



prove that there has been no change in the underlying facts or circumstances since the permit was granted in 2010, but rather that any changes do not affect its ability to meet the conditions on which the permit was issued. SDCL § 49-41B-27. The testimony of Keystone’s witnesses is relevant to prove that despite some changes since 2010, it can still meet the conditions on which the permit was issued.

The only difference between the previous joint motion and this motion is that Movants now contend that the Commission’s order denying the previous motion supports this motion. It does not. The Commission did not hold that evidence related to changed circumstances, as identified in Keystone’s tracking table, was not relevant. Nor did the Commission call into question the clear language of the certification statute, that Keystone must prove that it can “continue to meet the conditions on which the permit was issued.” SDCL § 49-41B-27. Under this standard, the testimony of Keystone’s challenged witnesses is relevant.

Movants contend that Keystone’s case consists of little more than evidence about the changes reflected in its tracking table, and that its testimony is irrelevant to prove that it can continue to meet the conditions on which the permit was issued. If nothing had changed since 2010, however, it would be undisputed that Keystone could continue to meet the conditions. The issue for the evidentiary hearing is whether anything that has changed affects Keystone’s ability to meet the conditions. As Keystone has previously argued, it will, through its certification, tracking table, and witness testimony and exhibits, establish that it can satisfy the terms of SDCL § 49-41B-27. The burden then shifts to the Intervenors to establish the contrary.

Neither logic, caselaw, any order of the Commission, or the governing statute supports the joint motion. Keystone respectfully requests that it be denied.

Dated this 17<sup>th</sup> day of July, 2015.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of July, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Applicant's Response to Joint Motion in Limine, to the following:

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