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March 25, 2015

Woods Fuller Shultz and Smith, PC
300 S. Phillips Avenue, Suite 300
Sioux Falls, SD 57104

Re: In the Matter of the Application by TransCanada Keystone Pipeline, LP
HP14-001
Concerns with Keystones Responses to Second Set of Interrogatories and Request for Production of Documents

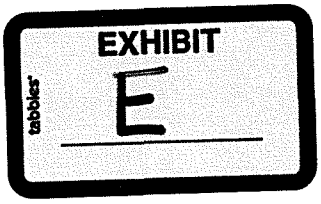
Dear Mr. Taylor,

I am writing in response to Keystone's Responses and Objections to the Rosebud Sioux Tribe's Second Set of Interrogatories and Request for Production of Documents to address concerns that I have with your responses. Each concern will be identified and addressed in turn. I welcome the opportunity to further discuss these concerns and look forward to hearing from you.

My first two concerns are initially with your statement that within the scope of SDCL 15-6-26(e) your responses shall not be deemed to be continuing nor are the answers to be supplemented and your general objection to the instructions and definitions contained in the First Set of Interrogatories and Request for Production of Documents. SDCL 15-6-26(e) - "Supplementation of Responses" provides that "a party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement or correct the response to include information thereafter acquired." Accordingly, your statement that your responses are not deemed to be continuing appear to be in conflict with SDCL 15-6-26(e) unless your initial responses were not complete when made. If your responses were not complete when made then your initial answers and production will need to be supplemented accordingly. Your first answers were supplemented on March 19, 2015.

The following addresses specific concerns that I have with your responses to the interrogatories and request for production of documents.

Specific Responses to TransCanada's Objections and Responses to Interrogatories:



Interrogatory No.: 1a, b, c, d, e, f, g and h.

a) For the most recent and accurate Project route (as described in ref (iii)) and facility locations, provide an approximate elevation profile of the proposed pipeline (elevation vs. pipeline milepost), capturing the segments from the nearest upstream pump station north of the state border to the nearest pump station just south of the state border.

b) On the elevation profile provided above, indicate (1) the location of the pump stations, (2) the location of all mainline valves, including check valves, by milepost; (3) the type of mainline valve actuation (i.e. manual, automatic, or remotely operated); and (4) the location of all valves in reference to water crossings.

c) According to Finding 20 and ref (iv), Keystone is proposing a number of changes to both the type of valves and their location since the PUC decision of June 29, 2010. Please list these changes and indicate them on the elevation profile requested above.

d) For the maximum design flow rate (i.e. the updated maximum design flow rate of 830,000 bpd as per Finding 20), indicate the suction and discharge pressures at each pump station identified on the above elevation profile.

e) On the provided elevation profile, indicate the maximum operating pressure ("MOP") for the pipeline segments.

f) Superimpose a hydraulic profile on the provided elevation profile for the stated design capacity/operation.

g) On the above pipeline elevation profile, indicate the approximate location of HCAs by milepost.

h) If the information in (g) is confidential as indicated on IR no. 1 responses to other parties, please indicate (on the above pipeline elevation profile) the approximate location by milepost of (i) water crossings; (ii) the High Plains aquifer (Ogallala Formation) in Tripp County; (iii) other areas of unconfined aquifers including alluvial aquifers associated with streams, and occasional unconfined stretches in the Hell Creek, Fox Hills, and Pierre Shale aquifers (as per ref (v)); and (iv) any Karst Aquifers, which are crossed by the Project.

Response:

1a. This request seeks information that is confidential for security reasons. It is also not relevant or likely to lead to the discovery of admissible evidence.

1b. This request seeks information that is confidential for security reasons. The milepost locations for each pump station and mainline valve are not relevant or likely to lead to the discovery of admissible evidence. Without waiving the objection, each mainline valve located in

South Dakota will be remotely operated. Mainline valves and pump stations are discussed in Section 2.1.4.4 of the FSEIS.

1c. This request for an elevation profile seeks information that is confidential for security reasons. Without waiving the objection, all valve locations are in compliance with 49 CFR 195.260 and PHMSA Special Condition 32. Changes include remote control and actuation of any valves which were manually operated; the addition of backup power; and the addition/adjustment of intermediate mainline valve locations to ensure no more than a 20 mile spacing.

1d. The request for an elevation profile seeks information that is confidential for security reasons. Without waiving the objection, the minimum suction pressure at the pump station is 50 psig and a maximum discharge pressure of 1,307 psig.

1e. The request for an elevation profile seeks information that is confidential for security reasons. Without waiving the objection, in accordance with 49 CFR 195.106 Design Pressure the mainline MOP will be 1,307 psig and at select locations downstream of pump stations, the MOP is 1,600 psig.

1f. This request seeks information that is confidential for security reasons. It is also not relevant or likely to lead to the discovery of admissible evidence.

1g. The location of High Consequence Areas is confidential and Keystone is required by PHMSA to keep this information confidential.

1h. The Department of State FSEIS discusses the High Plains Aquifer and other aquifers in Chapter 3, Water Resources, Section 3.3.2. The mile posts of the aquifers beneath the right of way are listed in Table 3.3-2.

Concerns:

1a. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

1b. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is

protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

1c. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

1d. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

1e. The answer provided is incomplete and provides only general MOPs for the Project, whereas our request asked for MOP by pipeline segment. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The MOP by pipeline segment is essential for evaluating the safety of the pipeline during operation. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

1f. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information. The hydrologic profile should be superimposed on the elevation profile and expressed as the maximum stream daily rate (in barrels per stream day) for

a specific gravity of crude. Note: we are not asking the calendar rate of 830k bpd (i.e. the average rate over the year for all types of crudes).

1g. The requested information is not confidential and TransCanada is not required by the PHMSA to keep the location of High Consequence Areas confidential. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation. The location of the updated High Consequence Areas on the elevation profile is key to Integrity Management, and central to the ability to evaluate the safety of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence.

1h. While the FSEIS does discuss water crossings, as well as the High Plains Aquifer and other aquifers in the reference provided in response to this question, it is impossible to know if the information in the FSEIS is still up-to-date given the changes in the routing (particularly around HCAs) in South Dakota, which may post-date the FSEIS. Furthermore, Table 3.3-2 (FSEIS) does not categorize the aquifers as "unconfined" and therefore does not answer the question. Nor does Table 3.3-2 provide the information requested about the location of occasional unconfined stretches in Hell Creek, Fox Hills and Pierre Shale aquifers. Finally, the question asks for the location of any Karst Aquifers crossed by the Project. (We are seeking confirmation of our understanding that no Karst aquifers are crossed by the project.) For the above reasons, the response is incomplete, potentially out of date, and ambiguous. Please provide a complete, direct, updated and unambiguous response to each of the specific questions in this request.

Interrogatory No. 2a through 2e.:

a) Please list each of the 20 remotely controlled valves (and any additional check valves) and their location by milepost. Please indicate which of these locations are proximate to water crossings and identify the water crossing.

b) For each critical water crossing, please confirm the placement of remotely controlled shut-off valves on either side of critical water crossings. If not, please explain why not.

c) For each critical water crossing, please confirm the placement of a check valve. If not, explain why not.

d) Given that all 20 mainline valves will be remotely controlled, does this imply that there are no more check valves planned? If yes, please explain the absence of check valves for additional safety on critical water crossings. If not, please confirm if there are check valves located at critical water crossings; and provide the location of the check valves.

e) According to refs (i)-(iv), Keystone is proposing a number of changes to both the type of valves and their location since the PUC decision of June 29, 2010. Please list these changes.

Response:

2a. This request seeks information that is confidential for security reasons. The mile post locations of valve sites is not relevant and not likely to lead to the discovery of admissible evidence. Without waiving the objection, please refer to FSEIS 2.1 Overview of the Proposed Project, Section 2.1.4.4 Mainline Valves. All valve locations are in compliance with PHMSA Special Condition 32 and 49 CFR 195.260. Per 49 CFR 195.260 (e) valves are placed on each side of a water crossing that is more than 100 feet from high water mark to high water mark.

2b. All valve locations are in compliance with PHMSA Special Conditions 32 and 49 CFR 195.260. Per 49 CFR 195.260 (e) valves are placed on each side of a water crossing that is more than 100 feet from high water mark to high water mark.

2c. All valve locations are in compliance with PHMSA Special Conditions 32 and 49 CFR 195.260. Per 49 CFR 195.260 (e) valves are placed on each side of a water crossing that is more than 100 feet from high water mark to high water mark.

2d. No. Select valve site locations contain remotely operable mainline isolation valve and a check valve. These valve assemblies are placed in proximity downstream to major water bodies.

2e. All valve locations are in compliance with 49 CFR 195.260 and PHMSA Special Condition 32. Changes include remote control and actuation of any valves which were manually operated; the addition of back-up power; and the addition/adjustment of intermediate mainline valve locations to ensure no more than a 20 mile spacing.

Concerns:

2a. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The information provided is outdated as the FSEIS gives mileposts locations for 15 valves in South Dakota and now there are 20 valves as well as check valves in South Dakota. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

2b. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the

discovery of admissible evidence. The information provided is outdated as the FSEIS gives mileposts locations for 15 valves in South Dakota and now there are 20 valves as well as check valves in South Dakota. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

2c. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The information provided is outdated as the FSEIS gives mileposts locations for 15 valves in South Dakota and now there are 20 valves as well as check valves in South Dakota. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

2d. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The information provided is outdated as the FSEIS gives mileposts locations for 15 valves in South Dakota and now there are 20 valves as well as check valves in South Dakota. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

2e. The interrogatory seeks information relevant to analyzing and determining worst case spill scenarios and is central to the ability to evaluate the safety of the pipeline as well as its overall design and operation and is necessary to understand the pressure safety factors on specific segments of the pipeline. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The information provided is outdated as the FSEIS gives mileposts locations for 15 valves in South Dakota and now there are 20 valves as well as check valves in South Dakota. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable

Administrative Rules, no such determination has been made. Please provide the requested information.

Interrogatory No's: 3a and 3c

a) Please provide a breakdown of the annual capacity of Keystone XL to move: (1) light crude; (2) medium crude; (3) heavy crude.

c) To the extent to which the annual capacity to move crude varies by type of crude (i.e. light, medium and heavy) as per Question b), please comment on the change in annual capacity for each type of crude from (i) the Project as originally permitted by the SD PUC on June 29, 2010 (which would have a nominal capacity of 700,000 bpd expandable to 900,000 bpd with additional pumping capacity) to (ii) the Project as currently proposed with a maximum capacity of 830,000 bpd.

Response:

3a. Keystone XL is designed to transport different grades of crude oil. Its annual average capacity is approximately 830,000 bpd.

3c. Keystone received additional commitments on Keystone XL Pipeline that would support an expansion of its total capacity from 700,000 barrels per day to 830,000 barrels per day.

Concerns:

3a. The answer provided is incomplete and non-responsive to the interrogatory. The interrogatory requested a breakdown of the annual capacity of Keystone XL to move: (1) light crude; (2) medium crude; and (3) heavy crude. Please provide a complete answer to the interrogatory. Note: we are not asking the calendar rate of 830k bpd (i.e. the average rate over the year for all types of crudes).

3c. The answer provided is incomplete and non-responsive to the interrogatory. Please provide a complete answer to the interrogatory. Note: again 700k bpd and 830k bpd are calendar rates (i.e. the average rate over the year for all types of crudes).

Interrogatory No. 4d and 4e

4d. Findings 22, 60, 90 refer to Keystone implementation of 59 PHMSA Special Conditions as set forth in ref (ii). According to ref (ii), pp. 95-107, Keystone has also committed to implement mitigation recommendations from the Battelle and Exponent risk assessment reports, including specifically addressing several issues in its Emergency Response Plan and Oil Spill Response Plan (and its risk analysis that is used in the development of those plans). Please explain what (if

anything) Keystone has committed to in regard to implementation of mitigation recommendations from the Battelle and Exponent risk assessment reports, and how this affects Findings 22, 60, 90, and any other Findings.

4e. Findings 22, 60, 90 refer to Keystone implementation of 59 PHMSA Special Conditions as set forth in ref (ii). According to ref (ii), pp. 107-108, Keystone has also committed to a number of measures beyond the spill cleanup measures described above in ref (ii), including specifically addressing several issues in its Emergency Response Plan and Oil Spill Response Plan (and the detailed risk analysis used in developing those plans). Please explain what (if anything) Keystone has committed to in regard to additional spill cleanup measures, and how this affects Findings 22, 60, 90, and any other Findings.

Response:

4d. Keystone will implement additional mitigation measures included in Appendix Z.

4e. Keystone will implement additional mitigation measures included in Appendix Z.

Concerns:

The answer provided is incomplete as you only answer part of the interrogatory by referring to Appendix Z, without attempting to specify how TransCanada will actually implement the 59 special conditions or the mitigation recommendations in the Battelle and Exponent reports (contained in Appendix Z). The response does not address how the implementation of the mitigation measures in Appendix Z will affect Findings 22, 60, 90 and any other relevant findings. A more complete answer would involve Keystone describing with specificity how it is going to apply the 59 special conditions and the mitigation recommendations in Battelle and Exponent to the Project in South Dakota and how the application of these new conditions is going to result in changes that are "either neutral or positive to the Commission's concerns."

For example, the answer provided does not address how Keystone plans to implement Special Condition 6 "Monitoring for Seam Fatigue from Transportation." Specifically, how does Keystone plan to avoid Double Submerged Arc Weld cracking introduced during transportation and installation along the pipeline? Additionally, does Keystone have plans to implement other measures to avoid DSAW cracking introduced during transportation and installation along the pipeline? Related to Special Condition 22 "Pressure Test Level," will Keystone conduct a pre-in-service hydrotest at a minimum of 100% SYMS for 8 hours? And following the test, will Keystone ensure no marked pipe permanent expansion? Special Condition 16 sets out conditions for the inspection of welds. Can Keystone confirm that Special Condition 16 implies that Keystone will radiologically inspect every girth weld, even if not required by regulation and that the weld inspection records will be maintained for the life of the pipeline?

In the spirit of providing a more complete response, will Keystone elaborate on which conditions and mitigation measures in Appendix Z that are the most important of the numerous additional conditions and mitigation measures and have the largest impact in supporting your claim that the

changes are either neutral or positive to the Commission's concerns. A complete answer will help us evaluate the basis of your claim that the changes are "either neutral or positive to the Commission's concerns."

Interrogatory No. 8a, 8b, 8c, 8d

a) Does the maximum response time of 6 hours apply to HCAs and HSAs? If not, please provide the maximum response time for HCAs and HSAs.

b) Does the maximum response time of 6 hours apply to (i) critical water crossings; (ii) the High Plains aquifer (Ogallala Formation) in Tripp County; (iii) other areas of unconfined aquifers including alluvial aquifers associated with streams, and occasional unconfined stretches in the Hell Creek, Fox Hills, and Pierre Shale aquifers (as per ref (iv)); and (iv) any Karst Aquifers, which are crossed by the Project. If not, please provide the maximum response time for these locations.

c) Does the maximum response time of 6 hours take into account various worst-case conditions (road/traffic/weather/other)?

d) Given a scenario involving poor (road/traffic/weather/other) conditions, has Keystone developed contingency plans to speed the emergency response (i.e. police escort, alternate routing or other). Please explain.

Response:

8a. Maximum response times are identified in the FSEIS Appendix I Spill Prevention Control and Countermeasure Plan and Emergency Response Plan; Emergency Response Plan Section 3.1 Initial Response Actions.

8b. Maximum response times are identified in the FSEIS Appendix I Spill Prevention Control and Countermeasure Plan and Emergency Response Plan; Emergency Response Plan Section 3.1 Initial Response Actions.

8c. TransCanada locates equipment and people that are transported by air, land and water to ensure that regulatory guidelines are met.

8d. TransCanada locates equipment and people that are transported by air, land and water to ensure that regulatory guidelines are met.

Concerns:

8a. The response is not responsive to and is an incomplete response to the interrogatory.

8b. The response is not responsive to and is an incomplete response to the interrogatory.

8c. The response is not responsive to and is an incomplete response to the interrogatory. The answer references meeting regulatory guidelines, however the question is about the maximum 6 hour response time that Keystone has committed to.

8d. The response is not responsive to and an incomplete response to the interrogatory. The answer references meeting regulatory guidelines however the question is about contingency plans designed to speed up the maximum response time.

Interrogatory No.: 9b, 9c, 9e

b) a description summarizing each entity's ownership and the operating relationships with each other. This description and the chart in (a) must show, but not be restricted to:
    a. the ownership of each entity and the jurisdiction in which each entity is registered;
    b. the general and limited partners in TransCanada Keystone Pipeline LP; and
    c. the respective roles and responsibilities of TransCanada Keystone Pipeline LP and TransCanada in managing the limited partnership (TransCanada Keystone Pipeline LP) and operating the pipeline;

c) confirmation as to whether the limited partners of TransCanada Keystone Pipeline LP and/or its parent or other affiliates would or would not provide financial backstopping to the limited partnership should it be unable to pay its creditors. If confirmation is not possible at this time, please indicate whether this backstopping would be an option these parties would consider when the Project is placed in service;

e) a summary of TransCanada Keystone Pipeline LP's distribution policy that would determine how cash in the limited partnership would be distributed to the limited partners.

Response:

9b. This request seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. The request also seeks information that is confidential and proprietary.

9c. This request seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. The request also seeks information that is confidential and proprietary. In addition, this request calls for speculation about hypothetical events that Keystone cannot answer.

9e. This request seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. The request also seeks information that is confidential and proprietary.

Concerns:

9b. The request seeks information relevant to the evaluation of TransCanada's financial coverage in the event of a spill. The sought information is likely to lead to the discovery of

admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

9c. The request seeks information relevant to the evaluation of TransCanada's financial coverage in the event of a spill. The sought information is likely to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

9e. The request seeks information relevant to the evaluation of TransCanada's financial coverage in the event of a spill. The sought information is likely to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

The following website links are to Interrogatories from the Canadian National Energy Board to Kinder Morgan in the Trans Mountain Expansion Project in relation to financial coverage. These are provided as an example of what another similar pipeline company has provided recently to another regulatory body for a similar project and demonstrative of the responses we are seeking from Keystone.

Cover Letter to Trans Mountain response to NEB IR set 1

https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2454322/B32-1_-_Trans_Mountain_Letter_NEB_IR_No._1_May_1_2014_-_A3W9H7.pdf?nodeid=2462073&vernum=-2

Trans Mountain response to NEB IR set 1, see specifically response to NEB IRs 1.7-1.19https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/2456419/B32-2_Trans_Mountain_Response_to_NEB_IR_No._1_1_of_2_-_A3W9H8.pdf?func=doc.Fetch&nodeid=2456419 pp. 18-30 (PDF pp. 20-32)

Re: response to NEB IR 1.7a, the corporate structure is provided in Attachment 1 to NEB IR No. 1.07a (NEB IR No. 1.07a– Attachment 1).

https://docs.neb-one.gc.ca/lleng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2454322/B32-4_-

Trans_Mountain_Response_to_NEB_IR_No._1.07a-Attachment_1_-_A3W9I0.pdf?nodeid=2454402&vernum=-2

Re: response to NEB 1.9a, the requested financial projections are provided in Attachment 1 to the response to NEB IR No. 1.09a (NEB IR No. 1.09a – Attachment 1).

https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2451003/2454322/B32-5_-_Trans_Mountain_Response_to_NEB_IR_No._1.09a-Attachment_1_-_A3W9I1.pdf?nodeid=2454323&vernum=-2

Interrogatory No.'s: 10a, 10b, 10d, 10e, 10f(a) and (b), 10g, 10h (a), 10h(c), 10i

a) Please describe the type and amount of insurance that would be held by and/or for TransCanada Keystone Pipeline LP[1] during the Project's construction phase. Please include details of the risk analysis performed, assumptions made, and supporting data considered in evaluating the coverage limits proposed.

b) Please describe the type and amount of spill liability insurance that would be held by and/or for TransCanada Keystone Pipeline LP[2] during the Project's operation phase. Please include details of the risk analysis performed, assumptions made, and supporting data considered in evaluating the coverage limits proposed.

d) Please provide an overview of the key elements in the spill liability insurance including the facilities and business functions and related activity risks that are covered by the spill liability insurance program, the name of the insurance provider and the provider's credit rating.

e) Please describe the conditions, circumstances, or exclusions, if any, under which the spill liability insurance would not cover the losses of TransCanada Keystone Pipeline LP and/or third parties in the event of a large oil spill. For clarity include a list of the standard risks and non-standard risks that are excluded from this insurance program.

f) If the response to d) confirms that the spill liability insurance may not cover all losses and liabilities, please:
    a. describe how TransCanada Keystone Pipeline LP would financially cover any losses and claims for spills, malfunctions, or other potential liabilities in excess of its insurance coverage during the life of the pipeline system; and
    b. describe and quantify, to the extent possible, the role of cash from operations, tariff provisions, indemnities, bonds, letters of credit, parental guarantees, cash reserves, or other instruments that would be available to cover these potential

[1] Insurance held for TransCanada Keystone Pipeline LP could include insurance held directly by TransCanada Keystone Pipeline LP, as well as insurance held by TransCanada (the parent corporation) and affiliated entities if that insurance provides coverage for TransCanada Keystone Pipeline LP.

[2] Insurance held for TransCanada Keystone Pipeline LP could include insurance held directly by TransCanada Keystone Pipeline LP, as well as insurance held by TransCanada (the parent corporation) and affiliated entities if that insurance provides coverage for TransCanada Keystone Pipeline LP.

liabilities. Regarding cash from operations and cash reserves, illustrate the financial capacity that these cash items could provide.

g) Please explain whether TransCanada Keystone Pipeline LP's spill liability coverage amount has changed (or will change) as a result of the increased capacity proposed for the pipeline system if the Project is approved and would operate in addition to Base Keystone. Include any risk analysis performed and assumptions made to determine this level of coverage for the period after the Project goes into service.

h) Regarding the spill liability insurance, please describe:
   a. the priority of payments for the components of insurance claims for spill events, such as clean-up costs, remediation costs, and third party liability claims;
   c. whether the coverage is per event or for more than one event in an insurance year.

i) Please provide the total insurance coverage amount for spill liability for TransCanada Keystone Pipeline LP, and confirm that any cash recovery for spill claims would be in addition to and separate from any recovery from the General Liability insurance program for claims not involving spills. If this cannot be confirmed, please explain the methodology for allocating the total insurance coverage among competing claims if the total claims exceed the spill liability coverage limit.

Response:

a) During construction TransCanada Keystone Pipeline would look to secure a dedicated general liability insurance policy including sudden and accidental pollution coverage with a limit not less than US$200 million.
b) During operations TransCanada Keystone Pipeline would look to secure a dedicated general liability insurance policy including sudden and accidental pollution coverage with a limit not less than US$100million.

In addition to the dedicated policy, TransCanada's corporate general liability policy would provide excess coverage. This policy covers all of TransCanada's controlled companies and subsidiaries and would include TransCanada Keystone Pipeline operations. Should a specific claim or claims within a policy year result in significant decrease of these limits, TransCanada would seek to reinstate the limits.

d) The policy would respond to the legal liability for third party liability claims, clean-up costs and remediation costs. There are a variety of insurance companies that participate in TransCanada insurance policies, but each must have a minimum Standard & Poor's rating of A-.

e) General liability insurance policies have standard exclusions typical for a company in the liquid pipeline industry including but not limited to i) liabilities arising from gradual seepage, ii) fines and penalties, iii) and other exclusions not relevant to spills. TransCanada Keystone Pipeline is unable to confirm that the exclusions in place today will remain in effect for the life of the project or if new exclusions will be added at a later date.

f) (a) we can't confirm how the insurance policy will or will not respond to losses and claims in the future, as every spill incident is unique. (b) Keystone is still preparing an answer to this interrogatory, and will provide a supplement as soon as possible. Supplement provided for (a) – We can't confirm how the insurance policy will or will not respond to losses and claims in the future, as every spill incident is unique. In the event of a spill, Keystone will identify the costs associated with spill response and recovery activities, remediation, and potential third-party damages. Based on such an analysis, Keystone will identify the levels and types of financial resources required to meet its obligations. Supplement provided for (b) – In the event of a spill, Keystone will identify the costs associated with spill response and recovery activities, remediation, and potential third-party damages. Based on such an analysis, Keystone will identify the levels and types of financial resources required to meet its obligations.

g) Our approach has not changed.

h) (a) There is no priority of payments for the components of an insurance claim for spill events.
(c) The policy is per occurrence, with an aggregate for the policy year.

i) This can't be confirmed. Insurance claims are made to the policy on a first occurring basis.

Concerns:

a) The answer provided is incomplete as it does not include details of the risk analysis performed, assumptions made and supporting data that was considered in evaluating the coverage limits proposed. The request seeks information relevant to the evaluation of TransCanada's financial coverage in the event of a spill. In your answer to 10 b), you state that "[i]n addition to the dedicated policy, TransCanada's corporate general liability policy would provide excess coverage." Would this excess coverage also apply in the construction phase? Please describe the type and the amount of insurance held in TransCanada's corporate general liability policy.

Confirm that this $200 million dedicated general liability insurance policy for the construction period is specific to Keystone XL in South Dakota, Nebraska and Montana. If not, please explain what the $200 million dedicated general liability insurance policy for the construction period covers (in terms of states and project).

b) The answer provided is incomplete as it does not include details of the risk analysis performed, assumptions made and supporting data that was considered in evaluating the coverage limits proposed. In answer to 10 b), you state that "[i]n addition to the dedicated policy, TransCanada's corporate general liability policy would provide excess coverage." Please describe the type and the amount of insurance held in TransCanada's corporate general liability policy.

Confirm that this $100 million dedicated general liability insurance policy for operations is specific to Keystone XL in South Dakota, Nebraska and Montana. If not, please explain what the $100 million dedicated general liability insurance policy for operations would cover (in terms of states and project).

In the supplemental answer to IR 12, you confirm that Keystone XL will have $200 million in aggregate third party liability insurance to cover spills in SD and all other states (including MT and NE). Is this $200 million in aggregate third party liability insurance a separate policy from the "dedicated general liability insurance policy including sudden and accidental pollution coverage with a limit not less than US$100 million" for operations? Or is the $100 million in dedicated general liability insurance a subset of the $200 million in aggregate third party liability insurance? Please explain in detail how the $200 million in aggregate third party liability insurance (described in response to IR 12) relates to the $100 million in dedicated general liability insurance for operations referred to in response to IR 10 b).

Given the supplemental answer to IR 12, please modify the answer to 10 b) to integrate the new information from IR 12 if applicable, including the details of the risk analysis performed, assumptions made, and supporting data considered in evaluating the coverage limits proposed.

d) The answer is incomplete. We have asked for an overview of the key elements in the spill liability insurance including the facilities and business functions and related activity risks that are covered by the spill liability insurance program, the name of the insurance provider and the provider's credit rating. You have not provided this information. You have told us that the policy would respond to the legal liability for third party liability claims, clean-up costs and remediation costs; but you have not told us how the how the $200 million in aggregate third party liability insurance (described in response to IR 12) relates to the $100 million in dedicated general liability insurance for operations referred to in response to IR 10 b). Nor have you told us if the names of the insurance providers and amounts and types of coverage for the "variety of insurance companies that participate in TransCanada insurance policies."

e) The answer provided is incomplete as it does not describe the conditions, circumstances or exclusions, if any, under which the spill liability insurance would not cover the losses of TransCanada Keystone Pipeline LP and or third parties in the event of a large oil spill. The answer did also not provide the requested standard risks and non-standard risks that are excluded from the insurance program.

f) (a) The answer provided is incomplete and non responsive to the interrogatory. The question asked about how Keystone would potentially cover losses in excess of its insurance, not for a confirmation of how the insurance policy will or will not respond to a loss or claim. The answer tells us nothing about how Keystone would cover losses in excess of its insurance. This non-responsive answer impacts our ability to evaluate the adequacy of financial coverage in the event of a spill. (b) The answer, although supplemented is incomplete and non responsive to the interrogatory. The question asked Keystone to describe and quantify the role of cash (from various sources, including operations, and cash reserves) that would be available to cover liabilities (such as spills and malfunctions) and then to illustrate the financial capacity that cash from operations and cash from reserves could provide. Simply telling us that Keystone will identify the costs associated with a spill after the fact does not answer the interrogatory. This non-responsive answer also impacts our ability to evaluate the adequacy of financial coverage in the event of a spill.

g) The answer is incomplete. Please confirm if the spill liability coverage will change and by how much it will change, as result of the increased capacity proposed for the Project (from Base Keystone to Base Keystone + Keystone XL). Include any risk analysis performed and assumptions made to determine the change in the level of coverage.

h) (a) This answer seems unlikely. Can TransCanada confirm the answer that "[t]here is no priority of payments for the components of an insurance claim for spill events." In other words, confirm that TransCanada's spill liability insurance would have no plan to prioritize clean-up costs, remediation costs and third party liability claims? If there is a priority of payments between these costs, please describe it.

(c) TransCanada has not provided the aggregate amount of the insurance policy. Please provide a complete answer with details on the aggregate amount for the insurance year.

i) The answer is incomplete. Do you consider the answer to be complete at this time?

Interrogatory No.: 11

a) Please provide the following for TransCanada Keystone Pipeline LP for the first full year and the fifth full year following Project commissioning:
   a. operating cash flow projections that identify net income and other components of cash flow; and
   b. the estimated total asset and liability values and their main components.

b) Please describe the following aspects of TransCanada Keystone Pipeline LP's cash management as anticipated at this time:
    a. the estimated per cent of total cash flow from TransCanada Keystone Pipeline LP's operations that would be distributed to the partners of the limited partnership over the first five years of operation following Project commissioning; and
    b. the estimated cash or near cash that TransCanada Keystone Pipeline LP plans to retain on its balance sheet by the end of the fifth full year of operation after Project commissioning.

c) With respect to the potential for self-insurance (should the spill liability coverage be exceeded), please explain how TransCanada Keystone Pipeline LP would ensure that it has unfettered access to these funds at all times, and indicate if TransCanada Keystone Pipeline LP will segregate the self-insurance funds from its general funds.

d) In the case of a spill incident, please explain the amount of cash that TransCanada Keystone Pipeline LP could access within 10 business days to pay some or all of the clean-up and remediation costs and to compensate third parties for some losses and damages while any insurance claims are being processed. Please describe the financial instruments that TransCanada Keystone Pipeline LP will use to ensure this unfettered access to funds.

Response:

a) This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence.
b) This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence.
c) This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. (Supplemented Answer) Notwithstanding the objection, in the event of a spill, Keystone will identify the costs associated with spill response and recovery activities, remediation and potential third party damages. Based on such an analysis, Keystone will identify the levels and types of financial resources required to meet its obligations.
d) This request seeks information that is confidential and proprietary and the disclosure of which would be damaging to Keystone. This request also seeks information that is not relevant and not likely to lead to the discovery of admissible evidence. (Supplemented Answer) Notwithstanding the objection, in the event of a spill, Keystone will identify the costs associated with spill response and recovery activities, remediation and potential third party damages. Based on such an analysis, Keystone will identify the levels and types of financial resources required to meet its obligations.

Concerns:

Interrogatory No. 11 seeks information relevant to analyzing and determining financial coverage in case of a spill scenario and is central to the ability to evaluate the adequacy of financial coverage in the event of a spill scenario. The information sought is reasonably calculated to lead to the discovery of admissible evidence. The responses make no reference to any specific confidentiality laws regarding the information sought. Rather, a blanket assertion is provided that the information is protected. While the information may be considered confidential by the PUC under applicable Administrative Rules, no such determination has been made. Please provide the requested information.

Interrogatory No.12:

a) Please confirm that Keystone has committed to $200 million in third-party liability insurance in both Nebraska and Montana. If not, please explain.

b) Does this imply that there is $200 million in third-party liability insurance available specifically to cover a spill in Nebraska; and another $200 million in third-party liability insurance available specifically to cover a spill in Montana? If not, please explain.

c) Does Keystone plan to offer third-party liability insurance available specifically to cover a spill in South Dakota? If not, please explain.

d) Has Keystone considered what level of third-party liability insurance should be available specifically to cover a spill in South Dakota? Please explain.

Response:

First response to IR 12(a-d): Keystone is still preparing an answer to this interrogatory, and will provide a supplemental answer as soon as possible.

Supplemented Responses:

a) Keystone XL undertakes to commit to $200 million in third party liability insurance in both Nebraska and Montana when required.
b) No, there will be a $200 million third party liability policy covering Keystone XL on an aggregate basis.
c) No, Keystone XL would have an aggregate third party liability insurance to cover spills in South Dakota and all other states.
d) Yes, a minimum of $200 million.

Concerns:

Our understanding from your supplemental response to IR 12 is that Keystone XL will have $200 million in aggregate third party liability insurance to cover spills in SD and all other states (MT and NE). In evaluating the adequacy of this new response (to IR 12), we have found a seeming ambiguity with the **response in 10b**, in which you confirmed that "[d]uring operations, TC would look to secure a dedicated general liability insurance including sudden and accidental pollution overage with a limit of no less than US$100M."

Is the $200 million in aggregate third party liability insurance (referred to in response to IR 12) a separate policy from the "dedicated general liability insurance policy including sudden and accidental pollution coverage with a limit not less than US$100 million" for operations (referred to in response to IR 10 b)? Or is the $100 million in dedicated general liability insurance (as per the response to IR 10b) a subset of the $200 million in aggregate third party liability insurance (as per the response to IR 12)? Please explain in detail how the $200 million in aggregate third party liability insurance (described in response to IR 12) relates to the $100 million in dedicated general liability insurance for operations referred to in response to IR 10 b).

If applicable, please modify any of the previous answers (to IR 10 b), d) and h), in particular) to take into account the new information regarding $200 million in aggregate third party liability insurance provide in response to IR 12.

Request for Production of Documents:

REQUEST FOR PRODUCTION 1: As per Bold Nebraska's Request for Production No. 18 in IR No. 1, and in order to make this proceeding more efficient and effective, provide electronic access to all parties in this proceeding to all responses by TransCanada in response to discovery requests (first and second rounds) submitted to TransCanada by all parties in this proceeding.

Response: A way to access copies of all responses to discovery requests submitted to Keystone will be separately provided.

Concerns: The same answer was provided in response to Bold Nebraska Interrogatory dated February 6, 2015. Initial response to the same question posed by RST prompted the same response provided to Bold Nebraska. To date the requested information has not been provided.

Thank you for your attention and consideration of these matters. I look forward to visiting with you so that we may discuss these matters fully.

Sincerely,

/s/Matthew L. Rappold
Matthew L. Rappold