

**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)	ORDER FOR AND NOTICE OF) MOTION HEARING ON LESS) THAN 10 DAYS' NOTICE) (July 21, 2015)) HP14-001)
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On September 15, 2014, TransCanada Keystone Pipeline, LP (TransCanada or Keystone) filed with the South Dakota Public Utilities Commission (Commission) a Petition for Order Accepting Certification under SDCL §49-41B-27 seeking an order accepting certification of the energy facility permit issued in Docket HP09-001 for construction of the Keystone XL Pipeline. On June 29, 2010, the Commission issued an Amended Final Decision and Order; Notice of Entry granting a permit to TransCanada for construction of the Keystone XL Pipeline. TransCanada now seeks an order accepting certification pursuant to SDCL 49-41B-27. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41B, specifically 49-41B-27, and ARSD Chapters 20:10:22 and 20:10:01, specifically 20:10:01:22.02 and 20:10:22.

On September 18, 2014, the Commission electronically transmitted notice of the filing and the intervention deadline of October 15, 2014, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. Applications for Party Status were received from forty-three persons, and on November 4, 2014, the Commission issued an Order Granting Intervention and Party Status to forty-two of the applicants. Three parties have since been granted withdrawal of party status. On December 17, 2014, the Commission issued an Order Granting Motion to Define Issues and Setting Procedural Schedule. On May 5, 2015, the Commission issued an Amended Procedural Schedule, which included an order that all motions *in limine* be filed by July 10, 2015, responses to those motions be filed by July 17, 2015, and those motions be heard on July 21, 2015.

On July 9, 2015, Commission Staff (Staff) filed a Motion for Judicial Notice. In its Motion, Staff requests the Commission take judicial notice of 1) the evidentiary record in Docket No. HP09-001, 2) the Final Environmental Impact Statement, 3) the Final Supplemental Environmental Impact Statement, and 4) SDCL Chapter 49-41B in its entirety.

On July 9, 2015, Rosebud Sioux Tribe (Rosebud) filed a Motion *in Limine* to Exclude Testimony. In its Motion, Rosebud seeks an order excluding the rebuttal testimony of Keystone witnesses: Heidi Tillquist, Meera Kothari, and Jeff Mackenzie.

On July 10, 2015, Staff filed a Motion for Time Certain for Witness Testimony. In its Motion, Staff requests the Commission issue an order reserving August 3, 2015, for testimony of witnesses for Staff and Standing Rock Sioux Tribe who are traveling from out-of-state.

On July 10, 2015, Keystone filed Applicant's Motion Concerning Procedural Issues at the Evidentiary Hearing. In this Motion, Keystone requests an order from the Commission 1) limiting parties with a common interest to one lawyer who may ask questions on cross-examination; 2)

requiring parties who wish to give an opening statement to do so in writing; 3) precluding friendly-cross examination; 4) for those parties represented by counsel, limiting the conducting of cross-examination to counsel; 5) limiting cross-examination to the scope of the direct examination; and 6) while allowing for objections, precluding parties from arguing evidentiary objections unless directed by General Counsel for the Commission.

On July 10, 2015, Keystone filed Keystone's Motion *in Limine* to Exclude Testimony of Kevin E. Cahill, Ph.D. Keystone argues testimony from this witness should be excluded as beyond the scope of this proceeding and not relevant to this proceeding.

On July 10, 2015, Keystone filed Keystone's Motion *in Limine* to Preclude Rebuttal Testimony of Ian Goodman and Bridgid Rowan. In its Motion, Keystone argues that the testimony is not responsive to the direct testimony of any other witness and is, therefore, improper as rebuttal testimony.

On July 10, 2015, Keystone filed Keystone's Motion *in Limine* to Preclude Rebuttal Testimony of Jennifer Galindo and Wasté Win Young. In its Motion, Keystone argues that the proposed testimony is irrelevant and should be excluded.

On July 10, 2015, Keystone filed Keystone's Motion *in Limine* to Preclude Testimony of Chris Saucosi. In its Motion, Keystone argues that the testimony of Chris Saucosi, filed as rebuttal testimony by Yankton Sioux Tribe, is insufficient to advise the Commission or the parties of his testimony and does not allow Keystone the opportunity to prepare for cross-examination.

On July 10, 2015, Keystone filed Keystone's Motion *in Limine* to Preclude Testimony of Dr. Hansen and Dr. Oglesby. In its Motion, Keystone argues that an order precluding such testimony is consistent with the Commission's Order Granting TransCanada's Motion to Preclude Witnesses issued on May 28, 2015.

On July 10, 2015, Keystone filed Keystone's Motion *in Limine* to Restrict Testimony of Leonard Crow Dog. In its Motion, Keystone requests an order precluding Leonard Crow Dog from testifying at the evidentiary hearing.

On July 10, 2015, Keystone filed Keystone's Motion *in Limine* to Restrict Testimony of Yankton Sioux Witnesses Spotted Eagle and Un-Named Member of the B&C Committee. In its Motion, Keystone requests an order from the Commission striking certain portions of the direct pre-filed testimony of Faith Spotted Eagle and all of the proposed rebuttal testimony of Faith Spotted Eagle and Jason Cooke, a member of the Yankton Sioux Business and Claims Committee.

On July 10, 2015, Keystone filed Keystone's Motion *in Limine* to Strike Paula Antoine's Rebuttal Testimony. Keystone requests an order prohibiting Paula Antoine from testifying at the evidentiary hearing and striking her pre-filed testimony from the record.

On July 10, 2015, Keystone filed Keystone's Motion *in Limine* to Strike the Article by Linda Black Elk and Restrict Her Testimony. Keystone seeks an order striking the article entitled "Culturally Important Plants of the Lakota" and prohibiting Linda Black Elk from testifying at the evidentiary hearing.

On July 10, 2015, the Commission received a Joint Motion *in Limine* to Exclude Evidence Pertaining to Keystone's Proposed Changes to Findings of Fact. The Motion was filed jointly by Yankton Sioux Tribe, Cheyenne River Sioux Tribe, Bold Nebraska, Rosebud, Indigenous Environmental Network, and Dakota Rural Action. In this Motion, movants seek an order excluding all evidence offered by Keystone in support of its Tracking Table of Changes.

Pursuant to ARSD 20:10:01:22.02, the Commission may order a hearing on less than ten days notice if the Commission determines good cause exists therefor. The Commission finds that because the Commission previously ordered all parties to file certain motions by July 10, 2015, and for those motions to be heard on July 21, 2015, in connection with the regularly scheduled Commission meeting, good cause exists to hear the Motions on less than ten days' notice.

It is therefore

ORDERED, that responses to all above-mentioned motions must be filed no later than 5:00 p.m. CDT on July 17, 2015.

ORDERED, that a hearing on all of the above-mentioned motions will be held by the Commission in connection with its regular meeting on July 21, 2015, beginning at 9:30 A.M. CDT in Rm. 413, Capitol Building, Pierre, SD.

Dated at Pierre, South Dakota, this 13th day of July, 2015.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.	
By:	<u>7/13/15</u>
Date:	<u>[Signature]</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Chairman

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner