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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 PROJECT

The logic of this motion is the same as in the Motion to Preclude Improper Relief dated May 26, 2015, filed by Yankton Sioux Tribe and Indigenous Environmental Network. Movants contend that if anything has changed, then the findings of fact, which cannot be changed, are no longer valid, and the permit based on them cannot be valid either. The only difference between this motion and the previous joint motion is that now Movants try to base their argument on the Commission's decision denying their previous motion. As Keystone previously argued, however, the logic of the motion is flawed. The governing statute does not require that Keystone

prove that there has been no change in the underlying facts or circumstances since the permit was granted in 2010, but rather that any changes do not affect its ability to meet the conditions on which the permit was issued. SDCL § 49-41B-27. The testimony of Keystone's witnesses is relevant to prove that despite some changes since 2010, it can still meet the conditions on which the permit was issued.

The only difference between the previous joint motion and this motion is that Movants now contend that the Commission's order denying the previous motion supports this motion. It does not. The Commission did not hold that evidence related to changed circumstances, as identified in Keystone's tracking table, was not relevant. Nor did the Commission call into question the clear language of the certification statute, that Keystone must prove that it can "continue to meet the conditions on which the permit was issued." SDCL § 49-41B-27. Under this standard, the testimony of Keystone's challenged witnesses is relevant.

Movants contend that Keystone's case consists of little more than evidence about the changes reflected in its tracking table, and that its testimony is irrelevant to prove that it can continue to meet the conditions on which the permit was issued. If nothing had changed since 2010, however, it would be undisputed that Keystone could continue to meet the conditions. The issue for the evidentiary hearing is whether anything that has changed affects Keystone's ability to meet the conditions. As Keystone has previously argued, it will, through its certification, tracking table, and witness testimony and exhibits, establish that it can satisfy the terms of SDCL § 49-41B-27. The burden then shifts to the Intervenor to establish the contrary.

Neither logic, caselaw, any order of the Commission, or the governing statute supports the joint motion. Keystone respectfully requests that it be denied.

Dated this 17th day of July, 2015.

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CERTIFICATE OF SERVICE

I 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 Applicant's Response to Joint Motion in Limine, to the following:

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