

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

**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 MEMORANDUM IN**
* **RESPONSE TO STANDING ROCK**
* **SIOUX TRIBE'S MOTION TO AMEND**
* **ORDER SETTING PROCEDURAL**
* **SCHEDULE**
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* **HP14-001**
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COMES NOW, Staff (Staff) of the South Dakota Public Utilities Commission (Commission), by and through its undersigned counsel, and hereby files this Memorandum in Response to Standing Rock Sioux Tribe's Motion to Amend Order Setting Procedural Schedule.

This docket was filed on September 15, 2014. The Commission granted intervention to interested parties on November 4, 2014. On December 17, 2014, the Commission issued an order establishing the procedural schedule for this docket. On March 27, 2015, the Commission received a Motion to Amend Order Setting Procedural Schedule from Standing Rock Sioux Tribe (Standing Rock). Included in the Motion was a request that the Motion be heard on less than ten days' notice. Rosebud Sioux Tribe has also filed a Memorandum in Support of Motion to Amend Procedural Schedule.

ARGUMENT AND LEGAL ANALYSIS

Grant or denial of a motion for continuance is discretionary with the Commission. *Saastad v. Okeson*, 16 S.D. 377, 92 N.W. 1072. However, there are certain factors the Commission must consider when decided whether to grant a motion for continuance. These factors are:

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- (1) whether the delay resulting from the continuance will be prejudicial to the opposing party; (2) whether the continuance
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motion was motivated by procrastination, bad planning, dilatory tactics or bad faith on the part of the moving party or his counsel; (3) the prejudice caused to the moving party by the trial court's refusal to grant the continuance; and (4) whether there have been any prior continuances or delays.

Meadowland Apartments v. Schumacher, 2012 S.D. 30, 813 N.W.2d 618. (quoting, *State v. Moeller*, 2000 S.D. 122, ¶ 8, 616 N.W.2d 424, 431). Staff, therefore, analyzes the above considerations with respect to Standing Rock's Motion to Amend Procedural Schedule.

1. Prejudice

Staff has subpoenaed five witnesses to be available for May 5-8, 2015. Staff has also contracted with consultants to be available for those dates. Because of the number of witnesses that Staff has relied upon for the upcoming evidentiary hearing, Staff would potentially be prejudiced, depending on the availability of its witnesses for any alternative dates.

2. Procrastination, bad planning, dilatory tactics, or bad faith

"A continuance may properly be denied when the party had ample time for preparation or the request for a continuance was not made until the last minute." *Mid-Western Elec. v. DeWild Grant Reckert*, 500 N.W.2d 250 (S.D.1993). Therefore, if the Commission determines that Standing Rock was not diligent or timely in its preparation to meet the deadlines established by the procedural schedule, then the Motion may be properly denied. Staff does note that at this docket has been pending for six and a half months at this time. At the time currently scheduled for hearing, the docket will have been pending for over seven and a half months.

3. Prejudice to the moving party

Staff declines to provide discussion on this issue, as the burden to show prejudice is on the moving party, rather than Staff. However, Staff does note that the South Dakota Supreme Court has held that a continuance on the ground of absence of a witness will not be granted

where the testimony of the witness, if obtained, would be inadmissible. *Richardson v. Carlis*, 26 S.D. 202, 128 N.W. 168. Therefore, if Standing Rock seeks to delay the evidentiary hearing in order to secure an expert witness, it may be necessary to ensure that the testimony of that expert witness is, in fact, admissible at the evidentiary hearing.

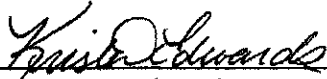
4. Prior continuances

There have been no prior continuances in this docket.

CONCLUSION

Staff is prepared and able to proceed according to the procedural schedule. Staff does not support a continuance at this time.

Dated this 30th day of March, 2015.



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