BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

11014 004

)	HP14-001
IN THE MATTER OF THE)	
APPLICATION BY TRANSCANADA)	KEYSTONE'S OBJECTIONS TO
KEYSTONE PIPELINE, LP FOR A)	STANDING ROCK SIOUX
PERMIT UNDER THE SOUTH DAKOTA)	TRIBE'S FIRST REQUEST FOR
ENERGY CONVERSION AND)	THE PRODUCTION OF
TRANSMISSION FACILITIES ACT TO)	DOCUMENTS
CONSTRUCT THE KEYSTONE XL)	
PROJECT		

TransCanada Keystone Pipeline, LP ("Keystone") makes the following objections to interrogatories pursuant to SDCL § 15-6-33 and objections to request for production of documents pursuant to SDCL § 15-6-34(a). Keystone will further respond, as indicated throughout the objections, on or before February 6, 2015. These objections are made within the scope of SDCL § 15-6-26(e) and shall not be deemed continuing nor be supplemented except as required by that rule.

GENERAL OBJECTION

Keystone objects to the instructions and definitions contained in Standing Rock Sioux Tribe's First Set of Interrogatories and Requests for Production of Documents to the extent that they are inconsistent with the provisions of SDCL Ch. 15-6. *See* ARSD 20:10:01:01.02. Keystone's answers are based on the requirements of SDCL §§ 15-6-26, 15-6-33, 15-6-34, and 15-6-36.

REQUEST FOR PRODUCTION OF DOCUMENTS

1. All exhibits to be introduced at the hearing in this matter.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

2. The resumes of all persons to be called as witnesses or whose testimony will be filed by TransCanada.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

3. All documents prepared for the purpose of demonstrating compliance by TransCanada with the Oil Pollution Act of 1990, codified at 33 U.S.C. §1321, and the PHMSA Facility Response Plan regulations, 49 CFR Part 194, in the construction and operation of the Keystone XL Pipeline.

OBJECTION: This request seeks information that is outside the scope of the PUC's jurisdiction and Keystone's burden under SDCL 49-41B-27. This request also seeks information that is governed by federal law and is within the province of PHMSA. The PUC's jurisdiction over the emergency response plan is preempted by federal law. *See* 49 C.F.R. Part 194; 49 U.S.C. 60104(c). This request further seeks information that is confidential and proprietary. Public disclosure of the emergency response plan could commercially disadvantage Keystone. Without waiving the objection, Keystone will respond to the first part of this request on or before February 6, 2015.

{01808260.1}

2

4. Integrity Management Plan and all other documents prepared for the purpose of demonstrating compliance by TransCanada with the Pipeline Safety Act, 49 U.S.C. §60101 *et seq.* and the implementing regulations, in the construction and operation of the Keystone XL Pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the exclusive province of the PHMSA. The PUC's jurisdiction over pipeline safety is preempted by federal law. See 49 C.F.R. Part 194; 49 U.S.C. § 60104(c). This request further seeks information that is confidential and proprietary. See Amended Final Order, HP 09-001, Condition ¶ 36. Public disclosure of the Integrity Management Plan would commercially disadvantage Keystone.

5. All documents prepared or obtained for the purpose of demonstrating compliance by TransCanada with the Clean Water Act, 33 U.S.C. §§1251-1387, and the implementing regulations, and SDCL Chapter 34A-02, in the construction and operation of the Keystone XL Pipeline.

OBJECTION: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact

3

Statement, Section 4.3, which is publicly available at <u>http://keystonepipeline-</u>xl.state.gov/finalseis/.

6. All documents prepared or obtained for the purpose of demonstrating compliance with the Endangered Species Act, 16 U.S.C. §§1531-1544, and the implementing regulations, and SDCL Chapters 34A-8 and 34A-8A, in the construction and operation of the Keystone XL Pipeline.

OBJECTION: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, Section 3.8, which is publicly available at <u>http://keystonepipeline-</u> xl.state.gov/finalseis/.

All documents relating to the environmental review of the Keystone XL
Pipeline by the Department of State under the National Environmental Policy Act, 42
U.S.C. §4231 *et seq.*

OBJECTION: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, which is publicly available at <u>http://keystonepipeline-xl.state.gov/finalseis/</u>.

4

 All documents prepared or obtained for the purpose of demonstrating compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §§470-470x-6.

OBJECTION: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, Section 4.11, which is publicly available at <u>http://keystonepipeline-</u> xl.state.gov/finalseis/.

 All documents prepared or obtained for the purpose of demonstrating compliance with the Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. §§3001-3013.

OBJECTION: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, Section 3.11, which is publicly available at <u>http://keystonepipeline-</u> <u>xl.state.gov/finalseis/</u>.

10. All documents relating to communications or meetings with the Standing Rock Sioux Tribe or other Indian Tribes in the United States or Canada.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

Construction quality assurance plan or related documents for the Keystone
XL Pipeline.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

12. Water sampling quality assurance plan or related documents for water samples taken in relation to construction of the Keystone XL Pipeline.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

13. Operations manual or related documents for the Keystone XL Pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the exclusive province of the PHMSA. The PUC's jurisdiction over the operations manual is preempted by federal law. See 49 C.F.R. Part 194; 49 U.S.C. § 60104(c). This request further seeks information that is confidential and proprietary. See Amended Final Order, HP 09-001, Condition ¶ 36. Public disclosure of the operations manual would commercially disadvantage Keystone.

14. All letters, correspondence, emails or instant messages to and from the South Dakota Public Utilities Commission, its employees, attorneys or agents, since January 1, 2008.

ANSWER: Any responsive, non-privileged documents will be provided on or before February 6, 2015.

15. All advertisements that have been purchased by TransCanada relating to the project in any South Dakota media, such as television, radio, newspaper, billboard or other.

OBJECTION: This request is overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b).

Dated this 23rd day of January, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By <u>/s/ James E. Moore</u> William Taylor James E. Moore Post Office Box 5027 300 South Phillips Avenue, Suite 300 Sioux Falls, SD 57117-5027 Phone: (605) 336-3890 Fax: (605) 339-3357 Email: <u>Bill.Taylor@woodsfuller.com</u> James.Moore@woodsfuller.com Attorneys for Applicant TransCanada

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January, 2015, I sent by e-mail

transmission, a true and correct copy of Keystone's Objections to Standing Rock Sioux

Tribe's First Request for Production of Documents, to the following:

Peter Capossela, P.C. PO Box 10643 Eugene, OR 97440 pcapossela@nu-world.com Chase Iron Eyes Iron Eyes Law Office, PLLC PO Box 888 Fort Yates, ND 58538 <u>chaseironeyes@gmail.com</u>

<u>/s/ James E. Moore</u> One of the attorneys for TransCanada