

**IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA**

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

IN THE MATTER OF PUC DOCKET HP14-0001,
ORDER ACCEPTING CERTIFICATION
OF PERMIT ISSUED IN DOCKET
HP09-001 TO CONSTRUCT THE
KEYSTONE XL PIPELINE

FILE NO. _____

**APPELLANT'S DOCKETING
STATEMENT**

SECTION A. TRIAL COURT

1. The circuit court from which the appeal is taken: Sixth Judicial Circuit Court
2. The county in which the action is venued at the time of appeal: Hughes County
3. The name of the trial judge who entered the decision appealed: Honorable John Brown

PARTIES AND ATTORNEYS

4. Identify each party presently of record and the name, address, and phone number of the attorney for each party. (May be continued on an attached appendix.)

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SECTION B. TIMELINESS OF APPEAL

(If section B is completed by an appellee filing a notice of review pursuant to SDCL 15-26A-22, the following questions are to be answered as they may apply to the decision the appellee is seeking to have reviewed.)

1. The date the judgment or order appealed from was signed and filed by the trial court: June 19, 2017
2. The date notice of entry of the judgment or order was served on each party: June 20, 2017
3. State whether either of the following motions was made:
 - a. Motion for judgment n.o.v., SDCL 15-6-50(b): Yes X No
 - b. Motion for new trial, SDCL 15-6-59: Yes X No

NATURE AND DISPOSITION OF CLAIMS

4. State the nature of each party's separate claims, counterclaims or cross-claims and the trial court's disposition of each claim (e.g., court trial, jury verdict, summary judgment, default judgment, agency decision, affirmed/reversed, etc.).

Appellant and other intervening parties challenged a petition submitted by TransCanada Keystone Pipeline, LP ("Keystone") to the South Dakota Public Utilities Commission ("Commission") seeking certification pursuant to SDCL § 49-41B-27 that the proposed Keystone XL pipeline continues to meet the conditions upon which a permit to construct the pipeline was granted in 2010. The Commission granted certification. Appellant and other intervening parties appealed the Commission's decision to the Circuit Court. The Circuit Court issued a memorandum opinion and order affirming the Commission's decision.

5. Appeals of right may be taken only from final, appealable orders. See SDCL 15-26A-3 and 4.
 - a. Did the trial court enter a final judgment or order that resolves all of each party's individual claims, counterclaims, or cross-claims? X Yes No
 - b. If the trial court did not enter a final judgment or order as to each party's individual claims, counterclaims, or cross-claims, did the trial court make a determination and direct entry of judgment pursuant to SDCL 15-6-54(b)? Yes No N/A
6. State each issue intended to be presented for review. (Parties will not be bound by these statements).
 - a. Whether the Circuit Court erred when it denied Appellant's Motion to Dismiss, when it denied Appellant's Joint Motion in Limine, and when it took inconsistent positions with regard to the "Tracking Table of Changes," denying Appellant its substantive right to due process.

- b. Whether the Circuit Court erred when it found that the Commission did not err by issuing the Order Granting Motion to Define Issues and Setting Procedural Schedule.
- c. Whether the Circuit Court erred when it found that the Commission did not place the burden of proof on the intervening parties rather than on Keystone and that the intervening parties failed to establish any reason why Keystone could not continue to meet the conditions on which the 2010 permit was issued.
- d. Whether the Circuit Court erred when it found that Keystone properly certified that it remains eligible to construct the Keystone XL pipeline and that Keystone's submission of a signed "certification" met Keystone's burden of proof.
- e. Whether the Circuit Court erred when it found that the PUC correctly concluded that Keystone is as able today to meet the conditions upon which the 2010 permit was issued, and by basing its decision on whether Keystone continues to be able to meet the 2010 conditions.
- f. Whether the Circuit Court erred when it found that the Commission's issuance of the Order Granting Motion to Preclude Consideration of Aboriginal Title or Usufructuary Rights and its preclusion of testimony and consideration of tribal aboriginal and treaty rights were proper.
- g. Whether the Circuit Court erred when it upheld the Commission's decision that tribes are not treated as local units of government and that no permit condition requires that Keystone consult with tribes about the Keystone XL pipeline.

Date: July 19, 2017

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