

**STATE OF SOUTH DAKOTA            )**  
   **) ss.**  
**COUNTY OF HUGHES                  )**

IN THE MATTER OF PUBLIC UTILITIES )  
COMMISSION DOCKET HP14-001, ) CIV.  
PETITION OF TRANSCANADA )  
KEYSTONE PIPELINE, LP, FOR ORDER )  
ACCEPTING CERTIFICATION OF PERMIT ) **STATEMENT OF ISSUES**  
ISSUED IN DOCKET HP09-001 TO ) **ON APPEAL**  
CONSTRUCT THE KEYSTONE XL )  
PIPELINE )

COMES NOW Intertribal Council On Utility Policy (“COUP”), on behalf of itself and its member Tribes, by and through its attorney Robert Gough, and hereby submits its Statement of Issues on Appeal with respect to the Final Decision of the Public Utilities Commission (“Commission”) Docket No. HP14-001, *In the Matter of the Petition of TransCanada Keystone Pipeline, LP* (“Keystone”) *for an Order Accepting Certification of Permit Issued in Docket HP09-001 to Construct the Keystone XL Pipeline* (“Final Decision”). This appeal is taken on the following issues:

3. Whether the Commission's *Order Granting Motion to Define Issues and Setting Procedural Schedule* dated December 17, 2014 is arbitrary, capricious and erroneous insofar as the Commission's interpretation of SDCL § 49-41B-27 renders the statute meaningless by creating a never-ending permit in perpetuity.
4. Whether the Commission erred in granting Keystone's *Motion to Define the Scope of Discovery*, in a December 17, 2014 *Order Granting Motion to Define Issues*, limiting the scope of discovery in this matter.
5. Whether the Commission's *Final Decision* in Docket HP14-001 granting Keystone's application for certification is arbitrary, capricious and erroneous given the applicant's failure to submit any substantive evidence during the July-August 2015 evidentiary hearing upon which the Commission could base its decision pursuant to SDCL§ 49-41B-27.
6. Whether the Commission's rejection of Intervenor's November 9, 2015 Motion to Dismiss is arbitrary, capricious and erroneous given that the second condition of the *Amended Final Decision and Order issued in Docket HP009-001*, dated June 29, 2010, remains prospective, rendering it, in fact, empty, pointless and meaningless.
7. Whether the Commission's holding that US Department of State's Final Supplemental Environmental Impact Statement describing failures of design and other deficiencies in Petitioner's plan to construct and operate the proposed KXL pipeline did not constituted a factual change were arbitrary, capricious and erroneous.
8. Whether the Commission's preclusion of Intervenor's witness testimony, evidence and examination relating to climate change as an issue of changed conditions in the proceedings constitutes an abject failure by the Commission to consider changes in circumstances relevant to Keystone's ability to comply with the original conditions of the HP09-001 Permit.

9. Whether the Commission used and abused its discretionary authority and judgment in discovery and evidentiary rulings against the Intervenors in an arbitrary and capricious manner that favored Keystone.
10. Whether the Commission's arbitrarily, capriciously and erroneously shifted the burden of proof from the Keystone as the applicant to the Intervenors throughout the course of these proceedings.
11. Whether the Commission failed to adequately consider the Treaty rights raised in this matter.
12. Whether the Final Decision was clearly erroneous with respect to the relevant Findings of Fact and Conclusions of Law in that the record lacks substantial evidence to the six conditions Keystone actually addressed and any evidence to the remaining hundred it failed to address at all, to support the finding that Keystone "remains eligible to construct the project under the terms of the 2010 permit."

The Intertribal Council On Utility Policy, on behalf of itself and its member Tribes, requests that this Court reverse the Commission's Final Decision.

Respectfully submitted this 29th day of February 2016.



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## CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of February, 2016, the foregoing Statement of Issues on Appeal was filed with the Office of the Clerk of Hughes County Circuit Court, via the Odyssey system and that a true and correct copy of the same was served upon the following via email or first class US Mail, postage prepaid:

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