BEFORE THE
PUBLIC UTILITIES COMMISSION
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

DOCKET HP14-001

PREFILED TESTIMONY OF DARREN KEARNEY
ON BEHALF OF THE COMMISSION STAFF
APRIL 2, 2015
Q. State your name.
A. Darren Kearney.

Q. State your employer and business address.
A. South Dakota Public Utilities Commission, 500 E Capitol Ave, Pierre, SD, 57501.

Q. State your position with the South Dakota Public Utilities Commission.
A. I am a Staff Analyst, which is also often referred to as a Utility Analyst.

Q. What is your educational background?
A. I hold a Bachelor’s of Science degree, majoring in Biology, from the University of Minnesota. I am also in the process of getting a Masters of Business Administration degree from the University of South Dakota and I expect to be awarded that degree in May of 2015.

Q. Please provide a brief explanation of your work experience.
A. I began my career in the utility industry working as contract biologist for Xcel Energy, where I conducted biological studies around various power plants, performed statistical analysis on the data collected, and authored reports in order to meet National Pollutant Discharge Elimination System (NPDES) permit requirements. After two years of performing biological studies, I then transitioned into an environmental compliance function at Xcel Energy as a full time employee of the company and became responsible for ensuring Xcel’s facilities maintained compliance with the Oil Pollution Act of 1990. This involved writing Spill Prevention Control and Countermeasure (SPCC) plans and also ensuring Xcel facilities maintained compliance with those plans. During this time I was also responsible for the company’s Environmental Incident Response Program, which involved training Xcel employees on
spill reporting and response, managing spill cleanups, and mobilizing in-house and contract spill response resources. I was also responsible for aboveground storage tank permitting during this time.

I was in that role for approximately three years and then I transitioned to a coal-fired power plant at Xcel and became responsible for environmental permitting and compliance for the plant. Briefly, my responsibilities involved ensuring that the facility complied with all environmental permits at the plant, which included a Clean Air Act Title V Air Permit, a Clean Water Act NPDES permit, and a hazardous waste permit. I also submitted reports on the plant’s operations to various agencies as required by permit or law. After three years at the power plant, I left Xcel Energy to work for the South Dakota Public Utilities Commission (SD PUC).

I have been at the SD PUC for just over two years now. During this time I worked on a variety of matters in the telecom, natural gas, and electric industries. The major dockets that I worked on were transmission siting dockets, pipeline siting dockets, and energy efficiency dockets. I also attended a number of trainings on public utility policy issues, electric grid operations, regional transmission planning, electric wholesale markets, and utility ratemaking.

Q. On whose behalf was this testimony prepared?
A. This testimony was prepared on behalf of the Staff of the South Dakota Public Utilities Commission.

Q. Were you involved in the Keystone XL permitting docket, HP09-001?
A. No.

Q. Did you file prefiled testimony in HP09-001?
A. No. However, I adopt the testimony of Staff witness Tim Binder in docket HP09-001. (Exhibit___(DK-1))

Q. Did you provide testimony at the evidentiary hearing in HP09-001?
A. No.

Q. Have you thoroughly reviewed all of the information filed in HP14-001?
A. Yes. I also reviewed the following: relevant sections of the Department of State’s Final Supplemental Environmental Impact Statement; relevant background information included in docket HP09-001; South Dakota Codified Laws and Rules applicable to the Petition; and discovery requests and responses of all parties.

Q. Were other Staff involved in the review of this petition?
A. Yes. Other Staff members involved in the review consisted of Brian Rounds (Staff Analyst) and Mary Zanter (Pipeline Safety Inspector).

Q. Explain, in your words, the role of the SDPUC Staff in the Petition proceedings.
A. After initial review of the filing, Staff identified the findings of fact changes provided by Keystone XL in Exhibit C of the petition that Staff believed could impact the opinions of Staff’s expert witnesses that were provided in docket HP09-001. Staff then procured consultants, making a good-faith effort to utilize the same witnesses or consultants used in docket HP09-001, to review the changes identified by Keystone XL and determine the following: 1) if the changes identified in Exhibit C resulted in a change to the professional opinion provided by Staff’s witnesses in HP09-001, 2) if the changes identified in Exhibit C comply with the rules and regulations that the witnesses are subject matter experts of, and 3) whether any other Keystone XL project changes or
information in the witnesses’ possession resulted in a change to their professional opinion.

In regards to processing the Petition by the Commission, Staff made great efforts to educate interveners on the process. Specifically, Staff responded to calls and emails from interveners with questions on a number of matters, including: the role of an intervener, the procedural schedule, the proper form of discovery, what laws and rules are applicable to the proceeding, and other miscellaneous information requests.

Staff was also active in discovery, where Staff submitted interrogatories to Keystone XL and responded to interrogatories submitted to Staff by Keystone XL and other interveners. Upon closure of discovery, Staff reviewed all interrogatories and responses communicated between all parties in order to understand the issues that could potentially be contested during the proceeding.

Q. **What did Staff focus on during its review of the Petition?**

A. In accordance with the Commission’s order in this docket to limit the scope of discovery only to issues relevant to whether the proposed Keystone XL Pipeline continues to meet the fifty permit conditions set forth in Exhibit A of the June 29, 2010, Amended Final Decision and Order and the changes identified by Keystone XL in Exhibit C, Staff focused its review on the fifty permit conditions and Exhibit C changes. Moreover, Staff’s experts focused their review on the project changes identified in Exhibit C that fell within their areas of expertise.

Q. **How many parties were granted party status?**

A. The commission granted party status to forty-two parties. All individuals who filed for party status were granted party status, however it is Staff’s recollection that
during the hearing it was clarified that Jane Kleeb and Benjamin D. Gotschall had both filed for party status on behalf of Bold Nebraska. Therefore, their applications for party status were combined and the Commission approved one application of party status for the Bold Nebraska organization.

Q. How many parties withdrew as interveners?

A. As of the date of writing this testimony, two interveners requested withdrawal of their party status and the Commission so approved. These interveners were the South Dakota Wildlife Federation and the Sierra Club.

Q. Did Staff review the road repair indemnity bond amount required in the Amended Final Decision and Order issued on June 29, 2010? If so, should the amount change?

A. Yes. In condition 23, subpart f, of the HP09-001 Amended Final and Decision and Order, the Commission identified that “Keystone shall obtain and file for approval by the Commission prior to construction in such year a bond in the amount of $15.6 million for the year in which construction is to commence and a second bond in the amount of $15.6 million for the ensuing year, including any additional period until construction and repair has been completed…” This bond amount was set based on Staff witness Tim Binder’s recommendation and was calculated as being ten percent of the estimated construction cost in South Dakota of $312 million and spread over two years.

According to revised finding of fact No. 23 in Exhibit C of the Petition, Keystone XL identifies that the total estimated project cost in South Dakota increased from $921.4 million to $1.974 billion in South Dakota. Keystone XL states that the project cost increased due to new technical requirements, inflation, and additional costs associated
with increased project management, regulatory, material storage, and material
preservation that resulted from the six year delay in starting construction. Staff believes
that not all of the project cost increases identified by Keystone XL would directly impact
that estimated construction cost in South Dakota. Staff does believe, however, that
inflation would have a direct impact on construction costs. Therefore, Staff
recommends the Commission increase the bond amount to account for inflation.

In order to determine the appropriate bond amount as a result of the six year
delay in starting construction, Staff used the 2009 estimated South Dakota construction
cost of $312 million and escalated the cost to the year 2015 using a 2.5% inflation rate.
This resulted in an estimated construction cost of $361.8 million for year 2015. Using
the same method established in docket HP09-001 to calculate the appropriate bond
amount, Staff determined that the bond should be set at $18 million for two years.
Therefore, Staff recommends the Commission increase the bond amount identified in
finding of fact No. 88 and condition No. 23 in the Amended Final Decision and Order
from $15.6 million to $18 million. Should Keystone XL not agree with Staff’s
methodology used for updating the bond amount, then Staff proposes that Keystone XL
should provide its most current estimate of South Dakota construction costs and then
recommend a bond amount in accordance with the methodology used in docket HP09-
001 in order to maintain consistency between the two dockets.

Q. Does this conclude your testimony?

A. Yes.