



responded that the identity of the sites is confidential and cannot be addressed outside of the government-to-government consultation process conducted by the Department of State, which is responsible for the surveys under Section 106 of the National Historic Preservation Act as explained in Paige Olson's prefiled testimony for Staff. This process is also explained in Section 1.6 of the Supplemental Final Environmental Impact Statement. The Department of State works with the South Dakota Historic Preservation Office on the surveys. Keystone further responded on March 13 with a citation to state law for the confidentiality of the sites, which is found at SDCL § 1-20-21.1. (Moore Aff. ¶ 4, Ex. C.) The Tribe's motion does not acknowledge this statute or the fact that Keystone provided it. The Tribe is not entitled to further discovery from Keystone.

**3. Document Request No. 18.** The Tribe seeks "documentation regarding TransCanada's compliance with reclamation and cleanup efforts from all other construction activities related to any other crude oil pipeline that TransCanada operates in the United States and Canada since 2005." Keystone objected that the request was overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. The request was not initially limited to reclamation issues since 2005, but that limitation does not resolve Keystone's objections. TransCanada operates 35,000 miles of natural gas pipelines that it wholly owns; its affiliated entities operate the following natural gas pipelines: Great Lakes Gas Transmission Company; Iroquois Gas Transmission System; North Baja; Northern Border; Portland; Trans Quebec and Maritimes; Tuscarora; Gas Transmission Northwest; and Bison Pipeline. Keystone is TransCanada's only crude oil pipeline. Reclamation efforts in South Dakota related to the Keystone Pipeline are well-known to the Commission and much information is publicly available through the Public Liaison's quarterly and annual reports that are posted on the

Commission's website. The Tribe does not explain how its request is not overbroad and unduly burdensome, nor does it explain how the information it seeks is reasonably calculated to lead to the discovery of admissible evidence in this proceeding, which concerns Keystone's ability to meet the permit conditions based on facts or circumstances that have changed since 2010.

**4. Document Request No. 19.** The Tribe seeks "documentation regarding TransCanada's compliance with pipeline safety requirements for any other crude oil line" operated by TransCanada. Keystone objected as in response to Document Request No. 18, but has since provided information on April 7 regarding two notices from PHMSA related to the Gulf Coast Project and the Houston Lateral. Keystone's objection and response are sufficient.

**5. Second round, Interrogatory No. 1.** The Tribe seeks in 1(a) and (b) an elevation profile for the Keystone XL Pipeline, including the location of pump stations, mainline valves, the type of valves, and the location of all valves in reference to water crossings. Keystone objected that the information was confidential and not likely to lead to the discovery of admissible evidence. Keystone also answered subparts (b), (c), (d), (e), and (h). Keystone objected to subpart (f), asking it to superimpose a hydraulic profile on the elevation profile, and subpart (g), asking for the location of High Consequence Areas by milepost, which PHMSA requires be kept confidential. (Moore Aff. ¶ 5.) The Tribe objects that Keystone has not sufficiently identified the maximum operating pressure of the pipeline by segment, but Keystone's answer to subpart (e) states that the MOP is 1,307 psig for the mainline, except for locations downstream of pumpstations, where it is 1,600 psig. Keystone's objections and responses are sufficient.

**6. Second round, Interrogatory No. 2.** The Tribe seeks the location of mainline valves and other information that Keystone provided in its responses to subparts (b), (c), (d), and (e).

Keystone also provided the elevation profile on April 8, which contains the location of mainline valves. Keystone's responses are sufficient.

**7. Second round, Interrogatory No. 4(d) and (e).** In 4(d), the Tribe asked: "Please explain what (if anything) Keystone has committed to in regard to implementation of mitigation recommendations from the Batelle and Exponent risk assessment reports, and how this affects Findings 22, 60, 90, and any other Findings." Keystone answered: "Keystone will implement additional mitigation measures included in Appendix Z." Appendix Z to the FSEIS contains the 59 special conditions imposed by PHMSA based on the Batelle and Exponent reports. Keystone does not know how else to answer the question: it is committed to implementing the 59 special conditions imposed by PHMSA, which PHMSA has the responsibility to enforce. The Tribe now argues that what it meant by its question is that Keystone must describe "how it is going to apply the 59 special conditions" in South Dakota, but this is a new and different question. It is overbroad, vague, and not reasonably calculated to lead to the discovery of admissible evidence in this limited proceeding. The Tribe contends that Keystone should have addressed each of the 59 special conditions and stated what measures it will take in each instance to comply. That is not what was asked, and it is not a reasonable request given the scope of this proceeding. In Interrogatory No. 4(e), the Tribe asks about additional spill cleanup measures based on the 59 special conditions. Keystone provided the same answer as to 4(d), which, for the reasons argued above, is sufficient.

**8. Round two, Interrogatory No. 8.** Keystone answered Interrogatory No. 8 without objection, referring to information contained in Appendix I to the FSEIS. The Tribe responded that the answers were insufficient, so Keystone provided additional responses on April 7, as reflected in the Tribe's motion. Keystone stands on those responses. To the extent that the Tribe

argues that Keystone must explain how it will comply with the maximum response times, that is not the question that was asked. With respect to 8(d), asking about contingency plans to speed emergency response during adverse conditions, Keystone responded that it will formulate specifics as part of its emergency response plan, which has not yet been prepared for Keystone XL, but which will be filed with PHMSA and the Commission as required by the Permit.

**9. Round two, Interrogatory No. 9.** In 9(b), the Tribe asked for information about legal entities involved in the Keystone XL Pipeline; in 9(c), the Tribe asked for confirmation whether the limited partners of TransCanada Keystone Pipeline LP would provide financial backstopping to the limited partnership; and in 9(e), a summary of the Limited Partnership's distribution policy. Keystone has provided a supplemental answer to 9(b) explaining the relationship between TransCanada Pipelines Limited, TransCanada Oil Pipelines, Inc., TransCanada Keystone Pipeline GP, LLC, and TransCanada Keystone Pipeline, LP. With respect to 9(c), Keystone stands on its objection that the request is speculative because it is unknown what the circumstances may be, and with respect to 9(e) asking for the distribution policy of TransCanada Keystone Pipeline, LP, that the request is confidential, proprietary, and not likely to lead to the discovery of admissible evidence.

**10. Round two, Interrogatory No. 10.** The Tribe asked for information about insurance, which Keystone answered and provided. The Tribe includes a detailed argument about the sufficiency of Keystone's responses, but the Tribe is asking new, additional questions beyond what it originally asked, and what Keystone answered. For purposes of this limited proceeding, Keystone's answers were appropriate and sufficient and the Tribe should not be allowed to ask new questions in a motion to compel discovery.

**11. Round two, Interrogatory No. 11.** In subpart (a), the Tribe seeks operating cash flow projections for TransCanada Keystone Pipeline, LP, for the first full year and fifth full year following project commissioning, and the estimated total asset and liability values for the limited partnership. Keystone objected that this request sought information that is proprietary, confidential, and not likely to lead to the discovery of admissible evidence. The Tribe's request for cash flow projections obviously seeks information that Keystone would not want made public. Nor does the Tribe explain how it is relevant to this limited proceeding, other than to state that Keystone's ability to respond to a major spill is at issue. Given the information that Keystone has disclosed about insurance coverage and its operating relationships, Keystone has provided sufficient responsive information about that issue. In subpart (b), the Tribe asks for details about the estimated cash management of TransCanada Keystone Pipeline, LP. Keystone stands on its objection for the same reasons as related to subpart (a). Although it is not clear from the Tribe's motion whether it challenges the responses to both subparts (c) and (d), Keystone stated the same answer to each, that in the event of a spill at some future date under future unknown circumstances, it would identify the costs associated with spill response activities, remediation and potential third party damages, and based on that analysis, would identify the levels and types of financial resources required to meet its obligations. Keystone cannot reasonably be expected to provide a more specific response to a question based on hypothetical and unspecified future conditions.

**12. Round two, Interrogatory No. 12.** In subpart (a), the Tribe asked for Keystone to confirm its commitment to purchase \$200 million in third-party liability insurance in Nebraska and Montana. Keystone answered that it would do so when required. In subpart (b), the Tribe asked whether there would be separate coverages available for spills in Nebraska and Montana.

Keystone answered no, that there would be a \$200 million policy covering Keystone XL on an aggregate basis. In subpart (c), the Tribe asked if there would be a separate policy dedicated to South Dakota. Keystone answered that there would not be. In subpart (d), the Tribe asked whether Keystone had considered what level of insurance should be available to cover a spill in South Dakota. Keystone answered yes, a minimum of \$200 million. The Tribe now argues that this answer creates an ambiguity, because in response to Interrogatory No. 10(b), Keystone stated that it would secure spill liability coverage with a limit not less than \$100 million. There is no ambiguity. The coverages discussed in Nos. 10 and 12 are separate, with a dedicated policy with \$100 million limits for the Keystone XL Pipeline during operation, and an additional corporate policy with limits of \$200 million.

### **Conclusion**

Keystone has worked diligently and in good faith to respond to the Rosebud Sioux Tribe's voluminous and detailed discovery responses. In its first set of requests, the Tribe asked 79 interrogatories and 48 document requests, not including subparts. (Moore Aff. ¶ 2, Ex. A.) The Tribe has challenged three interrogatory answers and the responses to two document requests. In its second round of requests, the Tribe asked 20 interrogatories, each containing multiple subparts, and seven document requests. (Moore Aff., ¶ 3, Ex. B.) The Tribe has challenged eight of the interrogatories and none of the document requests. Keystone maintains that its objections and responses were sufficient, proper, and made in good faith. Keystone respectfully requests that the Tribe's motion to compel be denied.

Dated this 13<sup>th</sup> day of April, 2015.

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### CERTIFICATE OF SERVICE

I hereby certify that on the 13<sup>th</sup> day of April, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Response to Rosebud Sioux Tribe's Motion to Compel Discovery, to the following:

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