

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)
)

ORDER GRANTING
KEYSTONE'S MOTION TO
STRIKE TESTIMONY AND
EXHIBITS OF CINDY MYERS

HP14-001

On September 15, 2014, TransCanada Keystone Pipeline, LP (TransCanada) filed with the South Dakota Public Utilities Commission (Commission) a Petition for Order Accepting Certification under SDCL §49-41 B-27 seeking an order accepting certification of the energy facility permit issued in Docket HP09-001 for construction of the Keystone XL Pipeline. On June 29, 2010, the Commission issued an Amended Final Decision and Order; Notice of Entry granting a permit to TransCanada for construction of the Keystone XL Pipeline. TransCanada now seeks an order accepting certification pursuant to SDCL 49-41 B-27. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41 B, specifically 49-41 B-27, and ARSD Chapter 20:10:22.

On September 18, 2014, the Commission electronically transmitted notice of the filing and the intervention deadline of October 15, 2014, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On October 1, 2014, the Commission issued an Order Assessing Filing Fee. Applications for Party Status were received from forty-three persons, and on November 4, 2014, the Commission issued an Order Granting Intervention and Party Status to forty-two of the applicants. On December 17, 2014, the Commission issued an Order Granting Motion to Define Issues and Setting Procedural Schedule. An evidentiary hearing was held July 27 - August 1, and August 3 - 5.

On April 2, 2015, pursuant to the Commission's scheduling order, Cindy Myers filed pre-filed testimony. Cindy Myers participated as a pro se intervenor. On August 3, 2015, Ms. Myers testified on her own behalf at the evidentiary hearing. TransCanada objected to much of her testimony and exhibits. However, in the interest of time, it was agreed that TransCanada would submit its objections in writing to be ruled on at a later date. On September 21, 2015, TransCanada filed Keystone's Motion to Strike Testimony and Exhibits of Cindy Myers (Motion to Strike).

In its Motion to Strike, TransCanada requested that certain exhibits be excluded and that certain prefiled testimony and live testimony offered at the evidentiary hearing be stricken. TransCanada sought to exclude the following exhibits: 6001, 6003, 6004, 6005, 6016, 6022, 6024, 6027, 6028, 6030, 6031, 6032, 6034, 6035, 6036, 6037, Cindy Myer's Power Point, and Plastic Water Line Survey Results.

TransCanada requested the following excerpts from Ms. Myers' prefiled testimony be stricken:

1. On page 1, under the subtopic "Introduction," the statement contained in the first paragraph under the subtopic Introduction;
2. On page 2, under the topic "Toxicity," the first, second, and third paragraphs;
3. On page 3, under the subtopic "Aquifers," the first paragraph, the second paragraph, and the third paragraph;
4. On page 3, under the subtopic "Waterways," the third paragraph;
5. On page 4, the section under subtopic "Impact Assessment" in its entirety;
6. On page 4, under the subtopic "Medical Preparedness," the second paragraph, third paragraph, fifth paragraph, seventh paragraph, and eighth paragraph;
7. On page 6, under the subtopic "Are Water Treatment Plants Prepared in South Dakota,"

- the section in its entirety; and
8. On page 6, the entirety of subtopic "Dr. Madden Testimony."

TransCanada's Motion to Strike also sought an order striking the following testimony from the transcript of Cindy Myers' live testimony at the evidentiary hearing:

1. 1659:6 through 1660:13;
2. 1660:25;
3. 1661:1-14;
4. 1661:15-19;
5. 1662:10-15;
6. 1662:19-25;
7. 1663:1;
8. 1663:2-7;
9. 1663:11-20;
10. 1665:2-10;
11. 1666:4-8;
12. 1666:20-25;
13. 1667:1-12; and
14. 1673:8-11.

At its October 29, 2015, at its regular Commission meeting, the Commission considered the Motion to Strike. Chair Nelson moved to grant TransCanada's Motion to Strike, subject to the clarifications made during the hearing. Commissioner Hanson moved to amend the motion to exclude Exhibit 6001 from the Motion to Strike. The motion to amend failed. Finding that TransCanada was correct in the evidentiary objections raised in its Motion to Strike, the Commission unanimously voted to grant TransCanada's Motion to Strike, with clarifications made during the hearing on the Motion to Strike. Those clarifications were 1) TransCanada's request to strike transcript testimony 1659:6-1660:13 should be 1659:6-1660:15; 2) TransCanada's request to strike the first paragraph under "Aquifers" applies to the entire paragraph; the request to strike the second paragraph under "Aquifers" excludes the first sentence of the second paragraph; 3) the request to strike the third paragraph under "Aquifers" refers to the entire paragraph; and 4) the request to strike the third paragraph under "Waterways" should be the second paragraph. It is therefore

ORDERED, that TransCanada's Motion to Strike is granted with the clarifications described above.

Dated at Pierre, South Dakota, this 4th day of November, 2015.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.	
By:	<u>Polayne West</u>
Date:	<u>11-6-15</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Chris Nelson
CHRIS NELSON, Chairman

Kristie Fiegen
KRISTIE FIEGEN, Commissioner

Gary Hanson
GARY HANSON, Commissioner