, 12:2</p> <p><b>dealing</b> [1] - 3:8</p> <p><b>different</b> [1] - 8:15</p> <p><b>direct</b> [2] - 7:21</p> <p><b>disclosed</b> [1] - 4:24</p> <p><b>discovery</b> [5] - 4:14, 4:16, 6:18, 8:20, 8:22</p> <p><b>discussed</b> [2] - 4:12, 4:19</p> <p><b>discussion</b> [3] - 11:13, 11:23, 12:5</p> <p><b>DO</b> [1] - 14:8</p> <p><b>DOCKET</b> [1] - 1:5</p> <p><b>Docket</b> [3] - 3:8, 3:11, 9:16</p> <p><b>documents</b> [1] - 6:21</p> <p><b>duly</b> [1] - 14:8</p> <p><b>duly-appointed</b> [1] - 14:8</p>	<b>F</b> 1
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