
**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

**GARY DORR'S
MOTION TO JOIN JOINT
MOTION BY STANDING ROCK,
CHEYENNE RIVER, ROSEBUD,
AND YANKTON SIOUX TRIBES,
DAKOTA RURAL ACTION,
INDIGENOUS ENVIRONMENTAL
NETWORK, INTERTRIBAL COUP,
AND BOLD NEBRASKA TO
EXCLUDE EVIDENCE AND
TESTIMONY BY TRANSCANADA**

HP14-001

Gary Dorr (“Dorr”), *pro se*, joins the above named interveners to move for an order excluding the introduction of evidence and testimony by Keystone and striking its pre-filed testimony from the record in this docket. Dorr request this relief for the reasons asserted in the Joint Motion to Exclude Evidence Testimony by TransCanada, as well as for the following reasons:

1. Keystone failed to fully comply with Dorr’s First and second Interrogatories and Request for Documents to TransCanada in violation of the South Dakot Rules of Civil Procedure. On 6 January 2015, Dorr requested “**3. Provide proof that the Rosebud Sioux Tribe was consulted about the results of the [cultural resources] survey.**” This question number 3 was in regards to amended permit condition 43(c) and the unanticipated discoveries plan and a cultural survey.

Keystone answered the question regarding amended permit condition 43(c) on February 5th, 2015 (Attachment D) with the reply “**Yes the Rosebud Sioux Tribe was consulted on**

numerous occasions” and then referred Dorr to a summary of government to government consultation with Indian Tribes that can be found at Attachment I of Appendix E and in Sections 3.11.4.3 of the Dept of State FSEIS. Keystone goes on further to state that Appendix E2 of the Dept of State FSEIS (2014) provides a thorough list of consultation dates. Upon reading these pages, there is no indication of any proof of consultation with the Rosebud Sioux Tribe about the results of the Cultural Survey. Attachment I of appendix E (Attachment C) lists several tribes, none of which is the Rosebud Sioux Tribe. Section 3.11.4.3 also lists several tribes, none of which is the Rosebud Sioux Tribe, and provides no indication of whether the subject of whether the subject of any of the consultations was a the cultural survey results. **“Figure 3.11.4-1 Indian Tribes Consulted”** (Attachment A) also shows a map of “Tribes Consulted: locations of Headquarters.” The South Dakota portion of the map appears to show Pine Ridge and possibly Lower Brule and Crow Creek and then possibly Yankton and Ponca tribes. There is a blank spot where Rosebud Sioux Tribe is located. None of the documents listed show that the Rosebud Sioux Tribe was consulted about the results of the Cultural Survey as part of Amended permit condition 43(c). When Dorr asked for proof that the Rosebud Sioux Tribe was consulted about the RESULTS of the Cultural Survey Keystone replied with an answer that is misleading when they said **“Yes,”** and implies without proof that they can continue to meet amended permit condition 43(c). In its answer TransCanada said “Appendix E2 of the Department of State FSEIS (2014) provides the most thorough list of consultation dates.” (Attachment B) TransCanada is right in that it is a thorough list of consultation dates. The list is just that, a list; it has no proof of what the subject of consultation was on any of the dates. TransCanada, by nature of the answer given, has again provided misleading information that leads to the false conclusion that proof of consultation with the Tribes (and specifically the Rosebud Sioux Tribe) about

cultural surveys exists. This would lead to a false determination that TransCanada has continued to meet Amended Permit Condition 43(c). Because the materials provided by Keystone are not responsive to this discovery request, Keystone failed to comply with this discovery request.

2. In request No. 1 of Dorr's Final Interrogatories and Request for Production of Documents, Dorr asked Keystone to "[p]rovide any and all documentation that TransCanada or Keystone complied with its publicly stated policy of consultation with the Tribes and met with the Rosebud Sioux Tribal Council." On 10 March, 2015 (Attachment E) Keystone responded by referring Dorr to attachments "Keystone 1122, 1129-30, 1135-40, 1145-46, 1148-50 and 1170-1181" as proof of consultation with the Rosebud Sioux Tribe. It was not until later that the documents were actually sent to Dorr. None of those documents actually provide proof of consultation with the Rosebud Sioux Tribe, rather they show Consultation with various departments or parts of Rosebud Sioux tribal council. Consultation with the Tribe itself cannot occur unless the full Tribal Council is present. Tribal departments and individual members of the Tribal Council do not have authority to act for the Tribe on these matters, any consultation that might have occurred with them does not constitute consultation with the Tribe. Therefore, the documents provided by TransCanada are not responsive to this discovery request. None of the documents, which were not even provided until a later date, show proof of consultation with the Tribe about the results of the cultural survey as was requested. It is inaccurate to say that these show proof of consultation. As shown by Rosebud Sioux Tribal Resolutions filed with TransCanada by Dorr, the Tribal Council is empowered to act on behalf of the Tribe. Dorr searched these documents for proof of consultation with the Rosebud Sioux Tribe about the results of the cultural survey in hopes that by some stretch of luck they might provide that. They do not. They allude to false conclusions that any type of consultation has occurred. One of the

documents is even from a third party talking about TransCanada to the Tribe. As a result, incorrect information has been provided that is not responsive to the request asked by Dorr.

3. In Dorr's Final Interrogatories and Request for Production of Documents submitted on February 19, 2015, Request No. 5 stated: "***Provide all easement agreements made by TransCanada or Keystone between TransCanada or Keystone and landowners on land where the Keystone XL pipeline will cross the Oglala Sioux Rural Water Supply System, otherwise known as the Mni Wiconi Waterline.***" To date, TransCanada has provided Easement Crossing agreements for (Attachment E) the Hostutler property in Haakon County, and the Iverson Property in Jones County. Dorr is aware and Keystone is aware that the Keystone easement for the Iverson property in Jones County is not where the Keystone XL pipeline will cross the OSRWSS waterline. Keystone has not provided any other easement agreement for any other place where the Keystone XL pipeline will cross any other part of the Oglala Sioux Rural Water Supply System. Dorr has obtained on his own means the **U.S. Easement Agreements** for the OSRWSS and Hostutlers' easement agreement with Keystone. TransCanada has avoided answering this question in its entirety. Dorr has been prejudiced by TransCanada withholding information that it has available to give to Dorr. After the recent hearing where the Motion to Compel by Dorr was denied, Mr. Taylor sat next to Dorr in the back of the room and stated very quietly, "***Gary I know we have those crossing documents somewhere, I'll get a copy of it to you.***" However, Keystone did not send me any crossing documents or any more easements where the Keystone crosses the OSRWSS after making this statement. Mr. Taylor also discussed with Dorr the fact that we agree that Dorr's usage of the term "branch" lines was consistent with Keystone's usage of the term "distribution" lines. Mr. Taylor said to Dorr he would provide Dorr with a copy of the easement crossing agreements for the "distribution lines," even though

the motion to compel was denied. I have not received any of those agreements. This leads me to believe that the documents exist as indicated by Mr. Taylor, but are not being provided to me. Again, the answer provided to Dorr leads to a false conclusion that the documents provided are the information in its entirety. This is a breach of the process of discovery and puts Dorr and the Public Utility Commission at a serious disadvantage to determining if Amended Permit Condition 16 can be met in its entirety.

In addition, Dorr in Question 6 of the same document on Feb 19 asked for proof that TransCanada received approval of crossing specifications from the Oglala Sioux Rural Water Supply System and the Bureau of Reclamation. TransCanada replied on March 10 (attachment E) with *“Keystone and the Bureau of Reclamation have agreed on crossing criteria. The Bureau of Reclamation has discussed the crossing criteria with both the executive and engineering staff of the Oglala Rural Water Supply System.”* That is all they did—just answer with no proof, and no documents were provided. This is not “proof” of any sort and is also a misleading answer. As a result of a completely different question posed by Dorr, TransCanada did provide me with documents about communications with Bureau of Reclamation and also the Oglala Sioux Rural Water Supply System. None of the documents provide proof of **approval** of crossing specifications. In fact in one of the communications between Keystone and Bureau of Reclamation, it talks about the fact that the Department of State will need to provide some sort of approval. TransCanada has provided an answer, however it is not the answer to the question posed by Dorr. The answer provided by TransCanada would be misleading in that it implies that proof has been gained some sort of agreement on crossing criteria with the Bureau of Reclamation. In reality the documents provided as part of a completely different question do not provide that proof. And the answer provided by TransCanada does not in any way provide proof that approval has been gained from anyone to cross the OSRWSS. This is again a matter that is

directly related to Keystone either continuing or not continuing to comply with amended permit Condition 16 and the answer cannot be ruled to be true until proof is provided otherwise. This is a very misleading answer and it is indicative of the fact that Dorr as a pro se intervener has been prejudiced in this process. To allow testimony regarding this evidence would be a serious breach of the rules regarding the discovery process.

4. At this time, there has been ample time for Keystone to provide the discovery requested of them. I have not asked for a great deal of information. I am therefore requesting that as a result of misleading information, denied information, and incomplete information that was provided to me by TransCanada, that TransCanada be excluded from offering Evidence and Testimony. Even after Dorr's motion to compel discovery was denied, Mr. Taylor indicated that evidence did exist and would be provided to Dorr. The late entry of the TransCanada documents 1122-1181 have also been reviewed by Dorr and are found to be misleading in nature and are void of proof that consultation with the Rosebud Sioux Tribe was conducted.

5. Dorr also moves to join the above listed interveners for the reasons listed on their motion to exclude TransCanada from offering evidence and testimony. I think it becomes obvious that there is a history of answers that are not compliant with the Discovery Process here in the South Dakota Public Utility Commission. To allow Keystone to participate by offering evidence and testimony without complying with the rules of discovery would be prejudicial both to the represented interveners and the pro se interveners in this process.

Dated this 1st day of May, 2015.

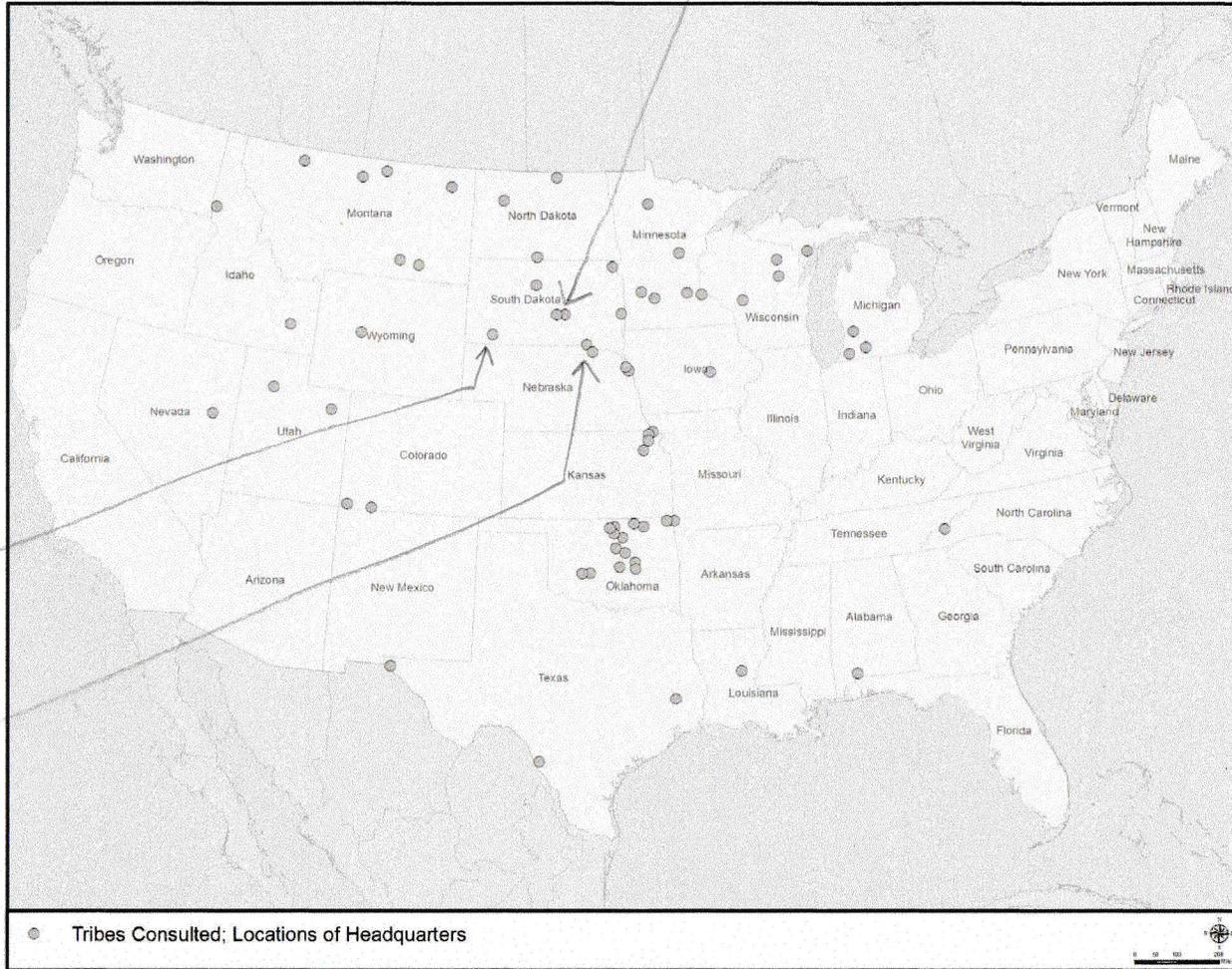
Gary F. Dorr
27853 292d St Winner, SD 57580

Attachment A

Lower Brule
Crow Creek

Pine Ridge

Vankar
Ponca



Source: Esri 2013

Figure 3.11.4-1 Indian Tribes Consulted

Attachment B

Keystone XL Project

Record of Consultation: Indian Tribes and Nations

Indian Tribe or Nation	State	Letters	Telephone	Emails	Faxes	Meetings
Ponca Tribe of Nebraska	NE	1/30/09; 3/30/09; 4/1/09; 4/8/09; 4/22/09; 6/3/09; 6/18/09; 7/13/09; 9/8/09; 9/10/09; 9/28/09; 11/17/09; 11/18/09; 12/24/09; 12/31/09; 4/5/10; 6/9/10; 6/14/10; 7/23/10; 8/13/10; 11/24/10; 12/9/10; 1/16/11; 3/29/11; 6/30/11; 7/8/11; 9/21/12; 10/11/12; 3/20/13; 5/1/13; 6/14/13; 7/16/13; 7/17/13; 9/12/13; 12/24/13	3/18/09; 10/10/12; 10/17/12; 11/5/12; 11/16/12	4/29/09; 5/4/09; 6/25/09; 6/29/09; 7/1/09; 7/6/09; 7/7/09; 7/13/09; 8/4/09; 8/13/09; 9/1/09; 9/10/09; 9/30/09; 10/7/09; 10/9/09; 10/12/09 (2); 10/19/09; 11/3/09; 11/4/09; 11/11/09; 11/17/09; 11/18/09; 11/20/09; 11/17/09; 11/18/09; 11/20/09; 12/31/09; 3/31/10; 5/6/10; 6/2/10; 6/4/10; 6/21/10; 6/23/10; 7/6/10; 7/12/10; 7/16/10; 7/23/10; 8/10/10; 10/15/10; 10/21/10; 10/22/10; 11/3/10; 11/11/10; 11/24/10; 12/7/10; 12/8/10; 12/14/10; 1/12/11; 1/27/11; 1/28/11; 2/22/11; 3/18/11; 3/29/11; 4/18/11; 6/21/11; 6/30/11 (3); 7/1/11; 7/8/11; 7/20/11; 7/22/11; 10/14/13; 10/15/12 (2); 11/2/12; 11/5/12 (2); 11/8/12; 11/16/13; 12/19/13; 1/30/13; 3/4/13; 3/22/13 (2); 4/3/13; 4/9/13; 4/11/13; 4/16/13; 4/23/13; 5/7/13; 5/20/13; 5/21/13; 6/14/13; 7/11/13; 7/16/13; 7/31/13; 12/23/13		5/12/09; 7/14/09; 7/22/10; 7/23/10; 10/26/12; 5/16/13
Prairie Band of Potawatomi Nation, Kansas	KS	1/30/09; 3/30/09; 4/1/09; 9/21/12; 10/11/12; 10/19/12; 3/20/13; 5/1/13; 6/14/13; 7/17/13; 12/24/13	3/18/09; 10/10/12; 10/17/12	10/10/12; 10/17/12 (2); 3/20/13; 5/1/13; 6/14/13; 7/17/13; 12/24/13; 12/23/13		
Prairie Island Indian Community in the State of Minnesota	MN	1/30/09; 3/30/09; 9/21/12; 10/11/12; 10/15/12	3/19/09; 10/10/12	3/19/09; 10/14/12; 10/15/12		
Red Lake Band of Chippewa Indians, Minnesota	MN	1/30/09; 3/30/09; 4/1/09; 9/21/12; 10/11/12; 3/20/13; 5/1/13; 6/14/13; 7/17/13; 12/24/13	3/19/09; 10/10/12; 10/17/12	10/14/12; 3/4/13; 3/22/13; 4/3/13; 4/9/13; 4/23/13; 5/7/13; 6/14/13; 7/11/13; 7/16/13; 7/31/13; 12/23/13		5/16/2013
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota	SD	1/30/09; 2/19/09; 3/30/09; 4/1/09; 4/9/09; 4/22/09; 5/5/09; 5/8/09; 5/22/09; 6/3/09; 6/18/09; 7/13/09; 7/21/09 9/8/09; 9/10/09; 9/28/09; 11/17/09; 11/18/09; 11/30/09; 12/24/09; 12/31/09; 1/6/10; 2/11/10; 4/5/10; 6/9/10; 6/14/10; 6/20/10; 7/23/10; 8/13/10; 10/6/10; 11/24/10; 12/9/10; 1/16/11; 3/29/11; 6/30/11; 7/8/11; 9/21/12; 10/11/12; 3/20/13; 5/1/13; 6/14/13; 7/17/13; 9/12/13; 10/1/13; 12/24/13	3/23/09; 10/12/12; 10/17/12; 9/5/13; 9/20/13	5/4/09; 5/6/09; 6/25/09; 6/29/09; 7/1/09; 7/13/09; 8/4/09; 8/13/09; 9/1/09; 9/10/09; 9/30/09; 10/7/09; 10/9/09; 10/13/09; 10/19/09; 10/21/09; 10/22/09; 10/23/09; 10/26/09; 11/3/09; 11/4/09; 11/11/09; 11/17/09; 11/18/09; 11/20/09; 11/30/09; 12/9/09; 12/31/09; 1/6/10; 2/11/10; 3/31/10; 5/6/10; 6/2/10; 6/4/10; 6/21/10; 6/23/10; 7/6/10; 7/12/10; 7/16/10; 7/23/10; 8/10/10; 10/15/10; 10/21/10; 10/22/10; 11/3/10; 11/11/10; 11/24/10; 12/7/10; 12/8/10; 12/14/10; 1/12/11; 1/27/11; 1/28/11; 2/22/11; 3/18/11; 3/29/11; 4/18/11; 6/21/11; 6/30/11 (3); 7/1/11; 7/8/11; 7/20/11; 7/22/11; 10/15/12; 10/18/12 (2); 2/25/13; 2/27/13; 3/4/13; 3/5/13; 3/22/13; 4/3/13; 4/9/13; 4/23/13; 5/7/13; 6/14/13; 7/11/13; 7/16/13; 7/31/13; 12/23/13; 1/9/14		5/12/09; 7/14/09; 10/20/09
Sac & Fox Nation of Missouri in Kansas and Nebraska	OK	1/30/09; 3/30/09 4/22/09; 6/3/09; 6/18/09; 7/13/09; 9/8/09; 9/10/09; 9/28/09; 11/17/09; 11/18/09; 12/24/09; 12/31/09; 4/5/10; 6/9/10; 6/14/10; 7/23/10; 8/13/10; 11/24/10; 12/9/10; 1/16/11; 3/29/11; 6/30/11; 7/8/11; 9/21/12; 10/11/12; 3/20/13; 5/1/13; 6/14/13; 7/17/13; 12/24/13	3/19/09; 1/21/10; 11/5/10; 11/19/10; 11/26/10; 12/3/10; 10/10/12; 10/17/12	5/4/09; 4/30/09; 5/1/09; 5/15/09; 6/25/09; 6/29/09; 7/1/09; 7/13/09; 8/4/09; 8/13/09; 9/1/09; 9/10/09; 9/30/09; 10/7/09; 10/9/09; 10/19/09; 11/3/09; 11/4/09; 11/11/09; 11/17/09; 11/18/09; 11/20/09; 12/31/09; 3/31/10; 5/6/10; 6/2/10; 6/3/10; 6/4/10; 6/17/10; 6/21/10; 6/23/10; 7/6/10; 7/12/10; 7/16/10; 7/23/10; 8/10/10; 10/15/10; 10/21/10; 10/22/10; 11/3/10; 11/11/10; 11/14/10; 11/22/10; 11/24/10; 12/1/10; 12/7/10; 12/8/10; 12/14/10; 1/12/11; 1/27/11; 1/28/11; 2/22/11; 3/18/11; 3/29/11; 4/18/11; 6/21/11; 6/30/11 (3); 7/1/11; 7/8/11; 7/20/11; 7/22/11		7/24/10; 7/25/10; 12/7/10
Sac & Fox Nation, Oklahoma	KS	1/30/09; 3/30/09; 9/21/12; 10/11/12; 3/20/13; 5/1/13; 6/14/13; 7/17/13; 12/24/13	3/19/09; 10/11/12			
Sac & Fox Tribe of the Mississippi in Iowa	MS	1/30/09; 3/30/09; 4/1/09; 9/21/12; 10/11/12; 3/20/13; 5/1/13; 6/14/13; 7/17/13; 12/24/13	3/19/09; 10/16/12			

ATTACHMENT I

**Summary of Government-to-Government Consultation with Indian Tribes
Since September 2012**

Starting on September 21, 2012, the Department of State (DOS) notified the 84 Indian tribes listed in Appendix B of its intent to amend the Keystone XL Programmatic Agreement (PA) to reflect changes to the proposed Keystone XL Project's route in Keystone's 2012 Presidential permit application. The DOS had previously consulted with these Indian tribes while preparing the Final Environmental Impact Statement (Final EIS) for the Keystone XL pipeline route as described in Keystone's 2008 Presidential permit application. The DOS consulted with 67 Indian tribes, listed in Attachment D, on a government-to-government basis and regularly informed all 67 Indian tribes of the progress on amending the PA. All Indian tribes that participated in consultation were invited in 2013 to sign as Concurring Parties to the Programmatic Agreement, consistent with 36 C.F.R. §§ 800.2(c)(2) and 800.6(c)(3). [Number TBD] Indian tribes informed the DOS that they would like to sign as Concurring Parties.

Of the 67 Indian tribes with which the DOS consulted, the DOS met with 17 Indian tribes, listed below, to discuss the proposed Project and its potential impacts on the environment, cultural resources, and other resources of concern to the consulting Indian tribes. The DOS gave Indian tribes the opportunity to review the proposed Project cultural resources survey reports. On several occasions, the DOS conveyed an invitation to Indian tribes to conduct applicant-funded Traditional Cultural Property (TCP) studies within the proposed Project area of potential effects (APE). All Indian tribes that expressed an interest and provided the necessary documentation were afforded an opportunity to conduct TCP studies within the proposed Project APE. Attachment G lists Indian tribes that submitted scopes of work to conduct TCP studies. The DOS also invited Indian tribes to help develop and participate in the Tribal Monitoring Plan (Attachment E).

In addition to communication by phone, email, and letter, Principal Deputy Assistant Secretary Judith Garber and other DOS officials travelled to areas near the proposed Project route to hold four face-to-face consultations, to which all Indian tribes were invited and whose participation was funded by the applicant. Indian tribes that participated in these meetings and a follow-up teleconference are listed below.

1. Billings, Montana – October 22, 2012

Attended by 5 Indian tribes: Blackfoot Tribe (3 representatives), Chippewa Cree Tribe (4 representatives), Crow Tribe (1 representative), Northern Cheyenne Tribe (1 representative), and Yankton Sioux Tribe (3 representatives).

2. Pierre, South Dakota – October 24, 2012

Attended by 4 Indian tribes: Cheyenne River Sioux Tribe (2 representatives), Crow Creek Sioux Tribe (2 representatives), Standing Rock Sioux Tribe (1 representative), and Yankton Sioux Tribe (2 representatives).

3. Lincoln, Nebraska – October 26, 2012

Attended by 4 Indian tribes: Assiniboine and Sioux Tribes (2 representatives), Kaw Nation (1 representative), Pawnee Nation (4 representatives), and Ponca Tribe of Nebraska (3 representatives).

4. **Rapid City, South Dakota – May 16, 2013**

Representatives of 10 Indian tribes (Northern Arapaho Tribe, Assiniboine and Sioux Tribes, Oglala Sioux Tribe, Yankton Sioux Tribe, Mille Lacs Band of Minnesota Chippewa Tribes, Northern Cheyenne Tribe, Omaha Tribe, Pokagon Band of Potawatomi Indians, Ponca Tribe of Nebraska, and Red Lake Band of Chippewa Indians) were seated for the consultation with Department of State representatives. The meeting could not proceed due to a demonstration.

5. **Teleconference – July 31, 2013**

Representatives of 9 Indian tribes identified themselves in this call: Chippewa Cree Tribe, Choctaw Nation, Confederated Goshute Tribe, Nez Perce Tribe, Oglala Sioux Tribe, Pawnee Nation of Oklahoma, Shoshone-Bannock Tribes, Standing Rock Sioux Tribe, and Yankton Sioux Tribe.

Tallahassee, FL 32308; Heidi Tillquist, Senior Associate, Stantec Consulting Ltd., 2950 E. Harmony Rd., Suite 290, Fort Collins, CO 80528.

2. Prior to answering these interrogatories, have you made due and diligent search of all books, records, and papers of the Applicant with the view of eliciting all information available in this action?

ANSWER: Yes, to the extent reasonably practicable in attempting to respond to over 800 discovery requests within the time allowed.

1(a). Provide proof that TransCanada has obtained consent from the Rosebud Sioux or Great Sioux Nation to pass through the 1868 boundaries of the Great Sioux Nation in accordance with the un-abrogated treaty stipulation in Article 16 of TREATY WITH THE SIOUX-BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE-AND ARAPAHO, 1868, contained in 15 Stats., 635.

ANSWER: The currently permitted route for the KXL pipeline in South Dakota does not pass across any lands owned by the federal government or any South Dakota resident tribe nor does it pass across Indian Country as that term is defined by the laws of the United States. Keystone does not believe that it is required to obtain consent from the Rosebud Sioux Tribe to construct the pipeline project on lands that are within the currently permitted route.

1(b). Provide explanation for how TransCanada is consulting, separate of other applicable Federal laws, with the Rosebud Sioux Tribe about protecting usufructuary and reserved resource rights as contained in the un-abrogated treaty stipulation in Article 11 (...the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River") of the TREATY WITH THE SIOUX-BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE-AND ARAPAHO, 1868, otherwise known as 15 Stats., 635.

ANSWER: The currently permitted route for the pipeline in South Dakota does not pass across any lands owned by the federal government or any South Dakota resident tribe nor does it pass across Indian Country as that term is defined by the laws of the United States. Keystone does not agree that the Treaties of Fort Laramie of 1851 and 1868 create usufructuary rights in lands that are within the KXL pipeline's currently permitted route.

41. Please provide explanation for why TransCanada is consulting with South Dakota and the USFWS but not consulting, separate of other applicable Federal laws, with the Rosebud Sioux Tribal Government despite the fact that the Rosebud Sioux Tribe has a Game, Fish, and Parks Department and a Land Use Code (Rosebud Sioux Tribe Title 18) about protecting usufructuary and reserved resource rights as contained in the

un-abrogated treaty stipulation in Article 11 (...the right to hunt on any lands north of North Platte, and on the Republican Fork of the Smoky Hill River") of the TREATY WITH THE SIOUX-BRULÉ, OGLALA, MINICONJOU, YANKTONAI, HUNKPAPA, BLACKFEET, CUTHEAD, TWO KETTLE, SANS ARCS, AND SANTEE-AND ARAPAHO, 1868, contained in 15 Stats., 635.

ANSWER: Keystone has had numerous consultations with the Rosebud Sioux tribal government and its political subdivisions regarding matters related to the construction of the KXL pipeline. Keystone does not agree that the Treaties of Fort Laramie of 1851 and 1868 create usufructuary rights in lands that are within the KXL pipeline's currently permitted route.

43. Please provide explanation for why TransCanada's unanticipated discoveries plan does not plan to notify the Federally-recognized Rosebud Sioux Tribal Historic Preservation Office (THPO) which also has the right to consultation under Section 106 of the National Historic Preservation Act as the "appropriate" tribe due to the fact that the pipeline passes between several Rosebud Tribal Housing communities, near tribal allotment land, and across established political precincts of the Rosebud Sioux Tribe, and the traditional homelands of those same people in those housing areas, on those allotments, and in those precincts.

ANSWER: Keystone does not believe that any part of its route as currently permitted passes through Indian Country or across tribally owned lands. Keystone recognizes the possibility that undiscovered cultural and/or historic sites may be found in the course of construction. Keystone believes Condition 43 and the provisions provided for therein suitably accommodate cultural and paleontological resource discoveries. Tribal monitors will be hired by Keystone to monitor designated areas during ground disturbing activities relating to construction to assist in managing previously undiscovered cultural and/or historic sites that are found in the course of construction and in complying with the unanticipated discoveries plan.

36(a). Identify all emergency medical response planning being provided to the Rosebud Sioux Tribal Government as contained within the emergency response plan.

OBJECTION AND RESPONSE: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the province of PHMSA. The PUC's jurisdiction over the emergency response plan is preempted by federal law. See 49 C.F.R. Part 194; 49 U.S.C.

60101(c). This request further seeks information that is confidential and proprietary. Public disclosure of the emergency response plan could commercially disadvantage Keystone. Without waiving the objection, the local health authority will have medical

jurisdiction in the event of an incident. The Rosebud Sioux Tribal Government will be invited to participate in Emergency Response Exercises.

36(b). Provide explanation for why the Rosebud Sioux Tribal Government is being excluded from having the emergency management plan filed with them.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the province of PHMSA. The PUC's jurisdiction over the emergency response plan is preempted by federal law. See 49 C.F.R. Part 194; 49 U.S.C. 60101(c). This request further seeks information that is confidential and proprietary. Public disclosure of the emergency response plan could commercially disadvantage Keystone.

36(c). Identify what affect emergencies will have for every tribal housing community, tribal allotments, and political precincts that the pipeline passes through or nearby?

ANSWER: TransCanada will cover costs associated with temporary relocation of tribal residences that are affected by a spill or incident.

36(d). Identify how will rural Tribal housing areas, tribal allotments, and political precincts of the Rosebud Sioux Tribe in and near to the project area be notified of spills or other emergencies?

ANSWER: If it is appropriate under the circumstances to notify political subdivisions of the Rosebud Sioux Tribe, it will be done in the manner provided in the emergency response plan, through contacts with law enforcement agencies and other official representatives of the body politic of the Rosebud Sioux Tribe.

34. Explain why the Rosebud Sioux Tribal Government, which has treaty-reserved and usufructuary rights which have never been abrogated from the Fort Laramie Treaty of 1868, is being excluded from consultation, separate from other applicable federal and state laws, regarding High Consequence Areas?

ANSWER: The currently permitted route for the KXL pipeline in South Dakota does not pass across any lands owned by the federal government or any South Dakota resident tribe nor does it pass across Indian Country as that term is defined by the laws of the United States. Keystone has had numerous consultations with the Rosebud Sioux tribal government and its political subdivisions regarding matters related to the construction of the KXL pipeline. Keystone does not agree that the Treaties of Fort Laramie of 1851 and 1868 create usufructuary rights in lands that are within the KXL pipeline's currently permitted route.

43(a). Provide proof that a proper cultural resources survey was completed, in accordance with accepted methodologies and procedures, and acceptable to federal guidelines as the pipeline crosses boundaries contained in the 1868 Treaty of Fort

Laramie which contains unabrogated treaty-reserved rights of the Rosebud Sioux Tribe among other tribes.

ANSWER: Section 3.11 of the Department of State FSEIS (2014) details the cultural resources work conducted for the Project route in South Dakota, and lists all findings.

43(b). Provide information on who was contracted to conduct the cultural resources survey.

ANSWER: SWCA Environmental Consultants performed the cultural resources surveys.

43(c). Provide proof that the Rosebud Sioux Tribe was consulted about the results of the survey.

ANSWER: Yes, the Rosebud Sioux Tribe was consulted on numerous occasions. A summary of government-to-government consultation with Indian tribes is included as Attachment I of Appendix E and in Section 3.11.4.3 of the Department of State FSEIS (2014). Appendix E2 of the Department of State FSEIS (2014) provides the most thorough list of consultation dates.

43(d). Please provide proof that any maps used for the survey and compiled from the survey contain recognition that the Rosebud Sioux Tribe is the appropriate tribe of consultation.

ANSWER: The SD SHPO and DOS reviewed and approved the survey methodologies used in the course of the surveys noted in Sections 3.11 and 4.11 of the Department of State SFEIS (2014).

43(e). Provide proof that the Rosebud Sioux Tribe which has political precincts, housing areas and tribal allotment land in Tripp and Gregory counties, and is the "appropriate tribe" to consult with under the rules of Section 106 of the National Historic Preservation Act, will be meaningfully consulted regarding unanticipated discoveries.

ANSWER: The Rosebud Sioux Tribe would continue to be consulted by DOS through the course of the Project.

24(a). Provide current documentation that the Keystone XL is necessary to meet demand by refineries and markets in the U.S.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-27. It is within the purview of the United States Department of State to determine whether the proposed project is in the national interest, under the applicable Presidential Executive Order. This request also seeks information that is not within Keystone's custody or control and is not maintained by Keystone in the ordinary course of business. Without waiving the objection, Shippers have committed to long-term binding contracts, which support construction of the pipeline once all regulatory, environmental, and other

approvals are received. These long-term binding shipper commitments demonstrate a material endorsement of support for the Project, its economics, proposed route, and target market, as well as the need for additional pipeline capacity to access North Dakota and Canadian crude supplies.

24(b). Provide information by percentage how much U.S. domestic oil production has increased since 2010.

ANSWER: According to the Department of State FSEIS 1.4.2.3, U.S. production of crude oil has increased significantly, from approximately 5.5 million bpd in 2010 to 6.5 million bpd in 2012 and 7.5 million bpd by mid-2013. Even with the domestic production growth the U.S. is expected to remain a net importer of crude oil well into the future.

24(c). When Keystone says market demand for the Project is strong, which market is being referred to?

ANSWER: The market being referred to is the demand for transportation of crude oil. Demand for the Project is reflected in the commitment by shippers to long-term binding contracts for delivery through the Keystone XL pipeline.

24(d). How much of the oil produced from the Keystone-pumped oil will be put into the United States' domestic oil supply market and not the open market?

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden of proof under SDCL § 49-41B-27. It is

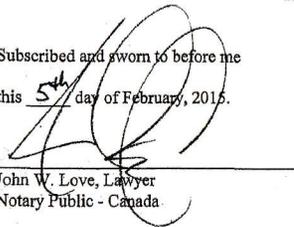
within the purview of the United States Department of State to determine whether the proposed project is in the national interest, under the applicable Presidential Executive Order. This request also seeks information that is not within Keystone's custody or control and is not maintained by Keystone in the ordinary course of business.

Dated this 5th day of February, 2015.

TRANSCANADA KEYSTONE PIPELINE, LP
by its agent, TC Oil Pipeline Operations, Inc.

By 
Its Director, Authorized Signatory

Subscribed and sworn to before me
this 5th day of February, 2015.


John W. Love, Lawyer
Notary Public - Canada

OBJECTIONS

The objections stated to Gary Dorr's Interrogatories and Request for Production of Documents were made by James E. Moore, one of the attorneys for Applicant TransCanada herein, for the reasons and upon the grounds stated therein.

Dated this 6th day of February, 2015.

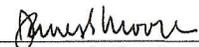
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Attorneys for Applicant TransCanada

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2015, I sent by e-mail transmission, a true and correct copy of Keystone's Responses to Gary F. Dorr's First Interrogatories and Request for Production of Documents, to the following:

Gary F. Dorr
27853 292nd Street
Winner, SD 57580


One of the attorneys for TransCanada

3. Provide any all documentation of any benefit or gift that was offered to Rosebud Sioux tribal communities as part of meetings with TransCanada or Keystone.

ANSWER: : See Keystone Documents disclosed in answer to Interrogatory No. 1 above, in particular Documents numbered 1135-1138 and 1170-72.

4. Provide proof of TransCanada's or Keystone's compliance with the United States Easement Agreements held in South Dakota County Recorders' Offices between the United States and South Dakota Landowners whose land the Oglala Sioux Rural Water Supply System crosses, whereby permission must be granted by the United States to cross the Oglala Sioux Rural Water Supply System, otherwise known as the "Mni Wiconi" water line.

OBJECTION AND ANSWER: Keystone objects to interrogatory number 4 on the grounds that it is argumentative, is an incorrect expression of law, and assumes facts not in evidence. Notwithstanding the objection and without waiving, the United States Department of Interior, acting through the Bureau of Reclamation, secured easements for the construction of the Oglala Sioux Rural Water Supply System core pipeline. Keystone's proposed route crosses the Oglala Sioux Rural Water Supply System core line in Haakon County and in Jones County. Discussions have been held between Keystone and the Bureau of Reclamation with respect to construction of the crossings and criteria governing the same.

5. Provide all easement agreements made by TransCanada or Keystone between TransCanada or Keystone and landowners on land where the Keystone XL pipeline will cross the Oglala Sioux Rural Water Supply System, otherwise known as the Mni Wiconi Waterline.

ANSWER: Responsive documents are attached as Keystone 1539-1564.

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6. In TransCanada or Keystone's required criteria for crossing Reclamation facilities, TransCanada said "TransCanada shall receive OSRWSS and Reclamation's review and approval of crossing specifications and drawings prior to starting work, including on the cathodic protection design to assure it does not impact the OSRWSS Core System or its cathodic protection system." Provide proof that TransCanada or Keystone gained approval of crossing specifications from the Oglala Sioux Rural Water Supply System and the Bureau of Reclamation in accordance with TransCanada's or Keystone's own reclamation plan.

ANSWER: Keystone and the Bureau of Reclamation have agreed on crossing criteria. The Bureau of Reclamation has discussed the crossing criteria with both the executive and engineering staff of the Oglala Sioux Rural Water Supply System.

7. In the same Criteria for Crossing Reclamation facilities TransCanada said "OSRWSS has a buried fiber optic cable installed with its pipeline that was placed by plow; its precise location is unknown. The burial depth information provided on the drawings is for information purposes only. TransCanada shall undertake exploratory excavations (potholing) to determine the exact burial depth for both the OSRWSS core pipeline and fiber optic line prior to starting crossing designs and construction of their pipeline." Provide proof that TransCanada or Keystone has received permission from the United States to "undertake exploratory excavations (potholing)" inside the Oglala Sioux Rural Water Supply System Right of Way, whereby permission must be gained from both the United States and the Oglala Sioux Rural Water Supply System to disturb the ground, as stipulated in the Oglala Sioux Rural Water Supply System

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Easement Agreement which was signed by the United States, and is held in a South Dakota County Recorder's Office.

ANSWER: The construction of the pipeline has not yet begun. Accordingly, Keystone has not yet asked to undertake exploratory investigations within the easements held by the Bureau of Reclamation. Keystone disagrees with the contention that permission must be gained from "both the United States and the Oglala Sioux Rural Water Supply System to disturb the ground."

8. Provide maps showing for every single place where the Keystone XL pipeline will cross a Core Line of the Oglala Sioux Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations.

OBJECTION AND ANSWER: The request for latitude and longitude seeks information that is confidential for security reasons. Without waiving the objection, see the map marked as Keystone 1633.

9. Provide a map showing every single place where the Keystone XL Pipeline will cross a Branch of the Core Lines of the Oglala Sioux Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations.

OBJECTION AND ANSWER: The request for latitude and longitude seeks information that is confidential for security reasons. Without waiving the objection, see the map marked as Keystone 1633.

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10. Provide a map showing every single place where the Keystone XL Pipeline will cross the Core Lines of the Lyman-Jones Rural Water Supply System, providing Latitude and longitude or Public Land Survey System information to identify those locations.

OBJECTION AND ANSWER: The request for latitude and longitude seeks information that is confidential for security reasons. Without waiving the objection, see the maps marked as Keystone 1633.

11. Provide all easement agreements between TransCanada or Keystone and those landowners who have both the Oglala Sioux Rural Water System and will have the proposed Keystone XL Pipeline situated on their land and also have a previous easement agreement with the Oglala Sioux Rural Water Supply System.

ANSWER: Responsive documents are attached as Keystone 1565-1588.

12. Provide copies of all communication TransCanada has had with the Bureau of Reclamation regarding the Keystone XL pipeline crossing South Dakota.

OBJECTION AND ANSWER: To the extent that the responsive documents include a site-specific draft Emergency Response Plan for the Oglala Tribal Water Supply Pipelines, the request seeks information that is confidential and proprietary. Without waiving the objection, responsive documents are attached as Keystone 1729-1921.

13. Provide a map of all specific areas of frac-out along the Oglala Sioux Rural Water System Core and Branch Lines providing Latitude and longitude or Public Land Survey System information to identify those locations.

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OBJECTION AND ANSWER: This interrogatory does not make sense. A frac-out is an unplanned event that may occur during horizontal directional drilling. Without waiving the objection, Keystone previously provided its HDD frac-out contingency plan to the Commission in Docket HP09-001 as part of Exhibit TC-17. Keystone does not plan to use HDD in connection with any crossing of Oglala Sioux Water System lines.

14. Provide a map showing where all areas of horizontal drilling will take place in South Dakota, providing Latitude and longitude or Public Land Survey System information to identify those locations.

OBJECTION AND ANSWER: The request for latitude and longitude seeks information that is confidential for security reasons. Without waiving the objection, see the maps marked as Keystone 1634.

15. Provide documentation showing proof that the Colome City Water Wells are upgradient from the Keystone XL Pipeline.

ANSWER: As discussed in the March 2009 Keystone XL Project Application to South Dakota Public Utilities Commission: "The Mellette County Reroute crossed directly through a groundwater Zone A SWPA near Colome, South Dakota. A reroute to the northeast will avoid, and by hydrologically down gradient from, the SWPA. As a result of the realignment, risk to the SWPA will be reduced to negligible levels." (TransCanada Keystone, LP 2009).

16. Provide copies of any lease, or easement agreement that been executed for the construction or use of a new substation or powerline on or through the Lower Brule Sioux Reservation.

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ANSWER: Keystone has no responsive documents. It is up to the power provider to obtain necessary easements to provide power to pump stations or valve sites on the Keystone XL Pipeline.

17. Is construction of a new substation or powerline through the Lower Brule Sioux Reservation necessary for operation of the Keystone XL pipeline based on current plan or updates to the final decision and order HP09-001?

ANSWER: Unknown. It is up to the power provider to obtain necessary easements to provide power to pump stations or valve sites on the Keystone XL Pipeline.

18. Provide documentation of all spills or leaks on the southern leg of the Keystone XL pipeline.

ANSWER: Attached as Keystone 774-784 is a spreadsheet showing spills associated with the Keystone Pipeline. The following spills occurred on the Gulf Coast Project: December 20, 2013, Winnsboro; January 7, 2014, Bryan PS; January 24, 2014, Cromwell PS; March 19, 2014, Nederland; March 26, 2014, Nederland; March 27, 2014, Nederland; April 12, 2014, Cushing 01A valve; April 15, 2014, Nederland; June 3, 2014, Cushing; June 23, 2014, Cushing; July 7, 2014, Nederland; July 9, 2014, Bryan PS; July 9, 2014, Nederland; July 24, 2014, Nederland; July 29, 2014, Bryan PS; August 10, 2014, Nederland; August 12, 2014, Lufkin; August 27, 2014, Cushing; September 15, 2014, Cushing; October 2, 2014, Lucas Terminal; October 29, 2014, Lufkin PS; November 10, 2014, Nederland; January 13, 2015, Cushing; January 16, 2015, Cushing.

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19. Describe the nature, circumstances, cause, and magnitude, and impact of each spill or leak and identify with specificity substances that were spilled or leaked from the Southern leg of the Keystone XL pipeline.

ANSWER: Please see the spreadsheet marked as Keystone 1635-1636.

20. Did Keystone or its contractors experience difficulty or problems with the welding of seams on the Southern Leg of the Keystone XL pipeline?

ANSWER: During 2013 construction a portion of the Gulf Coast Pipeline Project experienced a high weld reject rate upon start-up (first 3 weeks) of mainline manual welding of pipe joints.

21. If so, describe the nature and cause of the problems, how they were discovered, and describe what steps were taken to resolve the problems.

ANSWER: The nature of the issue was thoroughly investigated and found to occur when the weld bead did not fuse with the base metal. Key contributing factors that causes this type of weld defect were weld preparation and welding technique. The weld defects were discovered through the use of non-destructive examination performed on completed welds per Project specifications and Federal Code requirements. Any welds exhibiting defects as defined by API 1104 were removed and new welds made and examined. Final examination of welds was performed through the use of hydrostatic testing with no defects found. The Project implemented various changes during start-up such as use of mechanical end facing over manual facing to improve cleanliness of the pipe bevel, requiring line up clamps to remain on the pipe joints through completion of the first weld pass, adjustment of the weld gap, refinement (within the

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qualified ranges) of welding parameters (amps, volts and travel speed) and additional training of crews.

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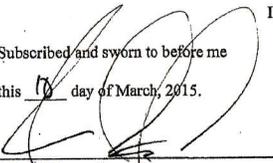
Dated this 10 day of March, 2015.

TRANSCANADA KEYSTONE PIPELINE, LP
by its agent, TC Oil Pipeline Operations, Inc.

By 
Joseph Brown
Its Director, Authorized Signatory

Subscribed and sworn to before me

this 10 day of March, 2015.


John W. Love, Lawyer
Notary Public - Canada

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OBJECTIONS

The objections stated to Gary Dorr's Interrogatories and Request for Production of Documents were made by James E. Moore, one of the attorneys for Applicant TransCanada herein, for the reasons and upon the grounds stated therein.

Dated this 10th day of March, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

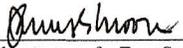
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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of March, 2015, I sent by e-mail transmission,
a true and correct copy of Keystone's Responses to Gary F. Dorr's Final Interrogatories
and Request for Production of Documents, to the following:

Gary F. Dorr
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gfdorr@gmail.com



One of the attorneys for TransCanada

Certificate of Service

Gary F. Dorr hereby certifies that, on this day of 21 April 2015, a true and correct copy of Gary Dorr's Witness and Evidence was filed on the Public Utilities Commission of SD e-filing website and also via email to the following:

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The undersigned further certifies that, on this day, I served the afore via U.S. mail with
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Midland, South Dakota 57552
Ronald Fees
17401 Fox Ridge Road
Opal, South Dakota 57758

Dated this 1st day of May, 2015

/S/

Gary F. Dorr