

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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HP 14-001

IN THE MATTER OF THE APPLICATION :  
BY TRANSCANADA KEYSTONE :  
PIPELINE, LP FOR A PERMIT UNDER THE :  
SOUTH DAKOTA ENERGY CONVERSION :  
AND TRANSMISSION FACILITIES ACT TO :  
CONSTRUCT THE KEYSTONE XL :  
PROJECT, :  
:  
:

KEYSTONE’S SUPPLEMENTAL  
OPPOSITION TO JOINT MOTION TO  
EXCLUDE TESTIMONY AND  
EVIDENCE

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In the Joint Motion to Exclude Evidence and Testimony by TransCanada filed by Standing Rock, Cheyenne River, Rosebud and Yankton Sioux Tribes, Dakota Rural Action, Indigenous Environmental Network, Intertribal COUP, and BOLD Nebraska, the movants suggest that the Affidavit of James P. White dated April 17, 2015, establishes that Keystone failed to comply with the Commission’s Order dated April 17, 2015, compelling the production of documents. Keystone previously submitted a response to the joint motion on April 27, 2015, and continues to rely on that response. Keystone submits this supplemental opposition in connection with the Affidavit of Dawn Radcliffe, which has been separately filed, as a further basis on which the Commission should deny the motion.

Keystone sent the Affidavit of James P. White to some of the movants in connection with Keystone’s supplemental discovery responses served on April 17, 2015. Keystone did not file White’s affidavit with the Commission. White’s affidavit was prepared in the three days that

Keystone had to respond to the Commission's order. Since then, Keystone asked Dawn Radcliffe, who works for TransCanada Pipelines, Ltd, as Manager, Discovery and Legal Support, to further investigate compliance with the document request by DRA that was the subject of White's affidavit. As Radcliffe's affidavit makes clear, it was not reasonably possible for Keystone to respond to that discovery request in three days. Moreover, the request was overbroad and not reasonable; compliance with the request would require that Keystone conduct a search of approximately 12 billion pages of printed text at a cost of between \$8 and \$13 million dollars over a period of three to six months. (Radcliffe Aff. ¶¶ 4, 10.)

Although the Commission did not have the benefit of Radcliffe's affidavit when it ruled on DRA's motion to compel discovery, the Commission can and should consider Radcliffe's affidavit as evidence of Keystone's good faith. Keystone previously pointed out that it produced substantial information in response to DRA's request, to which none of the movants have responded. The facts stated in Radcliffe's affidavit together with Keystone's actual production establish that Keystone's response to the Commission's order compelling discovery was not based on willfulness, bad faith, or any disregard either of the Commission's order or the discovery rules.

The movants do not seek further discovery. Rather, they seized on White's affidavit to ask that the Commission preclude Keystone from offering any testimony or evidence at hearing and strike Keystone's prefiled testimony. Based on the facts established by Radcliffe's affidavit and its previous response dated April 27, Keystone respectfully requests that the joint motion be denied.

Dated this 19<sup>th</sup> day of May, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

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### CERTIFICATE OF SERVICE

I hereby certify that on the 19<sup>th</sup> day of May, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Supplemental Opposition to Joint Motion to Exclude Testimony and Evidence, to the following:

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