
**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

**YANKTON SIOUX TRIBE'S
RESPONSE TO KEYSTONE'S
MOTION TO PRECLUDE
TESTIMONY OF CHRIS
SAUNSOCI**

HP14-001

COMES NOW Yankton Sioux Tribe (“Yankton”), by and through Thomasina Real Bird Jennifer S. Baker with Fredericks Peebles & Morgan LLP, and hereby responds to *Keystone’s Motion to Preclude Testimony of Chris Saunsoci* (“*Motion*”) as follows:

1. The rebuttal testimony for Chris Saunsoci was filed in accordance with the Public Utilities Commission’s deadline for pre-filed rebuttal testimony and complies with all applicable rules of procedure. ARSD 20:10:01:22.06 governs written testimony ordered by the Commission. The only requirements provided by the rule are that the written (or prefiled) testimony be served on all parties on the date prescribed by the Commission and that the front page show the docket number, docket name, and name of the witness. The testimony of Mr. Saunsoci meets these requirements. *See Prefiled Rebuttal Testimony of Chris Saunsoci*, attached hereto as **Exhibit A**.

2. Keystone cites no law, rule, or regulation to support its allegation that the rebuttal testimony is somehow deficient.

3. The rules of practice before the Commission do not prohibit a party from filing rebuttal testimony containing generalized statements. In fact, Keystone prompted Yankton to submit generalized rebuttal testimony due to the generalized nature of the direct testimony Keystone itself provided. Aside from irrelevant and inadmissible statements regarding the

Findings of Fact and the Tracking Table of Changes (which are not at issue in this proceeding), the rebuttal testimony submitted by Keystone consists almost entirely of generalized statements that do not contain any statements of fact or foundation for any opinion. The sole basis on which Keystone's case relies, looking only to its prefiled direct testimony, is the unfounded opinion of its five direct witnesses that they know of no reason the permit should not be certified. Keystone provided nothing to which Yankton's rebuttal witnesses could respond because it provided nothing concrete that is relevant to this proceeding.

If Keystone wishes to meet its burden of proof, it will have to address each of the fifty conditions contained in the original permit. Because it has failed to do so in its pre-filed direct testimony, it is impossible for Yankton's rebuttal witnesses to specifically rebut Keystone's arguments through its rebuttal testimony. Mr. Saunsoci has therefore provided as much information as possible, given Keystone's generalized pre-filed direct testimony, and identified the subject areas about which he will provide testimony as appropriate based on the testimony offered by Keystone.

4. As shown above, Keystone has cited no valid basis for its request to preclude the testimony of Mr. Saunsoci.

WHEREFORE, Yankton respectfully requests that the Commission deny Keystone's *Motion in Limine to Preclude Testimony of Chris Saunsoci*.

Dated this 17th day of July, 2015.



Jennifer S. Baker, *Pro Hac Vice*
Thomasina Real Bird, SD Bar No. 4415
FREDERICKS PEBBLES & MORGAN LLP
1900 Plaza Drive
Louisville, Colorado 80027
Telephone: (303) 673-9600
Facsimile: (303) 673-9155
Email: jbaker@ndnlaw.com
Email: trealbird@ndnlaw.com

Attorneys for Yankton Sioux Tribe