

2. If the Commission grants the motion, the Commission should also admit Keystone's response to the NOPV, which was submitted to PHMSA on December 18, 2015. A copy is attached as Exhibit A.

3. The NOPV includes a *proposed* civil penalty and a *proposed* compliance order. Keystone has requested a hearing on the NOPV. The matter is ongoing and will not be resolved before PHMSA for at least several months.

4. The issue concerns matters within the jurisdiction of PHMSA. It is not an issue that can be resolved by the Commission, although it is appropriate for the Commission to consider PHMSA's regulatory oversight of the Keystone Pipeline. The regulatory process is working as it should.

5. As explained in the NOPV and Keystone's response, the underlying cathodic protection issue that was addressed at the hearing, which arose after startup of the Keystone Pipeline, has been resolved.

6. The NOPV does not contradict Corey Goulet's hearing testimony or call into question his credibility. DRA does not argue otherwise.

7. The NOPV and the ongoing proceeding before PHMSA are not matters that should affect the outcome of Keystone's certification petition under SDCL § 49-41B-27. The cathodic protection issue does not indicate that Keystone is unable to comply with any permit condition. Rather, the NOPV addresses a design flaw in the cathodic protection system for a segment of the Keystone Pipeline that was corrected in 2013. Moreover, as established at the hearing, no similar situation exists in South Dakota where stray interference from a shared pipeline corridor could affect the Keystone XL Pipeline. The only argument on this issue made by DRA in the post-hearing briefing is that the Mni Waconi crossing could be similarly affected.

Meera Kothari testified, however, that Keystone worked with the Bureau of Reclamation to develop a crossing design that also addressed cathodic protection. (Hearing Tr. at 1187.)

8. Finally, PHMSA's proposed compliance order and proposed civil penalty, if implemented, reflect PHMSA's view of the appropriate action required with respect to the Keystone Pipeline, which remains in operation and which has safely transported more than 1 billion barrels of oil. There is no basis for DRA's implication that the Commission should take further and more severe action by denying Keystone's certification petition on the basis of the NOPV.

Thus, Keystone does not object to DRA's request that the record be supplemented, but contends that the additional record evidence does not offer the Commission any reason why Keystone's certification petition should be denied. Rather, Keystone respectfully requests that the Commission grant its certification petition, which has now been pending for almost sixteen months.

Dated this 21st day of December, 2015.

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