

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

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**IN THE MATTER OF THE PETITION  
OF TRANSCANADA KEYSTONE  
PIPELINE, LP FOR ORDER  
ACCEPTING CERTIFICATION OF  
PERMIT ISSUED IN DOCKET HP09-  
001 TO CONSTRUCT THE KEYSTONE  
XL PIPELINE**

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STAFF’S RESPONSE TO KEYSTONE’S  
MOTION *IN LIMINE* TO EXCLUDE  
TESTIMONY OF KEVIN E. CAHILL,  
PH.D.

**HP14-001**

COMES NOW, Staff (“Staff”) of the Public Utilities Commission (“Commission”) and files this Response to the Motion *in Limine* to Exclude Testimony of Kevin E. Cahill, Ph.D. In its Motion, Keystone seeks exclusion of Kevin E. Cahill, PhD’s rebuttal testimony. Dr. Cahill’s testimony was filed in rebuttal to the testimony of Staff witnesses Brian Walsh and Kimberly McIntosh. For the following reasons, Keystone’s Motion should be granted.

Keystone argues that the proffered rebuttal testimony is not relevant to this docket under SDCL § 49-41B-27. While Staff does agree with that argument, because the testimony was filed as rebuttal, it is more important that the testimony be responsive to prefiled direct testimony by being within the scope of the direct testimony it seeks to rebut. Generally, rebuttal evidence is confined to responding to matters raised by the opposing party. See AMJUR TRIAL § 289.


In his prefiled rebuttal testimony, Dr. Cahill claims to be responding to Ms. McIntosh’s testimony that “any oil spill may be totally remediated ‘given sufficient time and resources’ ...” This was not part of Ms. McIntosh’s prefiled direct testimony in this proceeding. Rather, it was taken from Ms. McIntosh’s prefiled testimony in HP09-001, as acknowledged by Dr. Cahill when he cites to page four of her testimony. Any rebuttal to direct testimony offered in HP09-001 should have been entered in that docket at the appropriate time. By calling its prior witnesses, Staff has not opened the door to rebut any and all testimony offered by witnesses in

HP09-001, as the issues are different. Therefore, Keystone's Motion should be granted as it relates to any testimony purporting to rebut that of Kimberly McIntosh.

Dr. Cahill also offers rebuttal to the direct testimony of Staff's witness Brian Walsh. Dr. Cahill offers his opinion on the socioeconomic risks of Keystone XL. Socioeconomic impacts are beyond the scope of Brian Walsh's direct testimony. Brian Walsh's testimony was specific to issues within the scope of the responsibilities of the South Dakota Department of Environment and Natural Resources. As stated in his prefiled direct testimony Brian Walsh is an Environmental Scientist with the Groundwater Quality Program. He is not an economic witness.

Furthermore, Dr. Cahill's testimony goes beyond the scope of SDCL § 49-41B-27. Therefore, it is appropriate to preclude this proffered rebuttal testimony, as well.

Dated this 14<sup>th</sup> day of July, 2015.

  
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