

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

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| IN THE MATTER OF: |) | Docket HP 14-001 |
| |) | |
| PETITION OF TRANSCANADA |) | STATEMENT AND OBJECTIONS |
| KEYSTONE PIPELINE, LP FOR ORDER |) | ON BEHALF OF INTERTRIBAL |
| ACCEPTING CERTIFICATION OF |) | COUP REGARDING SUBMISSION |
| PERMIT ISSUED IN DOCKET HP09-001 |) | OF WRITTEN TESTIMONY |
| TO CONSTRUCT THE KEYSTONE XL |) | |
| PIPELINE |) | |

Comes now the Intertribal Council On Utility Policy (COUP), by and through counsel, hereby joins with Dakota Rural Action in submitting the following statement and objections concerning the South Dakota Public Utilities Commission’s (“Commission”) Order Granting Motion to Define Issues and Setting Procedural Schedule dated December 17, 2014 (the “Scheduling Order”).

Witnesses for Intertribal COUP

This statement and the objections contained herein are applicable to the following witnesses Intertribal COUP has previously disclosed to TransCanada Keystone Pipeline, LP (“TransCanada”), namely: Dr. George Seiestad, Dr. Robert Oglesby and Dr. James Hansen.

Objections to Requirement for Submission of Written Testimony

Over the objections of several interveners in this proceeding, the Commission complied with TransCanada’s request to adopt a highly-accelerated schedule for these proceedings and issued the present Scheduling Order.

Despite motions filed by the intervening Rosebud and Standing Rock Sioux Tribes to amend the Scheduling Order to allow time for meaningful discovery and, thereby, procedural and substantive due process to all the interveners, on March 31, 2015 the Commission again, with a minor exception of a few extra days only for Rosebud, complied with TransCanada's desire to maintain the schedule set forth in the Scheduling Order.

Intertribal COUP supports and joins Dakota Rural Action in objecting to the Commission's requirement that parties submit and serve pre-filed direct testimony by April 2, 2015, because this requirement exceeds the Commission's statutory authority. The PUC's authority for requiring the submission of written testimony is found in Section 20:10:01:22.06 of the Commission's Regulations, which provides that:

"When ordered by the commission in a particular proceeding, testimony and exhibits shall be prepared in written form, filed with the commission, and served on all parties prior to the commencement of hearing on such dates as the commission prescribes by order. The front page of all prefiled testimony shall show the docket number, docket name, and name of the witness."

This regulation, adopted pursuant to authority granted to the Commission under SDCL §49-1-11, states in relevant part that:

"The Public Utilities Commission may promulgate rules pursuant to chapter 1-26 concerning: ... (4) Regulation of proceedings before the commission, including forms, notices, applications, pleadings, orders to show cause and the service thereof, ***all of which shall conform to those used in South Dakota courts***; ..." (emphasis added).

As Dakota Rural Action noted in its April 2, 2015 submission, the South Dakota Rules of Civil Procedure provides no basis for requiring a party to submit written testimony of witnesses in advance of a hearing, citing SDCL §15-6-43(a) which explicitly provides that “[i]n all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by this chapter or by the South Dakota Rules of Evidence.” In analyzing statutory language for legislative intent, the South Dakota Supreme Court adheres to two primary rules of statutory construction. “The first rule is that the language expressed in the statute is the paramount consideration. The second rule is that if the words and phrases in the statute have plain meaning and effect, we should simply declare their meaning and not resort to statutory construction. When we must, however, resort to statutory construction, the intent of the legislature is derived from the plain, ordinary and popular meaning of statutory language.” *R.B.O. v. Congregation of Priests of Sacred Heart, Inc.*, 806 N.W.2d 907, 914 (S.D. 2011), citing *State Auto Insurance Cos. v. B.N.C.*, 702 N.W.2d 379, 386 (S.D. 2005).

Here, the plain meaning of the applicable statutes is clear. Intertribal COUP agrees with the DRA in maintaining that the Rules of Civil Procedure clearly do not provide for submission of pre-filed written testimony, SDCL §15-6-43(a) requires oral testimony, and the Commission’s enabling statute, at SDCL §49-1-11, requires that its rules of procedure conform to those used in South Dakota’s courts. COUP joins in the assertion that, to the extent that the Commission seeks to require interveners to submit written testimony of witnesses, the Commission has exceeded its statutory authority.

Scope of Intended Witness Testimony

Maintaining our foregoing objection, Intertribal COUP intends to call three witnesses to testify with respect to three aspects of climate change. First, DRA intends to call witnesses to testify as to TransCanada's failure to comply with conditions previously imposed by the Commission in connection with TransCanada's construction of the original XL Pipeline through South Dakota. TransCanada's non-compliance with the Commission's conditions set for that project relate principally to TransCanada's failure to meet its obligations with respect to reclamation of land damaged during the course of pipeline construction. This evidence is relevant because it demonstrates TransCanada's unwillingness or inability to comply with Amended Conditions 13, 15, 16, 26, and 27 of the Amended Final Decision and Order in HP 09-001.

The proposed TransCanada Keystone XL pipeline has been designed to carry Tar Sands from Alberta to Texas, through Montana, South Dakota and Nebraska, and the SD PUC Permit of 2010 was issued with little or no concern with regards to its impact of accelerating the progression and impacts on the changing of our climate globally or along the project route, or of a changing climate on its route and operation. Over the last four years there have indeed been significant changes nationally and globally in our greater appreciation for the need of pipeline safety, of the growing scarcity of water resources over the next century and of our awareness of the threats of climate change holds for the region, such as to warrant far greater appreciation and consideration by the PUC to these concerns than was given in the 2009-2010 permit proceeding.

Pursuant to the Commission's Order Granting Motion to Define Issues and Setting Procedural Schedule, Petitioner ICoup, offers the following direct testimony of:

Dr. George A. Seielstad is the former Director of the Northern Great Plains Center for People and the Environment at the University of North Dakota will testify on the realities of climate change in this region of South Dakota and potential impacts of that spills and leaks from this project may have on the already scarce ground and surface water resources, especially in West River, SD, from pipeline leaks and spills;

Dr. Robert J. (Bob) Oglesby is a professor of climate modeling in the School of Natural Resources with a joint appointment in the Department of Earth & Atmospheric Sciences, at the University of Nebraska at Lincoln, will testify on the nature of the natural variation in regional climate over past centuries and millennia in the region and what the future is likely to hold with regard to our changing climate; and,

Dr. James Hansen, formerly Director of the NASA Goddard Institute for Space Studies, is an Adjunct Professor at Columbia University's Earth Institute, where he directs a program in Climate Science, Awareness and Solutions, and will testify on the potential impact of the Tar Sands development to the planet's narrowing atmospheric carbon budget; and the 'changes in the level and significance our national understanding' of climate change in the past four years.

No Waiver by Intertribal COUP

In submitting the names of Intertribal COUP's witnesses and the scope of their testimony, COUP does not waive any of the foregoing objections raised. Nor does COUP waive its objections by virtue of submitting pre-filed written testimony with respect to any other witness. Intertribal COUP supports and joins Dakota Rural Action's suggestion of setting an explicit date of April 21, 2015, for the submission of witness and exhibit lists, as the Commission itself left open the possibility that parties may name additional witnesses as of the April 21, 2015 date. Intertribal COUP reserves the right to name additional witnesses up to and including that date.

Submitted this 2nd day of April 2015

Respectfully submitted,



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CERTIFICATION OF SERVICE

I, Robert Gough, hereby certify that on the 2nd day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of the **STATEMENT AND OBJECTIONS ON BEHALF OF INTERTRIBAL COUP REGARDING SUBMISSION OF WRITTEN TESTIMONY**, to the following:

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Dated this 2nd Day of April, 2015.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'R. P. Gough', written over a horizontal line.

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