
**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

**GARY DORR'S
RESPONSE TO MOTION BY
TRANSCANADA TO PRECLUDE
TESTIMONY REGARDING MNI
WICONI PIPELINE EASEMENTS**

HP14-001

Gary Dorr (“Dorr”), *pro se*, responds to TransCanada’s Motion to preclude testimony regarding Mni Wiconi Pipeline Easements. Dorr requests this motion be denied for the reasons listed herein:

1. The condition of gaining easements is a duty established by the PUC to ensure that the permitting certification process is in compliance with SD Codified law. South Dakota established easements of the Mni Wiconi Waterline to provide potable water access to South Dakota citizens. The Mni Wiconi Waterlines are on South Dakota Public Records as a safeguard to the preservation of rights to the citizens of South Dakota. It is in the interest of the PUC to allow evidence concerning the Mni Wiconi Waterlines as the crossing of land or Mni Wiconi Waterlines are an important aspect of the PUC permitting process. To deny discussion of these easements across Mni Wiconi Waterlines would be a violation of the rules of procedures established by the agency to address the affects South Dakota citizens. Keystone initiated eminent domain when Keystone failed to gain voluntary easements from certain landowners. Easements are crucial to gaining access across the State of South Dakota for the protection of

public and private utilities. Discussion of the easements whether they are for crossing land or crossing the Mni Wiconi Waterline should remain as part of the testimony and evidence at the hearing for certification of this permit. This motion to preclude discussion of the Mni Wiconi Waterline is a dismissal of citizen's concerns of the State of South Dakota. Under the Declaration of Indigenous Rights established by the United Naitons, Lakota Tribal members have established rights for the protection of their land and water. It would be a disservice of justice if the commission dismissed the concerns of tribal members' rights . As citizens of the state of South Dakota the request of evidence regarding the Mni Wiconi Pipeline is pertinent to preserve the sole source of drinking water is at risk. WATERLINE CONSTRUCTION

The Mni Wiconi Waterline has been constructed with distinctive elements of engineering and design to protect the system because it protects Tribal members who prior to the Mni Wiconi Waterline, had no safe source of drinking water. The mere disturbance of ground can impact the de-compaction of the bed of this system. An upheaval of fluid into this de-compacted Mni Wiconi water pipe system bed by a leaking oil pipeline can affect the de-compacted status because clay expands when fluids contact it. There is a significant amount of clay in the areas where the Keystone pipeline will cross the OSRWSS. This lifeline of water into the reservations located in the state of South Dakota deserves a discussion of whether the easements are proper. The Bureau of Reclamation, despite their members of their organization discussed with Keystone, published crossing criteria for crossing reclamation facilities that grants approval privileges to both BOR **and** OSRWSS. That Crossing Criteria was referenced in the FSEIS and remains a part of it in Appendix D "**Required Crossing Criteria for Reclamation Facilities**". The original criteria publication was dated August 2010 and was Revised in April 2013. In a 2013 letter to Keystone which is filed with the FSEIS, Bureau of Reclamation said

“The final crossing criteria present reasonable and necessary measures for the proposed pipeline crossings of Reclamation water project infrastructure.” In the Revised Crossing Criteria dated March 26, 2013, the Bureau of Reclamation said

“The Mni Wiconi Project in South Dakota includes the Oglala Sioux Rural Water Supply System, (OSRWSS Core System) which delivers potable from the vicinity of Fort Pierre, South Dakota, south to three Indian reservations and a non-Indian rural water system. The OSRWSS Core System has two major conveyance pipelines, the South Core line and the North Coreline. The South Core line runs directly south of Fort Pierre while the North Core line runs west of Fort Pierre about 40 miles and then south. At the proposed Keystone XL Pipeline crossings the South Core pipeline is constructed of 24 inch diameter steel while the North Core pipeline is constructed of 14 inch PVC.”

This serves to identify that the OSRWSS is inclusive of any pipeline that runs from the uptake plant near Fort Pierre, SD to the Reservations. As I stated earlier in another hearing before this commission, the “System” extends from the Uptake Plant in Pierre all the way to the Reservations. No matter how many times Keystone repeats it, it is not true that the OSRWSS is not required to consent to the crossing of their water lines. Further, the Bureau of Reclamation in the same 2013 document said *“TransCanada shall make provisions acceptable to Reclamation and OSRWSS for any activity conducted by TransCanada that causes water service in the OSRWSS Core System pipeline to be interrupted during Keystone XL construction.”*

Additionally in the same document under the North Core Pipeline Crossing Criteria Bureau of Reclamation states that *“The North Core Pipeline (14 inch PVC) will be relocated a minimum of 6 feet below the planned bottom of the Keystone XL pipeline at the crossing location.”* In order to relocate the North Core Pipeline of 14 inch PVC as Mr. Taylor is so fond of reminding

us, TransCanada will have to conduct “*activity*” that will cause “*water service in the OSRWSS Core System pipeline to be interrupted,*” thus triggering the requirement to provide provisions acceptable to OSRWSS and Reclamation. Thus it follows that despite the turn of language in Keystone’s motion to which I am responding, the OSRWSS will have to grant permission to cross the waterline. The entire system from the uptake plant near Fort Pierre to the retail distribution lines on the Reservations is held in trust. And it follows that the language of the U.S. Easement agreements necessarily require that as a trust resource for the Tribes, who are citizens of the State of South Dakota they are required to grant permission to cross the waterlines. This trust resource cannot be interrupted without the permission of the Tribes so as not to obstruct the flow of water across both the Core lines at the same time. The easement agreements held by the United States for the Tribes are held in South Dakota Offices. That makes South Dakota a point of origin for the information, public information, information for the benefit of some of the most at risk populations in the entire United States on the reservations located in South Dakota. This commission can and should be evaluating the evidence that the easement agreements made on the soil of South Dakota and held by South Dakota are sound and that Keystone is in compliance with that process. The easement agreements for the benefit of these tribes are only found of the OSRWSS in the State of South Dakota. As the easement agreements held are the only potable source of drinking water for the tribes the easement agreements and the language must be part of the discussion of the certification of the permit inside the boundaries of South Dakota. Evidence and testimony must be allowed to be presented if for no other reason, then to verify to the public and the Commission that the letter of the law is being upheld. If Keystone is truly in compliance with conditions of the permit as they existed in 2010 then this discussion will have little effect on the judicial, transparent process.

2. Additionally, in the 2010 FEIS, the Bureau of Reclamation had stated *“TransCanada shall receive OSRWSS and Reclamation's review and approval of crossing specifications and drawings prior to starting work, including on the cathodic protection design, to assure it does not impact the OSRWSS Core System or its cathodic protection system.”* So even though the wording changed in the 2013 Required Crossing Criteria, again, no matter what was told to Keystone, the **published criteria** by Bureau of Reclamation made stipulations that the OSRWSS and BOR were to be consulted for review and **approval** of any actions on the Mni Wiconi Core lines.

3. If testimony and evidence of the easement agreements for the Mni Wiconi Waterlines and the OSRWSS is precluded from this process today, then there can be no assurance that the sole source of drinking water for 90,475 Indians who receive their drinking water from the OSRWSS is being protected in the process and that the permit conditions regarding the crossing criteria are being met or will continue to be met. There are 90,475 Indians who are citizens of the State of South Dakota who are relying on the Commission at least in this case to protect their drinking water by requiring an examination of the evidence that the easements to cross their sole source of drinking water are in compliance with every aspect of law and that the crossing criteria can continue to be met, if it was ever met, or if it is possible for it to ever be met.

4. Dorr respectfully moves to have the motion to preclude testimony regarding the Mni Wiconi Waterlines denied so that Keystone can verify whether they have met the permit conditions and findings, whether they are continuing to meet the permit conditions and Findings, or if they can ever meet the permit conditions. It is premature to assume the mere presentation of evidence to this commission would prejudice any party involved in the process, would be out of order, or would hinder the transparent presentation of truth whether it be the applicant or the interveners

who prevail in that respect. It is no small matter to verify that easement conditions for the sole source of drinking water for 90,475 Indians who are citizens of the state of South Dakota have been met by Keystone. It is then imperative that this Commission verify all the evidence to those 90,475 souls that any undertaking of an action that may hinder their health and wellbeing and the safe operation of the OSRWSS is being done with the highest degree of justice and oversight, and not laid to rest on a whim and a flick of the pen. I therefore request that this Commission deny this motion for the good of society, for the verification of justice, and ultimately to verify whether the permit conditions are still being met, or if they ever have been met or will be met in the future.

Dated this 2nd day of June, 2015.

Gary F. Dorr
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