

REQUEST FOR PRODUCTION OF DOCUMENTS

1. All exhibits to be introduced at the hearing in this matter.

ANSWER: Keystone has not yet identified hearing exhibits, but will disclose them as required by the PUC.

2. The resumes of all persons to be called as witnesses or whose testimony will be filed by TransCanada.

ANSWER: Responsive documents are attached as Keystone 1341-1374.

3. All documents prepared for the purpose of demonstrating compliance by TransCanada with the Oil Pollution Act of 1990, codified at 33 U.S.C. §1321, and the PHMSA Facility Response Plan regulations, 49 CFR Part 194, in the construction and operation of the Keystone XL Pipeline.

OBJECTION: This request seeks information that is outside the scope of the PUC's jurisdiction and Keystone's burden under SDCL 49-41B-27. This request also seeks information that is governed by federal law and is within the province of The Environmental Protection Agency for the Oil Pollution Act, and PHMSA.. The PUC's jurisdiction over the emergency response plan is preempted by federal law. *See* 49 C.F.R. Part 194; 49 U.S.C. 60104(c). This request further seeks information that is confidential and proprietary. Public disclosure of the emergency response plan could commercially disadvantage Keystone.

4. Integrity Management Plan and all other documents prepared for the purpose of demonstrating compliance by TransCanada with the Pipeline Safety Act, 49 U.S.C. §60101 *et seq.* and the implementing regulations, in the construction and operation of the Keystone XL Pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the exclusive province of the PHMSA. The PUC's jurisdiction over pipeline safety is preempted by federal law. See 49 C.F.R. Part 194; 49 U.S.C. § 60104(c). This request further seeks information that is confidential and proprietary. See Amended Final Order, HP 09-001, Condition ¶ 36. Public disclosure of the Integrity Management Plan would commercially disadvantage Keystone.

5. All documents prepared or obtained for the purpose of demonstrating compliance by TransCanada with the Clean Water Act, 33 U.S.C. §§1251-1387, and the implementing regulations, and SDCL Chapter 34A-02, in the construction and operation of the Keystone XL Pipeline.

OBJECTION AND ANSWER: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, Section 4.3, which is publicly available at <http://keystonepipeline->

xl.state.gov/finalseis/. Without waiving the objection, the Project has not started construction; therefore, Keystone has not initiated any activity that requires compliance with the federal Clean Water Act and SDCL Chapter 34A-02. Therefore, no documents have been prepared to date. Keystone has received a General Permit for Temporary Discharge Activities on April 11, 2013 from the SD Department of Environment and Natural Resources. The conditions contained within this general permit are in compliance with the federal Clean Water Act and SDCL Chapter 34A-02.

6. All documents prepared or obtained for the purpose of demonstrating compliance with the Endangered Species Act, 16 U.S.C. §§1531-1544, and the implementing regulations, and SDCL Chapters 34A-8 and 34A-8A, in the construction and operation of the Keystone XL Pipeline.

OBJECTION AND ANSWER: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, Section 3.8, which is publicly available at <http://keystonepipeline-xl.state.gov/finalseis/>. Without waiving the objection, the following documents demonstrate the Project's compliance with the Endangered Species Act and SDCL Chapters 34A-8 and 34A-8A during the planning phase of the Project route in South Dakota:

The Department of State FSEIS (2014) and the May 2013 Biological Opinion which is Appendix H of the Department of State FSEIS (2014).

Keystone has not initiated construction or operation of the Project.

7. All documents relating to the environmental review of the Keystone XL Pipeline by the Department of State under the National Environmental Policy Act, 42 U.S.C. §4231 *et seq.*

OBJECTION AND ANSWER: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. These extremely voluminous documents are available on the State Department's website for the Keystone XL Project. <http://keystonepipeline-xl.state.gov/>

8. All documents prepared or obtained for the purpose of demonstrating compliance with the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §§470-470x-6.

OBJECTION AND ANSWER: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, Section 4.11, which is publicly available at <http://keystonepipeline-xl.state.gov/finalseis/>. Without waiving the objection, cultural resources survey reports are listed in Section 3.11 of the Department of State FSEIS (2014), with results of the SD surveys detailed in Table 3.11-3.

9. All documents prepared or obtained for the purpose of demonstrating compliance with the Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. §§3001-3013.

OBJECTION AND ANSWER: This request is vague, unclear, overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. This issue is addressed in the Final Supplemental Environmental Impact Statement, Section 3.11, which is publicly available at <http://keystonepipeline-xl.state.gov/finalseis/>. Without waiving the objection, the Unanticipated Discovery Plan for cultural resources can be found within the Programmatic Agreement in Appendix E of the Department of State FSEIS (2014).

10. All documents relating to communications or meetings with the Standing Rock Sioux Tribe or other Indian Tribes in the United States or Canada.

OBJECTION AND ANSWER: This request is overlybroad and unduly burdensome to the extent that it goes beyond the Standing Rock Sioux Tribe. *See* Keystone documents 1121-1340.

11. Construction quality assurance plan or related documents for the Keystone XL Pipeline.

ANSWER: In its Application to the South Dakota Public Utilities Commission dated October 2009 Keystone stated that to ensure compliance with the regulations, standards, and Keystone's internal quality standards, Keystone will implement a quality

control and quality assurance plan (QC/QA Plan). The QC/QA Plan will establish technical inspection policies and procedures during manufacturing and construction, and will delineate the duties and responsibilities of each QC/QA inspector assigned to the Project. Keystone's QC/QA Plan includes periodic audits by manufacturing and construction management to confirm that inspections are being properly performed and documented. (SDPUC Application, October 2009, page 8.)

As part of its continuous improvement cycle Keystone is in the process of revising its QC/QA plans that would be used on the Keystone XL project based on Lessons Learned from recent completed projects. Impacting the final revision of the quality management plan for the Keystone XL project will be the two Special Conditions recommended by PHMSA in addition to the 57 Special Conditions listed in the FSEIS (Appendix B, Potential Releases and Pipeline Safety.)

The two additional Special Conditions include:

1. Keystone would develop and implement a Quality Management System that would apply to the construction of the entire Keystone XL project in the U.S. to ensure that this pipeline is—from the beginning—built to the highest standards by both Keystone personnel and its many contractors; and
1. 2. Keystone would hire an independent Third Party Inspection Company (TPIC) to monitor the construction of the Keystone XL project. PHMSA must approve the TPIC from among companies Keystone proposes. Keystone and PHMSA would work together to develop a scope of work to help ensure that all regulatory and technical EIS conditions are satisfied during the construction and commissioning of the pipeline project. The TPIC would oversee the execution and implementation of the Department-specified conditions and the applicable pipeline safety regulations and would provide monitoring summaries to PHMSA and Keystone concurrently. Keystone would address deficiencies or risks identified in the TPIC's assessments.³

Footnote ³: In response to a data request regarding this TPIC condition, Keystone responded: "Keystone agrees to hire an independent Third Party Inspection Company (TPIC) to monitor field construction activities of the Keystone XL project. Keystone understands that it will work jointly with PHMSA to define the scope of work, identify qualified companies and prepare a Request for Proposal. PHMSA will select the qualified TPIC and manage the work of the TPIC. PHMSA will retain authority for its mandate on the project, while the TPIC will provide supplementary resources to PHMSA staff to field monitor, examine, audit and report conditions as specified by DOS and applicable pipeline safety regulations. Keystone will address deficiencies as directed by PHMSA." (FSEIS, Appendix B, page 27; repeated at FSEIS, Appendix Z, page 95.)

At this time a Quality Management System to comply with additional PHMSA Special Condition No. 1 is not available, and the selection of a TPIC to comply with additional PHMSA Special Condition No. 2 has not been initiated.

12. Water sampling quality assurance plan or related documents for water samples taken in relation to construction of the Keystone XL Pipeline.

ANSWER: The Project has not started construction; therefore, Keystone has not initiated any activity that requires water sampling. Additionally, Keystone has not received any permits that require water sampling for quality assurance. If water sampling is required per agency regulation or permit requirement, Keystone will sample in an appropriate methodology to be compliant with all applicable regulatory statutes or permit conditions.

13. Operations manual or related documents for the Keystone XL Pipeline.

OBJECTION: This request seeks information that is beyond the scope of the PUC's jurisdiction and Keystone's burden under SDCL § 49-41B-27. This request also seeks information addressing an issue that is governed by federal law and is within the

exclusive province of the PHMSA. The PUC's jurisdiction over the operations manual is preempted by federal law. See 49 C.F.R. Part 194; 49 U.S.C. § 60104(c). This request further seeks information that is confidential and proprietary. See Amended Final Order, HP 09-001, Condition ¶ 36. Public disclosure of the operations manual would commercially disadvantage Keystone.

14. All letters, correspondence, emails or instant messages to and from the South Dakota Public Utilities Commission, its employees, attorneys or agents, since January 1, 2008.

OBJECTION AND ANSWER: This request is overlybroad and unduly burdensome. Without waiving the objection, all such materials are available on the Commission's website under Docket Nos. HP 09-001 and HP 14-001, except for communications by Keystone's public liaison directly to PUC staff.

15. All advertisements that have been purchased by TransCanada relating to the project in any South Dakota media, such as television, radio, newspaper, billboard or other.

OBJECTION: This request is overlybroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence under SDCL 15-6-26(b).

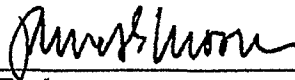
OBJECTIONS

The objections stated to Cheyenne River Sioux Tribe's Request for Production of Documents were made by James E. Moore, one of the attorneys for Applicant TransCanada herein, for the reasons and upon the grounds stated therein.

Dated this 6th day of February, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By



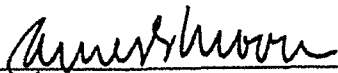
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CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2015, I sent by e-mail transmission, a true and correct copy of Keystone's Responses to Standing Rock Sioux Tribe's First Request for Production of Documents, to the following:

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One of the attorneys for TransCanada