

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

IN THE MATTER OF:	)	<b>Docket HP 14-001</b>
	)	
PETITION OF TRANSCANADA KEYSTONE	)	<b>INTERTRIBAL COUP'S</b>
PIPELINE, LP FOR ORDER ACCEPTING	)	<b>OPPOSITION TO</b>
CERTIFICATION OF PERMIT ISSUED IN	)	<b>TRANSCANADA'S</b>
DOCKET HP09-0001 TO CONSTRUCT THE	)	<b>MOTION TO LIMIT</b>
KEYSTONE XL PIPELINE	)	<b>DISCOVERY</b>

COMES NOW the Intertribal Council On Utility Policy (“Intertribal COUP”), Intervener in this matter, by and through its secretary and legal counsel, Robert P. Gough, in opposition to TransCanada’s Motion to Limit Discovery and to move the Public Utilities Commission of the State of South Dakota (the “Commission”) to dismiss TransCanada’s motion on several grounds. Intertribal COUP joins with its fellow interveners in opposing TransCanada’s attempt to narrowly define the scope of discovery in this certification procedure, and upon review, fully endorses, expressly adopts and incorporates the arguments and pleas of it fellow interveners by this reference.

TransCanada’s Motion to unduly limit discovery at the very onset of its certification petition procedure under SDCL §49-41B-27 to the 50 conditions expressly enumerated in and applied to the initial permit issued under docket HP 09-001, is premature, unnecessarily restrictive contrary to South Dakota law, and attempts to preempt any meaningful consideration of recent history, and in particular, the last 4 years of the fossil fuel pipeline industry’s devastating record with regard to the over 150 documented and reported incidents of significant

faults, failures, ruptures, spills, and fatal explosions in the operation of oil and gas pipelines and their associated technologies in the United States alone.

1. TransCanada's Motion is premature. The PUC is authorized under SDCL 15-6-26 (c) to provide a party with an order limiting or restricting annoying, embarrassing, oppressive, or unduly burdensome or expensive discovery requests, however, such an order can only come after such discovery has been attempted by opposing parties, and then only after the moving party has attempted to resolve any issues through conferring with the opposing party. Neither of these conditions precedent has occurred, nor has there been any allegations that either has occurred. Further, TransCanada has failed to allege or demonstrate the requisite harm that may befall it by the non-limited discovery it attempts to preempt and limit in this matter through this motion. Finally, the PUC has yet to establish a procedural schedule in this matter. Therefore, based upon the foregoing, TransCanada's motion is, at best, premature and should be dismissed as both unsupported and untimely.

2. TransCanada's Motion to impermissibly limit discovery is unduly restrictive to the responsibilities of the PUC and the rights the Interveners under South Dakota Law<sup>1</sup> to thoroughly examine TransCanada's certification petition before the PUC, including the issues treated in the initial permit and appended

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<sup>1</sup> ARSD 20:10:01:01.02 (Rules of Civil Procedure apply to these proceedings). Therefore, pursuant to SDCL §15-6-26(b)(1): "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action[.]" *Kaarup v. St. Paul Fire and Marine Ins. Co.*, 436 N.W.2d 17, 19 (S.D. 1989) ("broad construction of 'relevancy'").

conditions, as well as what has transpired in the field of pipeline accidents during the life of its original permit. The PUC, as the Fact Finder under SDCL §49-41B-27, and may limit its finding of facts from those developed through the discovery process, but the process of discovery should not be prematurely limited by a utility such as TransCanada, seeking to assume the continued privileged use of the sovereign governmental powers of eminent domain against the citizens and elder sovereigns located in the path of its pipeline. Discovery can be more broadly defined than the scope of the certification procedure itself, as long as such discovery is 'related' and "relevant' to the subject matter of the proceedings. The broad rights of liberal discovery awarded under South Dakota Civil Procedure to the Interveners in this matter should not be abridged by TransCanada's desire for protection from less than desirable disclosure.

3. TransCanada's Motion to proscribe the scope of discovery in this procedure bespeaks of the intention to foreclose any meaningful consideration of the over 150 significant pipeline accidents and incidents that have occurred and have been reported on in the United States since the issuance of their initial South Dakota permit in June of 2010, taking a terrible toll in human life, the natural environment, private property and property values, in fact, the devastation of entire rural, suburban and urban communities.

4. Finally, there is the need to go beyond the original permit and attached conditions, so that an updated awareness of the changes in public policy with

regard to carbon emissions are concerned and to the alternatives to the pipeline that TransCanada has explored in the increasingly likely event that their pipeline permissions are denied under other pending state and/or federal procedures.

WHEREFORE, The Intertribal Council On Utility Policy prays that the Commission deny TransCanada's Motion requesting a proscriptive defining of South Dakota's broad and liberal discovery procedures.

Dated this 1<sup>st</sup> Day of December 2014.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. P. Gough', with a long horizontal flourish extending to the right.

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## CERTIFICATE OF SERVICE

I, Robert Gough, hereby certify that on the 1st day of December 2014, or immediately thereafter, I caused to be sent by United States first-class mail, postage prepaid or by e-mail transmission, a true and correct copy of the Intertribal Council on Utility Policy's Opposition to TransCanada's Motion to Limit Discovery to the following:

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Dated this 1<sup>st</sup> Day of December 2014.

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