

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE	*	HP 07-001
APPLICATION BY TRANSCANADA		
KEYSTONE PIPELINE, LP FOR A	*	INTERVENER WEB WATER
PERMIT UNDER THE SOUTH		DEVELOPMENT ASSOCIATION'S
DAKOTA ENERGY CONVERSION	*	OBJECTIONS TO KEYSTONE'S
AND TRANSMISSION FACILITIES		PROPOSED FINDINGS OF FACT AND
ACT TO CONSTRUCT THE KEYSTONE	*	CONCLUSIONS OF LAW
PIPELINE PROJECT		
	*	

* * * * *

Intervener WEB Water Development Association submits this document in response to Applicant Keystone's proposed Findings of Fact and Conclusions of Law. Keystone's proposed Findings contain a large number of general statements without citation to the record. Consequently, it is difficult to determine whether some of Keystone's proposed Findings are supported by testimony or exhibits which were admitted into evidence at the December 2007 hearing. The Commission is urged to reject any Findings which are not supported by evidence in the record. In setting forth its objections, WEB will make use of the same paragraph numbers employed by Keystone.

Findings of Fact

2. Object to the use of the "leading" in reference to TransCanada.

3. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

33. Object to statement regarding reduction of construction right-of-way to 85 feet in certain wetlands. Commission is urged to adopt 75 foot or less right-of-way as recommended by staff. (*See* Commission Staff's Brief, p. 18, ¶ X a).

34. This proposed Finding is objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

35. This proposed Finding states the pipeline route was changed so as to run through the Hecla Sandhills "to avoid environmentally sensitive areas." The evidence presented at the hearing demonstrates that the route chosen to run through northern Marshall County did not

avoid environmentally sensitive areas. (See ¶¶ 13 through 26 of WEB's proposed Findings of Fact).

37. Object to the statement TransCanada gave "due consideration to environmentally sensitive area" and "aquifers."

39. Object to the use of the word "extensive" in connection with TransCanada's consultations with federal and state environmental agencies.

41. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

44. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

51. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

52. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

53. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing. This proposed Finding is also objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

54. WEB requests that its water lines be rerouted so as to run underneath the Keystone Pipeline. (See ¶ 106 of WEB's proposed Findings of Fact).

55. This Finding is not supported by the evidence presented at the hearing. (See ¶¶ 91 through 99 of WEB's proposed Findings of Fact).

58. This proposed Finding is objected to on the grounds it is incomplete. Although Ms. Tillquist did testify that the median size of a crude oil spill has been three barrels, she also testified to other figures regarding spill size. In her direct testimony, Ms. Tillquist stated the "average" size of pipeline spills has been 12 barrels. (TC EX 7 D, ¶ 20). In her rebuttal testimony, Tillquist stated the "mean" size of spills on all hazardous liquid pipelines was 287 barrels and on crude oil pipelines 164 barrels. The "median" size of spills was three barrels on both hazardous liquid and crude oil pipelines. (TC EX 7 R 2, ¶ 4). Intervener Ed Miller presented evidence that the average size spill was anywhere from 282 to 660 barrels. (MILLER EX 1, ¶ 11; MILLER EX 2, ¶ 8; MILLER EX 3, p. 172).

59. This proposed Finding is objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the

future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

60. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

61. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

64. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

66. This Finding is objected to on the grounds the Commission should follow the recommendations of staff witness Tom Janssen.

72. This proposed Finding is objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

75. This proposed Finding is objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

76. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

77. This proposed Finding is objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

79. This proposed Finding is objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

83. This Finding is unnecessary since it duplicates paragraph 78.

85. This proposed Finding is objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

91. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

94. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

95. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing. One of the primary reasons for requesting the special permit was to save money. (TR 118-19, 290).

97. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing. Safety is also a factor in requiring the thicker pipe in certain areas. (TR 106).

99. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

100. This proposed Finding is objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

101. This proposed Finding is objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

102. This proposed Finding is objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

103. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing. This proposed Finding is also objected to on the basis of Keystone's use of the word "will." The Commission is in no position to make a finding as to what Keystone will do in the future. At best, the Commission can make a finding to the effect that Keystone has agreed to take certain steps.

106. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

107. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

108. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

110. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

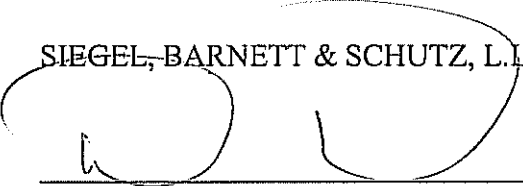
113. Object on the grounds the proposed Finding is incomplete, misleading or not supported by evidence presented at the hearing.

Conclusions of Law

WEB objects to paragraphs 3, 4, 5, 6, 7, 11, 14, 15, 17, 18, 19, 20 and 22 of Keystone's proposed Conclusions of Law on the grounds that said Conclusions are unsupported by the evidence presented to the Commission.

Dated this 31st day of January, 2008.

SIEGEL, BARNETT & SCHUTZ, L.L.P.



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