

aboriginal lands of the Tribe are all located east of the Missouri River in South Dakota.

(See Keystone's Opposition to Joint Motion to Preclude Improper Relief at ¶ 6 ([date].))

2. The Yankton Sioux Tribe has not granted its consent for the pipeline to cross through its treaty lands.

OBJECTION: Keystone objects to the relevance of this proposed finding.

The consent of the Yankton Sioux Tribe to the Keystone XL Pipeline is not required by law or any permit condition.

3. The Yankton Sioux Tribe is a "local unit of government" or "local government" for purposes of SDCL 49-41B-22 and Conditions 1, 6, 7, and 34 of the Permit issued in Docket HP09-00I ("Permit").

OBJECTION: This is a legal conclusion and an incorrect statement. The Yankton Sioux Tribe is a sovereign nation, not a local unit of government within the meaning of the permit conditions. The Commission did not expressly refer to any tribes in the permit conditions. Moreover, Keystone did consult with the Yankton Sioux Tribe, as evidenced by the Tribe's own application for party status, referring to "the initial flawed tribal consultation." It is the Yankton Sioux Tribe that rebuffed Keystone. (Tr. at 1873.)

4. Keystone has not taken into account the views of the Yankton Sioux Tribe as required by SDCL 49-41B-22.

OBJECTION: Nothing in the permit conditions or SDCL § 49-41B-22 requires that Keystone take into account the views of the Yankton Sioux Tribe. Keystone's compliance with SDCL § 49-41B-22 is not at issue in this proceeding under SDCL § 49-41B-27. (Tr. at 2476, 2478.)

5. Keystone has not notified the Yankton Sioux Tribe of material deviations proposed to the route as required by Condition 6 of the Permit.

OBJECTION: Condition 6 requires notice of material deviations to the Commission, not to the Yankton Sioux Tribe, which is not an affected landowner or local unit of government. The record establishes that there have been no material route deviations. Based on past experience with the Commission, Keystone understands a material route deviation to be one that affects a new landowner.

6. Keystone has not provided contact information for the public liaison officer to the Yankton Sioux Tribe and its law enforcement agency as required by Condition 7 of the Permit.

OBJECTION: Condition 7 does not expressly require that it provide contact information for the public liaison officer to the Yankton Sioux Tribe. Nevertheless, Sarah Metcalf's contact information is a matter of public record with the Commission, and is contained in Appendix B to Keystone's certification petition.

7. Keystone has not sought out and considered the knowledge of Yankton Sioux Tribe government officials as required by Condition 34 of the Permit.

OBJECTION: Condition 34 relates to High Consequence Areas. There is no showing in the record that Keystone should have sought and considered the knowledge of the Yankton Sioux Tribe with respect to any High Consequence Area.

8. The Final Environmental Impact Statement ("FEIS"), with which Keystone is bound to comply pursuant to Condition 2 of the Permit, has been superseded by a Final Supplemental Environmental Impact Statement ("FSEIS") which differs from the FEIS. Tr. 556 in 7-15.

OBJECTION: The Final Environmental Impact Statement has not been superseded or invalidated by the Final Supplemental Environmental Impact Statement. As stated in the FSEIS, it "builds on the work done in the 2011 Final EIS, including references to that document throughout the text where appropriate." (FSEIS, Section 1.1.1, at 1.1-7.)

The FSEIS notes that it “also relies, where appropriate, on the data presented and the analyses done in the Final EIS for the previously proposed project because much of the pipeline route remains unchanged from its August 2011 publication.” (*Id.*) To the extent that both documents are applicable, Keystone can and will comply with them as required by law. Moreover, to the extent that Keystone refiles a Presidential Permit application, Keystone will comply with any and all applicable environmental impact statements.

10. The Programmatic Agreement is a binding document that places legal responsibilities on Keystone with which Keystone is bound to comply pursuant to Condition 2 of the Permit. Tr. 557 in 16-25.

OBJECTION: This statement is a conclusion of law. Keystone also objects that Condition 2 requires that Keystone comply with all applicable federal, state, and local permits. Condition 2 does not mention the Programmatic Agreement. As noted in the Tribe’s proposed finding no. 11, Keystone can and will comply with the Amended Programmatic Agreement, which is consistent with its obligations under Condition 2. Moreover, to the extent that Keystone refiles a Presidential Permit application, Keystone will comply with any and all applicable programmatic agreements.

12. Condition 2 of the Permit requires TransCanada to comply with the Programmatic Agreement contained in the FEIS, rather than the Amended Programmatic Agreement contained in the FSEIS with which TransCanada intends to comply.

OBJECTION: This statement is a conclusion of law. Keystone also objects because Condition 2 does not mention the Programmatic Agreement. Keystone can and will comply with the Amended Programmatic Agreement, which is consistent with its obligations under Condition 2. Moreover, to the extent that Keystone refiles a Presidential

Permit application, Keystone will comply with any and all applicable programmatic agreements.

14. Keystone conducted no risk assessment with respect to the worker camps. Tr. 700 in 8-701 in 1.

OBJECTION: The transcript citation does not support the proposed finding. Heidi Tillquist testified that she did not do a risk assessment for the work camps as she did for the pipeline. (Tr. at 700-701.) The record does not establish that Keystone failed to investigate the need for and appropriateness of its proposed work camps. Moreover, no permit condition addresses the work camps, let alone requires that Keystone have conducted a risk assessment related to them in the same manner as Heidi Tillquist's risk assessment was done.

15. It is inevitable that the impacts of worker camps would include an increase in crime which would affect law enforcement. Tr. 2407 in 3-7.

OBJECTION: The transcript citation does not support the proposed finding. The testimony cited relates to speeding and traffic issues, not a general increase in crime. (Tr. at 2407.) Rick Perkins testified that he did not expect an increase in crime associated with the camps. (Tr. at 2409.) Keystone also objects to the relevance of this proposed finding because no permit condition is at issue.

19. Target Logistics is not aware of whether or when they have sex offenders living in their camps. Tr. 2429 in 3-5.

OBJECTION: The transcript citation does not support the proposed finding. Rick Perkins testified that the code of conduct does not address sex offenders, and that Target logistics does "not always know" if there are convicted sex offenders living in the camps. (Tr. at 2428-29.) Perkins testified that Target Logistics will periodically get a list

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of offenders from the local sheriff and review it. (*Id.* at 2429.) Keystone also objects to the relevance of this proposed finding because no permit condition is at issue.

20. Keystone is aware that human trafficking is a problem at camps. 2413 in 19-21.

OBJECTION: The transcript citation does not fully support the proposed finding. Rick Perkins testified that human trafficking can be a problem in areas where the camps are located. (*Id.* at 2413.) Keystone also objects to the relevance of this proposed finding because no permit condition is at issue.

21. Worker camps would increase crime and pose an unacceptable threat to the safety and welfare of surrounding communities.

OBJECTION: No evidence in the record supports this proposed finding.

Keystone also objects to the relevance of this proposed finding because no permit condition is at issue.

22. The proposed camp located near Colome would be in relatively close proximity to the Yankton Sioux Tribe's Fort Randall Casino. Tr. at 2404 in 12-19. This would place Yankton Sioux tribal members at particular risk to the criminal threat posed by the influx of workers.

OBJECTION: The proposed finding that the location of the proposed camp near Colome would place members of the Yankton Sioux Tribe “at particular risk to the criminal threat posed by the influx of workers” is unsupported by any evidence in the record.

II. Yankton’s Proposed Conclusions of Law

1. Keystone bears the burden of production and the burden of proof to show that the Permit should be certified pursuant to SDCL 49-41B-27.

OBJECTION: As argued in Keystone’s post-hearing reply brief dated October 30, 2015, Keystone admits that it has the burden of proof, meaning the burden of

persuasion, but disputes that it has the burden of production after filing its certification, certification petition, and supporting documents. (Keystone Reply Br. at 4-6.)

3. Keystone cannot meet Condition 1 of the Permit because federal law requires Keystone to obtain a Presidential Permit in order to construct the proposed project and Keystone's application for a Presidential Permit has been denied. **Exhibit A.**

OBJECTION: Keystone admits that its most recent application for a Presidential Permit was denied on November 6, 2015, but objects that it therefore cannot meet any permit condition. This issue is the subject of the Intervenors' joint motion to dismiss dated November 9, 2015, and is to be heard by the Commission on December 22, 2015.

4. Keystone is further unable to meet Condition 1 of the Permit because it has failed to obtain consent for the pipeline from the signatory tribes to the 1851 Fort Laramie Treaty, thus construction would constitute a trespass, a violation of the Treaty, and a violation of law.

OBJECTION: This proposed conclusion is a misstatement of the law. Keystone has no legal obligation to obtain consent for the pipeline from the signatory tribes to the 1851 Fort Laramie Treaty and the Commission has ruled that the issue is beyond its jurisdiction.

5. Keystone cannot meet Condition 2 of the Permit because Condition 2 requires Keystone to comply with the FEIS, which differs from the FSEIS that has now superseded the FEIS.

OBJECTION: This proposed conclusion is a misstatement of the law for the reasons stated in response to proposed finding no. 8.

6. Keystone has not proven that it will meet Condition 5 of the Permit, which requires Keystone to undertake and complete all of the actions that it and its affiliated entities committed to undertake and complete in Docket HP09-001. Keystone committed to comply with the Programmatic Agreement contained in the FEIS in Docket HP09-001,

but Keystone has now testified that it instead intends to comply with the Amended Programmatic Agreement contained in the FSEIS.

OBJECTION: This proposed conclusion incorrectly presumes that Keystone cannot meet condition 5 because it is bound by and intends to comply with the Amended Programmatic Agreement. The conclusion is incorrect for the reasons stated in response to proposed finding nos. 10 and 12.

7. Keystone has failed to meet its burden of proof with respect to Conditions 6, 7, and 34 because it has not shown that it has or will comply with these Conditions with respect to the Yankton Sioux Tribe.

OBJECTION: This proposed conclusion is unsupported by the record or the law. Condition 6 relates to route adjustments. Condition 7 relates to the public liaison officer. Condition 34 relates to ongoing monitoring of High Consequence Areas. None of the conditions is particular to the Yankton Sioux Tribe or any other South Dakota tribe, and no evidence in the record establishes that Keystone cannot comply with these conditions.

8. Keystone failed to provide evidence or provided insufficient evidence to prove that it will meet Conditions including, but not limited to, 13-16, 18, 20, 22, 24, 26, 28, 31-33, 35, and 39-49.

OBJECTION: This proposed conclusion is based on argument previously rejected by the Commission when it denied the Intervenors' motion made at the conclusion of the hearing to dismiss or deny the petition because Keystone had failed to present evidence on the cited conditions. The proposed conclusion misstates Keystone's burden for the reasons argued in Keystone's post-hearing reply brief.

9. Keystone has failed to meet its burden of production and its burden of proof with respect to each of the Permit Conditions.

OBJECTION: Keystone objects to this proposed conclusion for all of the reasons argued in its post-hearing briefs.

10. The Commission concludes that Keystone is not entitled to certification pursuant to SDCL 49-41B-27.

OBJECTION: Keystone objects to this proposed conclusion for all of the reasons argued in its post-hearing briefs.

Dated this 21st day of December, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Applicant's Objections to Yankton Sioux Tribe's Proposed Findings of Fact and Conclusions of Law, to the following:

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