

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

IN THE MATTER OF:)	
)	Docket HP 14-001
)	
PETITION OF TRANSCANADA KEYSTONE PIPELINE, LP FOR ORDER ACCEPTING CERTIFICATION OF PERMIT ISSUED IN DOCKET HP09-001 TO CONSTRUCT THE KEYSTONE XL PIPELINE)	INTERTRIBAL COUP'S MOTION FOR RECONSIDERATION OF MAY 28, 2015 ORDER TO PRECLUDE REBUTTAL WITNESSES AND OBJECTION TO KEYSTONE'S JULY 10TH MOTION TO PRECLUDE.

Comes now the Intertribal Council On Utility Policy (COUP), by and through counsel, Robert Gough, pursuant to SDCL 1-26-18 the Administrative Procedure Act, ARSD 20:10:01:29, to request the Public Utilities Commission to reconsider its order dated MAY 28, 2015 to Preclude Rebuttal Witnesses offered by the Intertribal COUP, and in Objection to Keystone's July 10, 2015 Motion in Limine to Preclude Testimony of Drs. Hansen and Oglesby.

The Commission's Order of May 28, 2015 states that:

On April 27, 2015, COUP filed a Request for a Time Certain for an Expert Rebuttal Witness. Included in this Request was a description of the scope of testimony for Dr. James Hansen. On April 27, 2015, TransCanada filed an Objection to COUP's Request for a Time Certain and Motion to Preclude Witnesses (Motion to Preclude Witnesses). In its Motion to Preclude Witnesses, TransCanada sought to preclude COUP's three proffered witnesses, namely Dr. James Hansen, Dr. George Seielstad, and Dr. Robert Oglesby, from testifying as rebuttal witnesses, arguing that the witnesses will not be offering testimony within the meaning of rebuttal testimony and did not file pre-filed direct testimony.

Intertribal COUP had NOT filed "pre-filed direct testimony" for Direct Witnesses, but sought to have its three witnesses serve instead as Rebuttal

Witnesses. The date for the pre-filing of Rebuttal Witnesses had been set for June 26, 2015, and therefore Intertribal COUP was not obliged to “pre-file rebuttal testimony” before that date. Intertribal COUP had only filed a “scope of testimony” from its potential witnesses.

The Order of May 28, 2015 further states that:

At its regularly scheduled meeting on May 26, 2015, the Commission found the Request for a Time Certain for an Expert Rebuttal Witness to be moot given the Commission's Order Granting Joint Motion for Continuance and Relief from Scheduling Order, dated April 27, 2015. The Commission also considered the Motion to Preclude Witnesses. Finding that the testimony of the proffered witnesses was beyond the scope of the certification proceeding, the Commission voted unanimously to grant the Motion to Preclude Witnesses.

Intertribal COUP pre-filed Rebuttal Testimony on June 26th with the Commission for Drs. James Hansen and Robert Oglesby, and on July 10, 2015, Transcanada filed Keystone’s Motion In Limine To Preclude Testimony Of Dr. Hansen And Dr. Oglesby.

Intertribal COUP objects to Keystone’s Motion in Limine to Preclude and respectfully requests the PUC reconsider its findings and order of May 28, 2015, that the testimony of the proffered witnesses was irrelevant and beyond the scope of the certification proceeding, in light of the following:

1. That until the Commission’s set deadline of June 26, 2015, and until that time no testimony, neither direct or in rebuttal, had yet been offered or filed by Intertribal COUP or its witnesses.
2. That in light of the Commission’s ruling in the preclusion was based upon a brief scope of testimony offer by counsel. The testimony pre-filed on June 26th should be considered as statements

qualifying the expertise of two named witnesses in aggregate adverse weather conditions, since “climate” is merely the 30 year aggregated weather conditions one is to expect in a given place, and “impacts of climate change” are likely to reveal themselves in the variable frequency and intensity of “adverse weather” events.

3. That in its brief of May 18, 2015, Staff concluded as follows:

“Should Dr. Hansen offer testimony on any matter relevant to this proceeding, within the purview of SDCL § 49-418-27, and in a manner that is truly rebuttal testimony, Staff has no objection to his being a witness at this time, but reserves the right to make objections as necessary at the time of the hearing.”

4. That in the Applicant Keystone’s Reply In Support Of Motion To Limit Testimony Of Richard Kuprewicz, Keystone clearly states that:

“It is presumed that some facts may have changed in four years. At issue is whether Keystone can continue to meet the permit conditions based on the facts today.

5. That in light of the Commission’s Order regarding Keystone’s Motion to Exclude the Testimony of Richard Kuprewicz, was granted, in part, for relevant testimony.

6. That there are a number of “Findings and Conditions” in the 2010 Permit subject to this Recertification process that deal with potential climatic conditions as expressed through “adverse weather”. Under Condition 25, for example, Keystone has an obligation to suspended construction when:

“(W)eather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.”

And to:

“(F)ile with the Commission an adverse weather land protection plan containing appropriate adverse weather land protection

measures, the conditions in which such measures may be appropriately used, and conditions in which no construction is appropriate, for approval of or modification by the Commission prior to the start of construction.”

7. That since questions regarding Keystone’s understandings, obligations and reporting requirements about the nature, type, intensity and frequency of “adverse weather” conditions along the pipeline route and environs, and any changes with regard to those conditions, our understanding of, and preparation for, such changing conditions, which may have occurred over the past four years, may be a fair inquiry for cross-examination, Intertribal COUP respectfully asserts the right to have its witness be allowed to rebut potential testimony when relevant.

CONCLUSION

Based upon the foregoing, the treatment of other witnesses, and the recommendations of staff, Intertribal COUP seeks the Commission’s reconsideration of its Order to Preclude, so as to allow Intertribal COUP’s witnesses to be able to offer relevant rebuttal testimony within their area of expertise.

Submitted this 17th day of July 2015

Respectfully submitted,



Robert P. Gough, SD SB# 620
Secretary of, and Attorney for,
Intertribal Council On Utility Policy (COUP)
P.O. 25, Rosebud, SD 57570
605-441-8316
Gough.bob@gmail.com

CERTIFICATION OF SERVICE

I, Robert Gough, hereby certify that on the 17th day of July 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of the **INTERTRIBAL COUP'S MOTION FOR RECONSIDERATION OF MAY 28, 2015 ORDER TO PRECLUDE REBUTTAL WITNESSES AND OBJECTION TO KEYSTONE'S JULY 10TH MOTION TO PRECLUDE**, to the following:

Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

Brian Rounds
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
brian.rounds@state.sd.us

James E. Moore
Woods, Fuller, Shultz and Smith P.C.
PO Box 5027
Sioux Falls, SD 57117
james.moore@woodsfuller.com
Attorney for TransCanada Keystone Pipeline, LP

Paul F. Seamans
27893 249th St.
Draper, SD 57531
jackknife@goldenwest.net

Elizabeth Lone Eagle PO Box 160
Howes, SD 57748
bethcbest@gmail.com

Viola Waln
PO Box 937
Rosebud, SD 57570
walnranch@goldenwest.net

Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501

Kristen.edwards@state.sd.us

Darren Kearney
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
darren.kearney@state.sd.us

Bill G. Taylor
Woods, Fuller, Shultz and Smith P.C.
PO Box 5027
Sioux Falls, SD 57117
bill.taylor@woodsfuller.com
Attorney for TransCanada Keystone Pipeline, LP

John H. Harter
28125 307th Ave. Winner, SD 57580
johnharter11@yahoo.com

Tony Rogers
Rosebud Sioux Tribe - Tribal Utility Commission
153 S. Main St.
Mission, SD 57555
tuc@rosebudsiouxtribe-nsn.gov

Jane Kleeb
Bold Nebraska
1010 N. Denver Ave.
Hastings, NE 68901
jane@boldnebraska.org

Benjamin D. Gotschall Bold Nebraska
6505 W. Davey Rd.
Raymond, NE 68428
ben@boldnebraska.org

Cindy Myers, R.N.
PO Box 104
Stuart, NE 68780
csmyers77@hotmail.com

Lewis GrassRope
PO Box 61
Lower Brule, SD 57548
wisestar8@msn.com

Bruce Ellison
518 6th Street #6
Rapid City, South Dakota 57701

belli4law@aol.com

and

Robin S. Martinez, MO #36557/KS
#23816 616 West 26th Street
Kansas City, Missouri 64108
robin.martinez@martinezlaw.net
Attorneys for Dakota Rural Action

Robert G. Allpress
46165 Badger Rd.
Naper, NE 68755
bobandnan2008@hotmail.com

Louis T. Genung
902 E. 7th St.
Hastings, NE 68901
tg64152@windstream.net

Nancy Hilding
6300 W. Elm
Black Hawk, SD 57718
nhilshat@rapidnet.com

Bruce & RoxAnn Boettcher
Boettcher Organics
86061 Edgewater Ave.
Bassett, NE 68714
boettcherann@abbnebraska.com

Willie Kindle President
Rosebud Sioux Tribe
PO Box 430 Rosebud, SD 57570
cscott@gwtc.net

Byron T. Steskal & Diana L. Steskal
707 E. 2nd St.
Stuart NE 68780
prairierose@nntc.net

Arthur R. Tanderup 52343 857th Rd.
Neligh, NE 68756
atanderu@gmail.com

Carolyn P. Smith
305 N. 3rd St.
Plainview, NE 68769
peachie_1234@yahoo.com

Jeff Jensen
14376 Laflin Rd.
Newell, SD 57760
jensen@sdplains.com

Peter Capossela, P.C.
Attorney at Law
PO Box 10643
Eugene, OR 97440 pcapossela@nu-world.com
Attorney for Standing Rock Sioux Tribe

Gary F. Dorr 27853 292nd
Winner, SD 57580
gfdorr@gmail.com

Wrexie Lainson Bardaglio 9748 Arden Rd.
Trumansburg, NY 14886
wrexie.bardaglio@gmail.com

Eric Antoine, Attorney
Rosebud Sioux Tribe PO Box 430
Rosebud, SD 57570
ejantoine@hotmail.com

Paula Antoine
Sicangu Oyate Land Office Coordinator Rosebud Sioux Tribe
PO Box 658
Rosebud, SD 57570
wopila@gwtc.net
paula.antoine@rosebudsiouxtribe-nsn.gov

Kevin C. Keckler, Chairman
Cheyenne River Sioux Tribe
PO Box 590
Eagle Butte, SD 57625
kevinckeckler@yahoo.com

Debbie J. Trapp 24952 US HWY 14
Midland, SD 57552
mtdt@goldenwest.net

Joye Braun
PO Box 484
Eagle Butte, SD 57625
jmbraun57625@gmail.com

Thomasina Real Bird
Fredericks Peebles & Morgan LLP 1900 Plaza Dr.
Louisville, CO 80027 trealbird@ndnlaw.com
Attorney for Yankton Sioux Tribe

Douglas Hayes
Sierra Club
Ste. 102W
1650 38th St.
Boulder, CO 80301 doug.hayes@sierraclub.org

Tom BK Goldtooth
Indigenous Environmental Network (IEN)
PO Box 485
Bemidji, MN 56619
ien@igc.org
ien@igc.org
Kimberly Craven, Attorney
kimecraven@gmail.com

Chris Hesla
South Dakota Wildlife Federation PO Box 7075
Pierre, SD 57501
sdwf@mncomm.com

Amy Schaffer
PO Box 114
Louisville, NE 68037
amyannschafter@gmail.com

Gena M. Parkhurst
2825 Minnewasta Place
Rapid City, SD 57702
gmp66@hotmail.com

Robert Flying Hawk, Chairman
Yankton Sioux Tribe
PO Box 1153
Wagner, SD 57380
Robertflyinghawk@gmail.com

Chastity Jewett
1321 Woodridge Dr. Rapid City, SD 57701
chasjewett@gmail.com

Duncan Meisel 350.org
20 Jay St. #1010
Brooklyn, NY 11201
duncan@350.org

Dallas Goldtooth
38371 Res. HWY 1
Morton, MN 56270
goldtoothdallas@gmail.com

Terry & Cheryl Frisch 47591 875th Rd.
Atkinson, NE 68713
tcfrisch@q.com

Tracey Zephier
Fredericks Peebles & Morgan LLP
910 5th Street, Suite 104
Rapid City, SD 57701
tzephier@ndnlaw.com
Attorney for Cheyenne River Sioux Tribe

Ms. Mary Turgeon Wynne, Esq.
Rosebud Sioux Tribe - Tribal Utility Commission
153 S. Main St
Mission, SD 57555
tuc@rosebudsiouxtribe-nsn.gov

Matthew L. Rappold
Rappold Law Office 816 Sixth Street
PO Box 873
Rapid City, SD 57709
Matt.rappold01@gmail.com
Attorney for Rosebud Sioux Tribe, Intervenor

And on or about May 20, 2015, a true and accurate copy of the foregoing was mailed via U.S. Mail, first class postage prepaid, to the following:

Jerry Jones
22584 US HWY 14
Midland SD 57552

Ronald Fees
17401 Fox Ridge Rd.
Opal, SD 57758

Bonny Kilmurry
47798 888 Rd.
Atkinson, NE 68713

Elizabeth Lone Eagle
PO Box 160
Howes, SD 57748

Dated this 17th Day of July 2015.

Respectfully submitted,



Robert P. Gough, SD SB# 620
Secretary of, and Attorney for,
Intertribal Council On Utility Policy
P.O. 25, Rosebud, SD 57570
605-441-8316

BobGough@IntertribalCOUP.org