

0-0

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

0-0

First, Ms. Myers is incorrect that proceedings before the Commission are quasi-judicial “for a very important reason, and that reason being flexibility for lay intervenors.” (Myers Br. at 1.) She is also incorrect that administrative agencies must accept a lay person’s testimony and exhibits “with the implied understanding and expectation those testimonies and exhibits won’t necessarily conform in a ‘legal sense.’” (*Id.* at 2.) The South Dakota Supreme Court has held the opposite, that “parties who appear pro se may not capitalize on their unfamiliarity with the law; they are bound by the same rules of evidence and procedure that bind attorneys and a trial judge is not required to act as counsel for a litigant.” *Oesterling v. Oesterling*, 354 N.W.2d 735, 737 (S.D. 1984). By statute, the rules of evidence apply in administrative proceedings. “The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit

courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed.” SDCL § 1-26-19(1). One set of rules applies, uniformly, to everyone. Granting Keystone’s motion would not be “a strike against democracy.” (Myers Br. at 2.) Rather, determining Keystone’s motion on the law without regard to Myers’ pro se status is nothing more or nothing less than what the Commission is required to do, and is in fact what the Commission has done throughout the proceedings in this docket.

Second, it is not in some way harmless for the Commission to allow into evidence whatever documents or testimony a lay witness offers, even if the Commission does not ultimately rely on the testimony or exhibits. Once the testimony and exhibits are in the record, they become part of the administrative record. Once a part of the record, the testimony and exhibits must be considered by the Commission, and may be considered on appeal. It is therefore important that the Commission address admissibility based on the law and the rules of evidence, not any other factors.

Finally, Ms. Myers offers no substantive response to Keystone’s motion. She offers no authority of any kind on which the Commission could decide that the testimony and exhibits to which Keystone objects are in fact compliant with the rules of evidence and therefore admissible.

Keystone respectfully requests that its motion to strike be granted.

Dated this 26th day of October, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

James E. Moore

PO Box 5027

300 South Phillips Avenue, Suite 300

Sioux Falls, SD 57117-5027

Phone (605) 336-3890

Fax (605) 339-3357

Email James.Moore@woodsfuller.com

- and -

William Taylor
2921 E. 57th Street, Box 10
Sioux Falls, SD 57108
Phone 605-212-1750
Bill.Taylor@williamgtaylor.com

Attorneys for Applicant TransCanada

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Applicant's Reply Brief in Support of Motion to Strike Testimony and Exhibits of Cindy Myers, to the following:

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

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

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

Jane Kleeb
1010 North Denver Avenue
Hastings, NE 68901
jane@boldnebraska.org

Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501
kristen.edwards@state.sd.us

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

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

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

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

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

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

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

Benjamin D. Gotschall
6505 W. Davey Road
Raymond, NE 68428
ben@boldnebraska.org

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

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

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

Travis Clark
Fredericks Peebles & Morgan LLP
Suite 104, 910 5th St.
Rapid City, SD 57701
tclark@ndnlaw.com

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

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

Louis T. (Tom) Genung
902 E. 7th Street
Hastings, NE 68901
tg64152@windstream.net

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

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

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

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

Harold C. Frazier
Chairman, Cheyenne River Sioux Tribe
PO Box 590
Eagle Butte, SD 57625
haroldcfrazier@yahoo.com
mailto:kevinckeckler@yahoo.com

Jerry P. Jones
22584 US Hwy 14
Midland, SD 57552

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

Jennifer S. Baker
Representing Yankton Sioux Tribe
Fredericks Peebles & Morgan LLP
1900 Plaza Dr.
Louisville, CO 80027
jbaker@ndnlaw.com

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

Bruce Ellison
Attorney for Dakota Rural Action
518 6th Street #6
Rapid City, SD 57701
belli4law@aol.com

RoxAnn Boettcher
Boettcher Organics
86061 Edgewater Avenue
Bassett, NE 68714
boettcherann@abbnebraska.com

Bonny Kilmurry
47798 888 Road
Atkinson, NE 68713
bjkilmurry@gmail.com

Robert P. Gough, Secretary
Intertribal Council on Utility Policy
PO Box 25
Rosebud, SD 57570
bobgough@intertribalCOUP.org

Cody Jones
21648 US Hwy 14/63
Midland, SD 57552

Gena M. Parkhurst
2825 Minnewsta Place
Rapid City, SD 57702
GMP66@hotmail.com

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

The Yankton Sioux Tribe
Robert Flying Hawk, Chairman
PO Box 1153
Wagner, SD 57380
robertflyinghawk@gmail.com
Thomasina Real Bird
Attorney for Yankton Sioux Tribe
trealbird@ndnlaw.com

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

Bruce Boettcher
Boettcher Organics
86061 Edgewater Avenue
Bassett, NE 68714
boettcherann@abbnebraska.com

Ronald Fees
17401 Fox Ridge Road
Opal, SD 57758

Tom BK Goldtooth
Indigenous Environmental Network (IEN)
PO Box 485
Bemidji, MN 56619
ien@igc.org

Dallas Goldtooth
38731 Res Hwy 1
Morton, MN 56270
goldtoothdallas@gmail.com

William Kindle, President
Rosebud Sioux Tribe
PO Box 430
Rosebud, SD 575
William.Kindle@rst-nsn.gov
ejantoine@hotmail.com

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

Frank James
Dakota Rural Action
PO Box 549
Brookings, SD 57006
fejames@dakotarural.org

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

Matthew Rappold
Rappold Law Office
on behalf of Rosebud Sioux Tribe
PO Box 873
Rapid City, SD 57709
matt.rappold01@gmail.com

Kimberly E. Craven
3560 Catalpa Way
Boulder, CO 80304
kimecraven@gmail.com

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

Sabrina King
Dakota Rural Action
518 Sixth Street, #6
Rapid City, SD 57701
sabinra@dakotarural.org

Robin S. Martinez
Dakota Rural Action
The Martinez Law Firm, LLC
616 W. 26th Street
Kansas City, MO 64108
robin.martinez@martinezlaw.net

Paul C. Blackburn
4145 20th Avenue South
Minneapolis, MN 55407
paul@paulblackburn.net

Joy Lashley
Administrative Assistant
SD Public Utilities Commission
joy.lashley@state.sd.us

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

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

/s/ James E. Moore
One of the attorneys for TransCanada