

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

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

ROSEBUD SIOUX TRIBE'S
RESPONSE TO KEYSTONE'S
MOTION IN LIMINE TO
RESTRICT TESTIMONY
OF CHIEF LEONARD CROW
DOG

HP14-001

For its response to Keystone's Motion in Limine to Restrict Testimony of Chief Leonard Crow Dog, the Rosebud Sioux Tribe states the following:

By filing dated July 10, 2015, Keystone seeks to restrict testimony of Chief Leonard Crow Dog, to limit the testimony of Chief Leonard Crow Dog and finally to prohibit Chief Leonard Crow Dog from testifying at the certification hearing. Keystone has asked for three completely different, conflicting types of relief put forward in its motion. Because they have done so, the Motion must be denied because it is impossible to formulate a meaningful response to the multiple and conflicting requests for relief. Accordingly, an order granting relief in this situation necessarily violates Rosebud's due process rights.

First Keystone alleges that the pre-filed written testimony of Chief Leonard Crow Dog does not conform to the Commission's rules for filing testimony and should be rejected for that reason alone. This suggestion is without merit as ARSD 20:10:01:22:06 "Written Testimony" provides that "the front page of all written testimony shall show the docket number, docket name and name of witness." The pre-filed rebuttal testimony of Chief Leonard satisfies all of these requirements. Keystone next alleges that the testimony should be precluded because it appeared that he would testify to matters related to aboriginal land claims. Chief Leonard Crow Dog has

knowledge unique to these proceedings because of his ancestral relationship to the Great Sioux Nation and the Rosebud Sioux Tribe both of which have occupied the area known as the State of South Dakota for a time period longer than most people here can comprehend. Just because he states that this is one of the areas that he obtains his knowledge from, does not mean that he will testify to aboriginal land issues. This concept is a part of the foundation for his knowledge and testimony, not his testimony. The fact that the Commission has chosen to disregard these issues and exclude testimony related to aboriginal land does not make them any less relevant or of any less importance to the outcome of these proceedings.

Keystone also alleges that the Commission directed that rebuttal testimony be presented in writing and in a form that allows the other parties to understand what the witness will say and offer as proof. Rosebud submits that there is no Commission rule that adopts the requirements suggested by Keystone. Even if there is such a rule, the testimony complies with such requirements. A review of the testimony reveals the following – Leonard Crow Dog’s rebuttal testimony states the following:

1. “I have come to testify today to refute the assertions put forth by TransCanada with ask the Commission to certify their permit.”
2. “I will rebut the testimony of Corey Goulet as it pertains to Keystone’s petition for certification.”
3. “Your permit would unlawfully allow this pipeline to pass through our aboriginal land without due regard and consideration afforded to the views of all the tribes here today and the impact that the pipeline will have upon our people and on our other relatives.”
4. “This will be done in violation of international human rights laws and traditional Lakota laws.”

Keystone also seeks three different types of relief all in the same motion pertaining to the same witness. Keystone seeks to restrict his testimony, to limit his testimony and to prohibit his testimony. A simple basic, look at the dictionary provides the meanings of each of these words. “Restrict” means to 1: “to confine within bounds.” “Limit” is “a: something that bounds, restrains, or confines” or b: “the utmost extent.” “Prohibit” means “1: to forbid by authority” or “2 a: to prevent from doing something or b: “preclude.”

See <http://www.merriam-webster.com/dictionary/restrict>; <http://www.merriam-webster.com/dictionary/limit> and <http://www.merriam-webster.com/dictionary/prohibit>.

It is not possible for the Commission to grant the three types of requested relief, because each of the requests for relief conflicts with the others. Such a result violates basic principle and concepts of due process.

Keystone also complains of the form of the testimony because they claim that the witness needs to be interviewed in English; translated into Lakota and then have the answers which are provided in the Lakota language get translated back into English for written testimony purposes. This demand is unreasonably burdensome and prejudicial to Rosebud and offensive to the witness. The tribe and the witnesses traditions are based on an oral history. To require the witness to testify in a manner that is contrary to his understanding of fair play is repugnant to fundamental notions of due process and fair play. The Tribe has a right to due process and that includes having its witnesses to testify in their native tongue if that witness so chooses. Neither the witness, nor the tribe will succumb to the desires and demands of a foreign corporation whose only goal is to profit from the monetary gain that is obtained from the whole sale destruction of Unci Maka (grandmother motherearth) and the witnesses homeland in blatant disregard of tribal rights and history in this area. Additionally, Keystone presents skeletal

testimony on the issues. They do not provide detailed direct testimony, yet demand that the Commission require this particular witness to do something that they themselves have not done. Again this is nothing more than Keystone requesting that the Commission create one set of rules for Keystone and Staff and a different set of rules for all of the other parties. This is a result that is not supported by law and should be rejected.

CONCLUSION

Based on the foregoing Rosebud requests the PUC to deny Keystone's motion Concerning Procedural Issues at the Evidentiary Hearing.

Dated this 17th day of July, 2015.

RESPECTFULLY SUBMITTED:

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