

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

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

ROSEBUD SIOUX TRIBE'S  
MOTION IN LIMINEE TO  
EXCLUDE TESTIMONY

HP14-001

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The Rosebud Sioux Tribe moves the Public Utilities Commission to exclude the testimony of the following Keystone witnesses: Heidi Tillquist, Meera Kothari and Jeff Mackenzie (Richard Kuprewicz). In support therein counsel states the following:

On April 24, 2015 the Rosebud Sioux Tribe filed the direct testimony of The Goodman Group (Ian Goodman and Brigid Rowan) and Accufacts (Richard Kuprewicz). On June 26, 2015 Keystone filed its rebuttal testimony for witnesses Heidi Tillquist, Meera Kithari and Jeff Mackenzie. The rebuttal testimony for Keystone's witnesses Tillquist (rebuttal testimony page 1 at paragraph 3), Kothari (rebuttal testimony at page 1, paragraph 3) and Mackenzie (page 2 at paragraph 3) is intended to rebut the direct testimony of Richard Kuprewicz (Accufacts) and The Goodman Group (Ian Goodman and Brigid Rowan). Keystone's rebuttal testimony is on file with the PUC at the following internet address:

<https://puc.sd.gov/Dockets/HydrocarbonPipeline/2014/hp14-001prefiledtestimony.aspx>

The Rosebud Sioux Tribe filed its Witness and Exhibit List with the PUC on July 7, 2015 and identified the following witnesses it intended to call at the evidentiary hearing in this matter – Paula Antoine, Jennifer Galindio and Chief Leonard Crow Dog. The Rosebud Sioux Tribe's Witness and Exhibit List is attached as Exhibit 1 and incorporated by reference. In its Witness and Exhibit List, the Rosebud Sioux Tribe did not identify The Goodman Group (Ian Goodman

and Brigid Rowan) or Accufacts (Richard Kupreqicz) as witnesses that the Rosebud Sioux Tribe will call at the evidentiary hearing. Because The Goodman Group and Accufacts will not be testifying in this matter there is no direct testimony for Keystone's witnesses Tillquist, Kithari and Mackenzie to rebut.

#### ARGUMENT

The admission of rebuttal testimony must be examined in the context of *State vs. Phillips*, 489 NW 2d 613 (S.D. 1992). The Court in *Phillips* stated that rebuttal testimony is improper where it does not rebut evidence presented by other witnesses in their direct testimony. It follows that where there is no direct testimony offered, there is no testimony to rebut and rebuttal testimony is improper. As the Rosebud Sioux Tribe will not present any testimony or evidence from The Goodman Group or Accufacts, the witnesses that Tillquest, Kithari and Mackenzie seeks to rebut, Tillquest's Kithari's and Mackenzie's testimony is not rebuttal testimony and must be excluded.

#### CONCLUSION

Based on the foregoing the Rosebud Sioux Tribe respectfully requests the PUC to grant its Motion in Liminee and exclude the rebuttal testimony of Heidi Tillquest, Meera Kithari and Jeff Mackenzie.

Dated this 9<sup>th</sup> day of July, 2015.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I certify that on this 9<sup>th</sup> day of July, 2015, the original of behalf of the Rosebud Sioux Motion in Liminee was filed on the Public Utilities Commission of the State of South Dakota e-filing website and also that on this day and a true and correct copy was sent via email and/or U.S. Mail first class postage prepaid to the following persons, as designated:

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