

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

IN THE MATTER OF THE PETITION OF)	Docket 14-001
TRANSCANADA KEYSTONE PIPELINE, LP)	
FOR ORDER ACCEPTING CERTIFICATION OF)	INTERVENORS' JOINT MOTION TO
PERMIT ISSUED IN DOCKET HP09-001 TO)	DISMISS
CONSTRUCT THE KEYSTONE XL PIPELINE)	
)	

The Intervenor in this proceeding, including John H. Harter, Elizabeth Lone Eagle, Paul F. Seamans, Cindy Myers, Diana L. Steskal, Byron T. Steskal, Arthur R. Tanderup, Lewis GrassRope, Carolyn P. Smith, Nancy Hilding, Gary F. Dorr, Wrexie L. Bardaglio, Joye Braun, Chastity Jewett, Dallas Goldtooth, Bonny J. Kilmurry, Viola Waln, Louis T. Genung, Terry Frisch, Cheryl Frisch, Dakota Rural Action (“DRA”), the Indigenous Environmental Network (“IEN”), the Intertribal Council on Utility Policy (“ICOUP”), Bold Nebraska (“Bold”), the Rosebud Sioux Tribe (“Rosebud”), Yankton Sioux Tribe (“Yankton”), Cheyenne River Sioux Tribe (“Cheyenne River”) and the Standing Rock Sioux Tribe (“Standing Rock”) jointly move to (a) dismiss the petition for certification filed by TransCanada Keystone Pipeline, LP (“TransCanada”), and (b) to revoke the permit for construction of the proposed Keystone XL Pipeline (the “Project”) through South Dakota which was granted by the Commission on June 29, 2010 in its Amended Final Decision and Order (the “2010 Permit”). This joint motion should be granted because both TransCanada’s petition and the underlying 2010 Permit are moot as a result of public positions taken by TransCanada with respect to the future of its development of the Project, and due to the November 6, 2015 denial of Keystone’s application for a presidential permit to cross an international border. With respect to the scheduling of this motion for hearing, the Intervenor assert the statutory right to 10-day notice prior to the date of the hearing.

For proposed petroleum pipelines (such as the Project) that cross international borders of the United States, the President of the United States, through Executive Order 13337, directs the Secretary of State to

decide whether a project serves the national interest before granting a Presidential Permit. On November 6, 2015, in a widely-publicized announcement, the President determined that Keystone XL Pipeline would not serve the national interest of the United States and denied TransCanada's application for a Presidential Permit for the Project.¹

TransCanada was originally granted a permit for construction of the Project through South Dakota under the terms of the 2010 Permit, subject to fifty separate conditions and multiple sub-conditions. The conditions imposed on TransCanada by the 2010 Permit ranged from compliance with all federal and state environmental laws, to compliance with a variety of other matters as set forth in the 2010 Permit. Because TransCanada failed to commence construction of the Project within four years of the date of the 2010 Permit, under SDCL § 49-41B-27 it was required to file a petition with the Commission certifying that it could continue to meet the conditions upon which the 2010 Permit was issued. Condition No. 1 requires TransCanada to comply with all applicable laws and rules. Condition No. 2 of the 2010 Permit specifically provides that:

“Keystone shall obtain and shall thereafter comply with all applicable federal, state and local permits, including but not limited to: Presidential Permit from the United States Department of State, Executive Order 11423 of August 16, 1968 (33 Fed. Reg. 117 41) and Executive Order 13337 of April 30, 2004 (69 Fed. Reg. 25229), for the construction, connection, operation, or maintenance, at the border of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country ...” [*emphasis added*]

SDCL § 49-41B-33(b) further provides the Commission with authority to revoke the 2010 Permit for “[f]ailure to comply with the terms or conditions of the permit”. With the denial of the Presidential Permit, TransCanada is unable to comply with these key conditions imposed by the Commission in the 2010 Permit in that it cannot obtain the Presidential Permit for which it applied and it cannot comply with all applicable laws and rules. For this simple reason, TransCanada's petition for certification filed in these

¹ <https://www.whitehouse.gov/the-press-office/2015/11/06/statement-president-keystone-xl-pipeline>

proceedings pursuant to SDCL § 49-41B-27 should be summarily dismissed and the 2010 Permit revoked pursuant to SDCL § 49-41B-33.

Respectfully submitted,

Date: November 9, 2015

By the Following Individual Intervenors:

/s/ John H. Harter
John H. Harter

/s/ Elizabeth Lone Eagle
Elizabeth Lone Eagle

/s/ Paul F. Seamans
Paul F. Seamans

/s/ Cindy Myers
Cindy Myers

/s/ Diana L. Steskal
Diana L. Steskal

/s/ Byron T. Steskal
Byron T. Steskal

/s/ Arthur R. Tanderup
Arthur R. Tanderup

/s/ Lewis GrassRope
Lewis GrassRope

/s/ Carolyn P. Smith
Carolyn P. Smith

/s/ Nancy Hilding
Nancy Hilding

/s/ Gary F. Dorr
Gary F. Dorr

/s/ Wrexie L. Bardaglio
Wrexie L. Bardaglio

/s/ Joye Braun
Joye Braun

/s/ Chastity Jewett
Chastity Jewett

/s/ Dallas Goldtooth
Dallas Goldtooth

/s/ Bonny J. Kilmurry
Bonny J. Kilmurry

/s/ Viola Waln
Viola Waln

/s/ Louis T. Genung
Louis T. Genung

/s/ Terry Frisch
Terry Frisch

/s/ Cheryl Frisch
Cheryl Frisch

***And the following counsel on behalf of organizational
Intervenors:***

/s/ Bruce Ellison

Bruce Ellison
P.O. Box 2508
Rapid City, South Dakota 57709
(605) 348-1117
Email: belli4law@aol.com

and

By: /s/ Robin S. Martinez

Robin S. Martinez, *Pro Hac Vice*
The Martinez Law Firm, LLC
616 West 26th Street
Kansas City, Missouri 64108
(816) 979.1620
Email: robin.martinez@martinezlaw.net

Attorneys for Dakota Rural Action

/s/ Matthew L. Rappold

Matthew L. Rappold
PO Box 873
Rapid City, SD 57709
(605) 828-1680
Matt.rappold01@gmail.com

Attorney for the Rosebud Sioux Tribe

/s/ Kimberly Craven

Kimberly Craven, *Pro Hac Vice*
3560 Catalpa Way
Boulder, Colorado 80304
Telephone: 303.494.1974
Fax: 720.328.9411
kimecraven@gmail.com

Attorney for the Indigenous Environmental Network

By: /s/ Peter Capossela
Peter Capossela, P.C.
Attorney at Law
Post Office Box 10643
Eugene, Oregon 97440
(541) 505-4883
pcapossela@nu-world.com

and

/s/ Chase Iron Eyes
Chase Iron Eyes, S.D. Bar No. 3981
Iron Eyes Law Office, PLLC
Post Office Box 888
Fort Yates, North Dakota 58538
(701) 455-3702
chaseironeyes@gmail.com

Attorneys for the Standing Rock Sioux Tribe

/s/ Tracey A. Zephier
Tracey A. Zephier

/s/ Travis G. Clark
Travis G. Clark
Fredericks Peebles & Morgan LLP
910 5th St., Suite 104
Rapid City, SD 57701
Phone: 605-791-1515
Fax: 605-791-1915
Email: tzephier@ndnlaw.com

Attorneys for the Cheyenne River Sioux Tribe

/s/ Jennifer S. Baker
Jennifer S. Baker, *Pro Hac Vice*

/s/ Thomasina Real Bird
Thomasina Real Bird, SD Bar No. 4415
Fredericks Peebles & Morgan LLP
1900 Plaza Drive
Louisville, Colorado 80027
Telephone: (303) 673-9600
Facsimile: (303) 673-9155
Email: jbaker@ndnlaw.com
Email: trealbird@ndnlaw.com

Attorneys for the Yankton Sioux Tribe

/s/ Paul C. Blackburn

Paul C. Blackburn, South Dakota Bar No. 4071
4145 20th Avenue South
Minneapolis, MN 55407
Telephone: 612-599-5568
Email: paul@paulblackburn.net

Attorney for Bold Nebraska

/s/ Robert P. Gough

Robert P. Gough, SD SB# 620
P.O. 25, Rosebud, SD 57570
605-441-8316
gough.bob@gmail.com

*Secretary of, and Attorney for the
Intertribal Council On Utility Policy (COUP)*