

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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HP 14-001

IN THE MATTER OF THE APPLICATION	:	
BY TRANSCANADA KEYSTONE	:	
PIPELINE, LP FOR A PERMIT UNDER THE	:	
SOUTH DAKOTA ENERGY CONVERSION	:	
AND TRANSMISSION FACILITIES ACT TO	:	KEYSTONE'S OPPOSITION TO JOINT
CONSTRUCT THE KEYSTONE XL	:	MOTION FOR CONTINUANCE
PROJECT,	:	
	:	
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Applicant TransCanada Keystone Pipeline, LP (“Keystone”) submits this response to the joint motion for a continuance dated April 24, 2015, which has been noticed for hearing at 9:00 a.m. on Monday, April 27, 2015. For the following reasons, Keystone respectfully requests that the motion be denied.

1. The evidentiary hearing is set to begin on May 5, 2015, based on the Commission’s scheduling order dated December 17, 2014. Keystone’s certification petition was filed on September 15, 2014.
2. The Intervenor bears the burden of showing good cause for a continuance of the hearing. *See* SDCL § 15-6-16 (“[a] schedule shall not be modified except by leave of the judge upon a showing of good cause”). The most relevant factor to consider “is usually the effect that the amendment will have on delaying the ultimate disposition of the case.” *Tosh v. Schwab*, 2007 S.D. 132, ¶ 24, 743 N.W.2d 422, 430. Other relevant factors include prejudice to the opposing party; whether the continuance motion was motivated by procrastination, bad planning, or

dilatory tactics; prejudice caused to the moving party by denial of the continuance; and prior continuances or delays. *Id.* ¶ 25, 743 N.W.2d at 430. Ultimately, “a continuance may properly be denied when the party had ample time for preparation or the request for a continuance was not made until the last minute.” *State v. Moeller*, 2000 S.D. 122, ¶ 7, 616 N.W.2d 424, 431.

3. The Commission has within the last month entered two orders denying a continuance of the hearing. By order dated April 2, 2015, the Commission denied a request by the Standing Rock Sioux Tribe to continue the hearing date. By order dated April 22, 2015, the Commission denied a joint motion for a stay of proceedings.

4. The basis for the current joint motion is discovery responses that Keystone provided in response to the Commission’s orders granting several motions to compel discovery. As stated in the motion, Keystone produced substantial documents in response to the Commission’s orders and the discovery requests, and did so within the three days ordered by the Commission. The Intervenor now object that they got the relief they requested.

5. As already established by affidavit, Keystone served written discovery objections on January 23, 2015, before the deadline to respond to the first round of written discovery on February 6, 2015. The Intervenor had ample time to raise discovery issues with Keystone and to file discovery motions without altering the procedural schedule. The earliest motion that was filed, however, was on March 25, 2015, and the other motions were not filed until April 7, 2015. The fact that the procedural order originally did not include a deadline for discovery motions did not mean that they could not be filed, as the Standing Rock Sioux Tribe’s motion dated March 25 proves.

6. Keystone would be prejudiced by a continuance of the hearing date. Keystone has met all of the deadlines in the Commission’s scheduling order. It has submitted its prefiled

testimony. It has prepared rebuttal testimony to be submitted on April 27, 2015, the deadline. It received on April 24, 2015, new prefiled testimony from the Rosebud Sioux Tribe, to which it has until May 5 to submit rebuttal testimony. It is finalizing its witness and exhibit lists, which are due on April 28, 2015. Its witnesses have arranged their schedules to appear in person at the hearing beginning on May 5, and Keystone has made travel, hotel, and other logistical arrangements for the hearing. Keystone has a right to a timely evidentiary hearing on its petition, which has been pending since mid-September of last year, and a final decision from the Commission.

7. If the Commission continues the hearing date, no doubt there will follow further discovery motions, perhaps additional discovery requests, further requests for additional time, and requests to disclose additional witnesses or revised testimony. The work that has been done to date in good faith and in full compliance with the procedural order will be for naught.

8. Keystone relies on its earlier arguments that the due process objections to the current procedural order are without merit. The Intervenors have received and will continue to receive through the evidentiary hearing a fair opportunity to be heard.

9. This is a limited proceeding. It is not a retrial of the permit proceeding in HP09-001. The fact that the Intervenors want to raise questions that could have been but were not raised in that proceeding does not change the nature of the current proceeding. It is statutorily limited to determining whether Keystone can continue to meet the conditions on which the permit was granted. SDCL § 49-41B-27. The Commission's procedural schedule took that into account, and so should its ruling on the pending motion.

For all of these reasons, Keystone respectfully requests that the joint motion for continuance be denied.

Dated this 24th day of April, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Opposition to Joint Motion for Continuance, to the following:

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