

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

| | | |
|----------------------------------|---|-----------------------------|
| IN THE MATTER OF: |) | |
| |) | Docket HP 14-001 |
| |) | |
| PETITION OF TRANSCANADA |) | INTERTRIBAL COUP'S RESPONSE |
| KEYSTONE PIPELINE, LP FOR ORDER |) | TO KEYSTONE'S OBJECTION TO |
| ACCEPTING CERTIFICATION OF |) | COUP'S REQUEST FOR A TIME |
| PERMIT ISSUED IN DOCKET HP09-001 |) | CERTAIN AND MOTION TO |
| TO CONSTRUCT THE KEYSTONE XL |) | PRECLUDE WITNESSES |
| PIPELINE |) | |

Comes now the Intertribal Council On Utility Policy (COUP), by and through counsel, Robert Gough, and hereby submits the following response to KEYSTONE'S OBJECTION TO COUP'S REQUEST FOR A TIME CERTAIN AND MOTION TO PRECLUDE WITNESSES.

Rebuttal Witnesses for Intertribal COUP

This statement is applicable to the following rebuttal witnesses Intertribal COUP has previously disclosed to TransCanada Keystone Pipeline, LP ("TransCanada"), namely: Dr. George Seiestad, Dr. Robert Oglesby and Dr. James Hansen.

TransCanada has moved the Commission to "preclude Dr. Hansen, Dr. Seielstad, and Dr. Oglesby from testifying [as Rebuttal Witnesses] based on their failure to timely submit prefiled testimony [for Direct Testimony]. This position is untimely and absurd as it relies upon imagined rebuttal testimony.

Intertribal COUP disclosed our witnesses and the scope of their testimony, but in reliance on citing SDCL §15-6-43(a), we did not pre-file our direct witness

testimony by the date set by the SD PUC based upon our reading of the law in this matter. COUP was overruled by the SD PUC, which imposed the harsh penalty of precluding our witnesses from offering direct testimony during the Re-Certification Hearing. During that preliminary hearing, Intertribal COUP reserved the right to have its witnesses appear as rebuttal witnesses, which was agreed to by the SD PUC. Based upon the PUC ruling, COUP will not file any "Direct Testimony" but will file, by leave of the PUC, Rebuttal Testimony from our three witnesses, as deemed necessary.

According to the transcript of the April 14, 2015 hearing at pages 191-192:

CHAIRMAN NELSON: Yes, Mr. Gough. I thought Mr. Gough who wanted to speak.

MR. GOUGH: Yes, Chairman. Point of clarification on the Motion regarding Dakota Rural Action and InterTribal COUP. Given what was resolved today, do I understand that we are precluded from bringing a written on direct? And that's the only preclusion, that we still have all of our rights for cross-examination and all other rights as parties, including providing rebuttal witnesses?

CHAIRMAN NELSON: That is my understanding. And I'm going to turn to Mr. Smith to make sure that I'm right on that.

MR. SMITH: That's my understanding of what you -- when I asked you the questions. And, again, it's a little unusual because of the weird way we're set up here this year in terms of -- but my understanding is that people have responsive testimony, and they're not -- and they wish to -- they're not -- and they do prefile, that that will not be precluded.

The agreed upon condition for Rebuttal Testimony is "that prefiled rebuttal testimony would be allowed to be filed by all parties until the April 27, 2015, deadline." (Order, Apr. 23, 2015, at 2.) That deadline has since been extended until as per the April 30, 2015 hearing.

TransCanada's objections to our characterization of testimony as "direct" is moot, as that option has been precluded by the PUC already. TransCanada's objections are also untimely on additional two counts. First, TransCanada has no more information at the time of their filing their motion to preclude as to the testimony of COUP's proposed and disclosed witnesses and the likely scope of their testimony than they did at the hearing. They waited until COUP filed our motion for a "Time Certain" as directed by the PUC staff, and only then did they note their objection and desire to preclude our witnesses. If they had objections to the SD PUC advising COUP that it could provide 'Rebuttal Witnesses" they should have objected then and there at the April. Secondly, COUP has yet to pre-file our rebuttal testimony, so TransCanada appears to be pre-supposing too much.

Finally, TransCanada contends that COUP's proposed testimony is "direct testimony" and, not "rebuttal testimony".

First, TransCanada's motion appears to claim to divine the nature and content of our rebuttal testimony, without benefit of either our original 'direct testimony' which was not filed, as per the PUC ruling against COUP, or our soon to be pre-filed rebuttal testimony, which isn't due until . TransCanada has apparently imagined what elements of their own direct testimony may be subject to rebuttal and then have further imagined what our rebuttal testimony is going to be, and then have taken it upon themselves to deem it not rebuttal testimony and have moved to preclude it sight unseen.

Second, we agree with TransCanada that “rebuttal testimony is testimony responding directly to the testimony of another witness.” See, e.g., *State v. Phillips*, 489 N.W.2d 613, 618 (S.D. 1992) (stating that witness testimony was “improper rebuttal testimony as it did not rebut the evidence presented by” other witnesses who had offered direct testimony). The relevancy of COUP’s rebuttal testimony remains to be seen. Having finally waded through some of TransCanada’s document delivery available to Intertribal COUP, we find that TransCanada has opened the door to rebuttal testimony on the issues of “carbon emissions” and in the direct testimony of Mr. David Diakow with regard to Finding #27 and greenhouse gas intensity. In TransCanada’s update to Finding #27 it boldly states:

The DOS Final SEIS indicates that transportation of crude oil by pipeline is safer and less greenhouse gas intensive than crude oil transportation by rail.

Lastly, EPA’s comments on the FSEIS also compel an examination of greenhouse gas emissions intensity and climate change issues and the changes in our understanding and consequences of these emissions over the state of understanding in 2010.

CONCLUSION

TransCanada's motion to preclude COUP's rebuttal witnesses must be dismissed for the reasons cited above.

Submitted this 15th day of May 2015

Respectfully submitted,



Robert P. Gough, SD SB# 620
Secretary of, and Attorney for,
Intertribal Council On Utility Policy (COUP)
P.O. 25, Rosebud, SD 57570
605-441-8316
BobGough@IntertribalCOUP.org

CERTIFICATION OF SERVICE

I, Robert Gough, hereby certify that on the 15 day of May, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of the **INTERTRIBAL COUP'S RESPONSE TO KEYSTONE'S OBJECTION TO COUP'S REQUEST FOR A TIME CERTAIN AND MOTION TO PRECLUDE WITNESSES**, to the following:

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

Brian Rounds
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

brian.rounds@state.sd.us

James E. Moore
Woods, Fuller, Shultz and Smith P.C.
PO Box 5027
Sioux Falls, SD 57117
james.moore@woodsfuller.com
Attorney for TransCanada Keystone Pipeline, LP

Paul F. Seamans
27893 249th St.
Draper, SD 57531
jackknife@goldenwest.net

Elizabeth Lone Eagle PO Box 160
Howes, SD 57748
bethcbest@gmail.com

Viola Waln
PO Box 937
Rosebud, SD 57570
walnranh@goldenwest.net

Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
Kristen.edwards@state.sd.us

Darren Kearney
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
darren.kearney@state.sd.us

Bill G. Taylor
Woods, Fuller, Shultz and Smith P.C.
PO Box 5027
Sioux Falls, SD 57117
bill.taylor@woodsfuller.com
Attorney for TransCanada Keystone Pipeline, LP

John H. Harter
28125 307th Ave. Winner, SD 57580
johnharter11@yahoo.com

Tony Rogers
Rosebud Sioux Tribe - Tribal Utility Commission

153 S. Main St.
Mission, SD 57555
tuc@rosebudsiouxtribe-nsn.gov

Jane Kleeb
Bold Nebraska
1010 N. Denver Ave.
Hastings, NE 68901
jane@boldnebraska.org

Benjamin D. Gotschall Bold Nebraska
6505 W. Davey Rd.
Raymond, NE 68428
ben@boldnebraska.org

Cindy Myers, R.N.
PO Box 104
Stuart, NE 68780
csmyers77@hotmail.com

Lewis GrassRope
PO Box 61
Lower Brule, SD 57548
wisestar8@msn.com

Bruce Ellison
518 6th Street #6
Rapid City, South Dakota 57701
belli4law@aol.com
and
Robin S. Martinez, MO #36557/KS
#23816 616 West 26th Street
Kansas City, Missouri 64108
robin.martinez@martinezlawn.net
Attorneys for Dakota Rural Action

Robert G. Allpress
46165 Badger Rd.
Naper, NE 68755
bobandnan2008@hotmail.com

Louis T. Genung
902 E. 7th St.
Hastings, NE 68901
tg64152@windstream.net

Nancy Hilding
6300 W. Elm
Black Hawk, SD 57718

nhilshat@rapidnet.com

Bruce & RoxAnn Boettcher
Boettcher Organics
86061 Edgewater Ave.
Bassett, NE 68714
boettcherann@abbnebraska.com

Cyril Scott, President
Rosebud Sioux Tribe
PO Box 430 Rosebud, SD 57570
cscott@gwtc.net

Byron T. Steskal & Diana L. Steskal
707 E. 2nd St.
Stuart NE 68780
prairierose@nntc.net

Arthur R. Tanderup 52343 857th Rd.
Neligh, NE 68756
atanderu@gmail.com

Carolyn P. Smith
305 N. 3rd St.
Plainview, NE 68769
peachie_1234@yahoo.com

Jeff Jensen
14376 Laflin Rd.
Newell, SD 57760
jensen@sdplains.com

Peter Capossela, P.C.
Attorney at Law
PO Box 10643
Eugene, OR 97440 pcapossela@nu-world.com
Attorney for Standing Rock Sioux Tribe

Gary F. Dorr 27853 292nd
Winner, SD 57580
gfdorr@gmail.com

Wrexie Lainson Bardaglio 9748 Arden Rd.
Trumansburg, NY 14886
wrexie.bardaglio@gmail.com

Eric Antoine, Attorney
Rosebud Sioux Tribe PO Box 430
Rosebud, SD 57570
ejantoine@hotmail.com

Paula Antoine
Sicangu Oyate Land Office Coordinator Rosebud Sioux Tribe
PO Box 658
Rosebud, SD 57570
wopila@gwtc.net
paula.antoine@rosebudsiouxtribe-nsn.gov

Kevin C. Keckler, Chairman
Cheyenne River Sioux Tribe
PO Box 590
Eagle Butte, SD 57625
kevinckeckler@yahoo.com

Debbie J. Trapp 24952 US HWY 14
Midland, SD 57552
mtdt@goldenwest.net

Joye Braun
PO Box 484
Eagle Butte, SD 57625
jmbraun57625@gmail.com

Thomasina Real Bird
Fredericks Peebles & Morgan LLP 1900 Plaza Dr.
Louisville, CO 80027 trealbird@ndnlaw.com
Attorney for Yankton Sioux Tribe

Douglas Hayes
Sierra Club
Ste. 102W
1650 38th St.
Boulder, CO 80301 doug.hayes@sierraclub.org

Tom BK Goldtooth
Indigenous Environmental Network (IEN)
PO Box 485
Bemidji, MN 56619
ien@igc.org
ien@igc.org
Kimberly Craven, Attorney
kimecraven@gmail.com

Chris Hesla
South Dakota Wildlife Federation PO Box 7075
Pierre, SD 57501
sdwf@mncomm.com

Amy Schaffer
PO Box 114
Louisville, NE 68037

amyannschafter@gmail.com

Gena M. Parkhurst
2825 Minnewasta Place
Rapid City, SD 57702
gmp66@hotmail.com

Robert Flying Hawk, Chairman
Yankton Sioux Tribe
PO Box 1153
Wagner, SD 57380
Robertflyinghawk@gmail.com

Chastity Jewett
1321 Woodridge Dr. Rapid City, SD 57701
chasjewett@gmail.com

Duncan Meisel 350.org
20 Jay St. #1010
Brooklyn, NY 11201
duncan@350.org

Dallas Goldtooth
38371 Res. HWY 1
Morton, MN 56270
goldtoothdallas@gmail.com

Terry & Cheryl Frisch 47591 875th Rd.
Atkinson, NE 68713
tcfrisch@q.com

Tracey Zephier
Fredericks Peebles & Morgan LLP
910 5th Street, Suite 104
Rapid City, SD 57701
tzephier@ndnlaw.com
Attorney for Cheyenne River Sioux Tribe

Ms. Mary Turgeon Wynne, Esq.
Rosebud Sioux Tribe - Tribal Utility Commission
153 S. Main St
Mission, SD 57555
tuc@rosebudsiouxtribe-nsn.gov

Matthew L. Rappold
Rappold Law Office 816 Sixth Street
PO Box 873
Rapid City, SD 57709
Matt.rappold01@gmail.com
Attorney for Rosebud Sioux Tribe, Intervenor

And on or about April 2, 2015, a true and accurate copy of the foregoing was mailed via U.S. Mail, first class postage prepaid, to the following:

Jerry Jones
22584 US HWY 14
Midland SD 57552

Bonny Kilmurry
47798 888 Rd.
Atkinson, NE 68713

Ronald Fees
17401 Fox Ridge Rd.
Opal, SD 57758

Elizabeth Lone Eagle
PO Box 160
Howes, SD 57748

Dated this 15th Day of May, 2015.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'R. P. Gough', is written over a light yellow rectangular background.

Robert P. Gough, SD SB# 620
Secretary of, and Attorney for,
Intertribal Council On Utility Policy
P.O. 25, Rosebud, SD 57570
605-441-8316
BobGough@IntertribalCOUP.org