

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

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| |) | |
| |) | HP14-001 |
| |) | |
| IN THE MATTER OF TRANSCANADA |) | SUGGESTIONS IN |
| KEYSTONE PIPELINE, LP |) | OPPOSITION |
| FOR ORDER ACCEPTING CERTIFICATION |) | TO KEYSTONE'S |
| OF PERMIT ISSUED IN DOCKET HP09-001 |) | MOTION TO PRECLUDE |
| TO CONSTRUCT THE KEYSTONE XL |) | CERTAIN INTERVENORS |
| PIPELINE |) | FROM OFFERING |
| |) | WITNESSES OR |
| |) | EVIDENCE AT HEARING |
| |) | |

COMES NOW, the Indigenous Environmental Network (IEN), by and through counsel, Kimberly Craven and submits their response to TransCanada's Keystone (TransCanada) Pipeline LP's Motion to Preclude Certain Intervenors From Offering Witnesses or Evidence at Hearing. We urge the Commission to deny this motion.

As TransCanada admits in its motion seeking to exclude intervenors from further participation in this proceeding, the Commission has broad discretion to address discovery issues. Precluding parties from fully participating in this important proceeding regarding the social, health, welfare and environment of the people of South Dakota, especially individual South Dakota citizens exercising their statutory right to intervene in South Dakota Public Utility Commission cases and whom are not represented by legal counsel, should not be the first action sought by opposing parties.

The first step that TransCanada should have taken was to seek an order compelling discovery. SDCL Sec.15-6-37(a). According to South Dakota Codified Laws of Civil Procedure, a party, upon reasonable notice to other parties and all

persons affected thereby, may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the *movant has in good faith conferred or attempted to confer* with the person or party failing to make the discovery in an effort to secure the information or material without court action. 15-6-37(a) (2).

That required good faith attempt to confer has not happened here.

After obtaining the order and working in good faith to confer with opposing party to seek compliance of the order, then further action might be warranted including sanctions and penalties. 15-6-37(a) (4). However, TransCanada has so far taken none of these steps. Instead, they choose to send a letter threatening to seek parties exclusion from proceedings and then promptly filed a motion when responses to final discovery that were due on March 10th, 2015, arrived.

Many of the parties felt that TransCanada had not complied with the Commission's December 17th, 2014 Order Limiting the Scope of Discovery that TransCanada had sought in which each request for information were required to be identified by a number of either the 50 Special Permit Conditions or 30 Changed Conditions that it was related. Commission's own staff attorney, Kristen Edwards, confirmed in an email that **all** parties must comply with the Dec. 17th, 2014 Order. Despite what Ms. Edwards filed in her response to TransCanada's motion, it is not what she told individual intervenors.

The Indigenous Environmental Network joins with Dakota Rural Action, Standing Rock Sioux Tribe and other parties objecting to TransCanada's Motion and urges the Commission to deny TransCanada's attempt to preclude participation by

these citizens and organizations thus effectively limiting robust civic participation in further proceedings for this docket.

Dated this 7th Day of April, 2015.

/s/Kimberly Craven

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