

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
) :SS	
COUNTY OF HUGHES)	SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF PUC DOCKET)	CIV NO. 16-39
HP14-001, PETITION OF TRANSCANADA)	
KEYSTONE PIPELINE, LP FOR AN)	
ORDER ACCEPTING CERTIFICATION)	ORDER DENYING MOTION
OF PERMIT ISSUED IN DOCKET)	TO DISQUALIFY AND
HP09-001 TO CONSTRUCT THE)	DENYING AFFIDAVIT
KEYSTONE XL PIPELINE)	FOR CHANGE OF JUDGE

On April 1, 2016, Appellant Cindy Myers informally requested that the Honorable Mark Barnett disqualify himself from the above captioned matter. Judge Barnett declined to disqualify himself in a letter filed April 6, citing Judicial Canon 3C, codified at SDCL 15-12-37, that he has no “knowledge of a ground for self-disqualification under the guidelines established by Canon 3C.” Later that afternoon, Appellant filed an affidavit pursuant SDCL 15-12-21, again requesting the disqualification of Judge Barnett. SDCL 15-12-21 provides that when such an affidavit is filed, “that named judge or magistrate shall proceed no further in said action and shall thereupon be disqualified as to any further acts with reference thereto . . .” Pursuant to this mandatory directive, Judge Barnett has filed his motion for disqualification. However, SDCL 15-12-21 goes on to provide, “. . . unless otherwise ordered to proceed by the presiding judge of the circuit involved.” As the Presiding Judge, this Court orders Judge Barnett to proceed in this action unless and until all parties who are united in interest unite in the filing of an affidavit for change of judge.

This appeal comes from the Final Decision of the Public Utilities Commission (“PUC”) to certify the permit for construction of the Keystone XL Pipeline. Six other appeals disputing that permit have been filed in Hughes County: 16-33, 16-34, 16-35, 16-36, 16-37, and 16-38. Statements of Issues have been filed in all cases (except 16-35, where none has been filed). A review of the 140 total Stated Issues

shows that many of those are repeated or similar to other Issues stated in these other files. Also, each Appellant can only benefit from the other Appellants making additional arguments for error. Therefore, this Court finds:

That each and every appellant in all seven cases are united in interest, to wit: to reverse the PUC's final decision accepting certification of the permit issued in Docket HP09-001 to construct the Keystone XL Pipeline.

This Court further concludes:

That SDCL 15-12-23 requires, "All parties who are united in interest or representation must unite in the filing of an affidavit for change of judge or magistrate and the filing of such affidavit by one party is deemed to be filed by all of such parties."

This Court, having considered the applicable law in SDCL Chapter 15-12, therefore, hereby

ORDERS that all Appellant parties in Hughes County civil file numbers 16-33 through 16-39, inclusive, are united in interest and must unite in the filing of an affidavit for change of judge, in which case they shall have one joint recusal only;

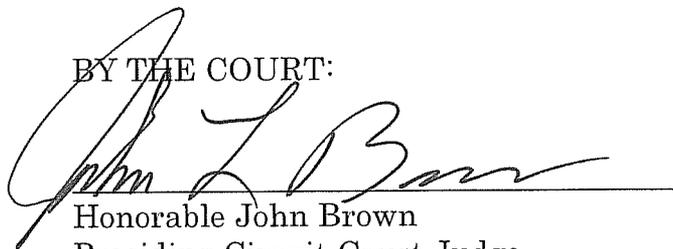
ORDERS that Judge Barnett's motion for appointment of new judge is DENIED;

ORDERS that Judge Barnett is to continue to preside over these related proceedings unless and until all parties who are united in interest unite in the filing of one affidavit for change of judge; and further hereby

ORDERS that the Affidavit of Chase Iron Eyes, on behalf of Cindy Myers, filed in this matter, at this time, is DENIED.

Dated this 7th day of April, 2016.

BY THE COURT:



Honorable John Brown
Presiding Circuit Court Judge