

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

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**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 BRIEF IN RESPONSE**  
\* **TO KEYSTONE'S OBJECTION**  
\* **TO COUP'S REQUEST FOR A**  
\* **TIME CERTAIN AND MOTION**  
\* **TO PRECLUDE WITNESS**

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\* **HP14-001**  
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COMES NOW, Staff ("Staff") of the South Dakota Public Utilities Commission ("Commission") and hereby files this brief in response to Keystone's Objection to COUP's Request for A Time Certain and Motion to Preclude Witness (Motion). Because the hearing was continued, the Request for Time Certain is moot, and Staff, therefore, addresses only the Motion to Preclude Witness.

On April 27, 2015, TransCanada Keystone Pipeline, LP (Keystone) filed the Motion, requesting that a witness proffered by Intertribal Council on Utility Policy (COUP) be precluded. Keystone argues that the testimony of that witness, Dr. James Hansen, is not rebuttal testimony, rather it is direct testimony, which should be excluded, because no pre-filed direct testimony was filed for Dr. Hansen.

Staff supports the Motion, in part, but for reasons other than those offered by Keystone. COUP states in its Notice and Request for a Time Certain for an Expert Rebuttal Witness (Request) that

Dr. Hansen will testify on: A) the potential impact of the Tar Sands development to the planet's narrowing atmospheric carbon budget; B) the role of the proposed Keystone XL pipeline in the economic development of the Tar Sands; and C) the changes in the level and

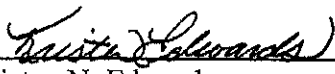
significance our national understanding of climate change over the past four years since the granting of the ... permit to TransCanada in this matter.

See Request at ¶7. None of the three areas mentioned by COUP are relevant to the certification proceeding. While climate change and greenhouse gas issues may be relevant as they relate to transportation, they are not relevant as they relate to extraction of oil, as that is not what the permit is for.

### **Conclusion**

Staff supports the Motion to the extent that Dr. James Hansen should be precluded from offering testimony on the potential impact of the Tar Sands development, climate change, and any other issue not relevant to the certification proceeding, as well as to the extent that it deals with any issue not raised in Keystone's case in chief. Should Dr. Hansen offer testimony on any matter relevant to this proceeding, within the purview of SDCL § 49-41B-27, and in a manner that is truly rebuttal testimony, Staff has no objection to his being a witness at this time, but reserves the right to make objections as necessary at the time of the hearing.

Dated this 18th day of May, 2015.

  
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