

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF HUGHES)

IN THE CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

IN THE MATTER OF PUBLIC UTILITIES
COMMISSION DOCKET NO. HP14-001,
TRANSCANADA KEYSTONE PIPELINE,
LP

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CIV. 32CIV16-000034

STATEMENT OF ISSUES

COMES NOW Yankton Sioux Tribe (“Tribe”), by and through Thomasina Real Bird of Fredericks Peebles & Morgan LLP, and hereby submits its Statement of Issues pursuant to South Dakota Codified Laws (“SDCL”) 1-26-31.4. The Tribe challenges the Public Utilities Commission’s (“PUC”) *Final Decision and Order; Notice of Entry* (“*Final Decision*”), issued on January 21, 2016, and interim orders. The issues the Tribe intends to raise on appeal are as follows:

1. Whether the PUC erred in its *Final Decision* by accepting TransCanada Keystone Pipeline, LP’s (“Keystone”) certification despite the fact that Keystone currently has a permit for a wind energy project, rather than for a tar sands pipeline.

2. Whether the PUC erred in its *Final Decision, Findings of Fact*, by finding that the parties did not present evidence of any factual changes to the proposed Keystone XL pipeline project (“Project”) other than the “updates” stated in Appendix C to the *Petition for Order Accepting Certification Under SDCL § 49-41B-27* (“*Petition*”).

3. Whether the PUC erred in its *Final Decision*, Findings of Fact, by finding that no evidence was presented that Keystone cannot satisfy any of the conditions identified in Appendix C of the *Petition*.

4. Whether the PUC erred in its *Final Decision*, Findings of Fact, by finding that Keystone presented evidence that it will continue making contacts with local emergency responders and that this statement is supported by pages 317-318 of the transcript.

5. Whether the PUC erred in its *Final Decision*, Findings of Fact, by referencing Corey Goulet's testimony regarding the threat posed to PVC by benzene. Mr. Goulet is not an expert in PVC pipe and has no direct knowledge of the studies about which he testified.

6. Whether the PUC erred in its *Final Decision*, Findings of Fact, by finding that Cindy Myers' testimony does not establish that Keystone is unable to meet any permit condition. The burden is not on Cindy Myers or any other intervenor to show that Keystone is unable to meet a Permit condition.

7. Whether the PUC erred in its *Final Decision*, Findings of Fact, by discounting Faith Spotted Eagle's testimony and asserting that it does not contain any factual basis for the Commission to find either that the Project poses a threat to the Tribe's drinking water or that water will not be available from the Missouri River for the Tribe's spiritual ceremonies.

8. Whether the PUC erred in its *Final Decision*, Findings of Fact, by finding that no permit condition requires that Keystone consult with tribes about the Project.

9. Whether the PUC erred in its *Final Decision*, Findings of Fact, by asserting that page 11 of Appendix E to the Final Supplemental Environmental Impact Statement establishes that the Standing Rock Sioux Tribe was consulted by the Department of State.

10. Whether the PUC erred in its *Final Decision*, Findings of Fact, by asserting that Rick Perkins testified that Keystone expects no increase in crime associated with work camps and by relying in its decision on that incorrect finding.

11. Whether the PUC erred in its *Final Decision*, Findings of Fact, by finding that Keystone certified that it remains eligible to construct the Project under the terms of the 2010 permit.

12. Whether the PUC erred in its *Final Decision*, Conclusions of Law, by concluding that Keystone has no legal obligation to prove that it meets the requirements of SDCL 49-41B-22.

13. Whether the PUC erred in its *Final Decision*, Conclusions of Law, by concluding that Keystone met its burden of proof through merely submitting a signed certification, submitting documents with its petition, and offering testimony that despite some “updates,” nothing that has changed affects Keystone’s *ability to meet* the conditions on which the Permit was granted.

14. Whether the PUC erred in its *Final Decision*, Conclusions of Law, by concluding that Keystone is as able today to meet the conditions of the permit as it was when the permit was issued. This is a misinterpretation of the burden of proof.

15. Whether the PUC erred in its *Final Decision*, Conclusions of Law, by concluding that no evidence was offered demonstrating that Keystone will be unable to meet the conditions in the future.

16. Whether the PUC erred in its *Final Decision*, Conclusions of Law, by concluding that Keystone offered sufficient evidence to establish that Keystone can continue to meet the conditions.

17. Whether the PUC erred in its *Final Decision*, Conclusions of Law, by concluding that the intervening parties failed to establish any reason why Keystone cannot continue to meet the conditions on which the permit was issued.

18. Whether the PUC erred in its *Final Decision* by placing the burden of proof on the intervening parties rather than on Keystone.

19. Whether the PUC erred in its *Final Decision* by failing to treat tribes as local units of government.

20. Whether the PUC erred in its *Final Decision* by failing to consider tribal aboriginal and treaty rights.

21. Whether the PUC erred by precluding the introduction of testimony regarding aboriginal and treaty rights.

22. Whether the PUC erred by basing its decision regarding certification on whether Keystone continues to be able to meet the requirements imposed by the 2010 permit.

23. Whether the PUC erred by accepting Keystone's certification under SDCL 49-41B-27 despite the fact that Keystone failed to submit substantive evidence during the evidentiary hearing.

24. Whether the PUC erred by deciding that Keystone met the standard for certification set forth in SDCL 49-41B-27.

25. Whether the PUC erred by failing to require Keystone to prove that the Project would fulfill the energy requirements of the people of the state pursuant to SDCL 49-41B-1.

26. Whether the PUC erred by issuing the Order Granting Motion to Define Issues and Setting Procedural Schedule.

27. Whether the PUC erred by issuing the Order Granting Motion to Preclude Consideration of Aboriginal Title or Usufructuary Rights on June 15, 2015.

28. Whether the PUC erred by denying the Yankton Sioux Tribe's Motion to Dismiss filed December 2, 2014, and issuing the Order Granting Motions to Join and Denying Motions to Dismiss on January 8, 2015.

29. Whether the PUC erred by denying the Joint Motion to Dismiss filed November 9, 2015, and issuing the Order Denying Motion to Dismiss on December 29, 2015.

30. Whether the PUC erred by accepting Keystone's certification despite the fact that the Presidential Permit for the Project, a prerequisite for constructing the pipeline and a condition of the 2010 permit, was denied.

31. Whether the PUC erred in requiring the submission of pre-filed testimony prior to the conclusion of discovery.

32. Whether the PUC erred in requiring the submission of pre-filed testimony as a prerequisite for presenting testimony at the evidentiary hearing.

33. Whether the PUC erred in first denying the Yankton Sioux Tribe's Motion to Dismiss dated November 2, 2014, then later denying the Yankton Sioux Tribe's Motion to Preclude Improper Relief or, in the Alternative, to Amend Findings of Fact filed May 26, 2015, and finally issuing 78 new findings of fact on January 21, 2016 .

Respectfully submitted this 29th day of February, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of February, 2016, the foregoing **STATEMENT OF ISSUES** was filed with the Office of the Clerk of Hughes County Circuit Court via the Odyssey File and Serve System; and a true and correct copy of the same was served upon the following via first class mail, postage pre-paid:

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