

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

0-0

IN THE MATTER OF THE APPLICATION	:	
BY TRANSCANADA KEYSTONE	:	HP 14-001
PIPELINE, LP FOR A PERMIT UNDER	:	
THE SOUTH DAKOTA ENERGY	:	
CONVERSION AND TRANSMISSION	:	KEYSTONE'S RESPONSE TO
FACILITIES ACT TO CONSTRUCT THE	:	APPLICATIONS OF PARTY
KEYSTONE XL PROJECT	:	STATUS OF CINDY MYERS,
	:	R.N., JANE KLEEB, DIANA L.
	:	STESKAL, BYRON T. STESKAL,
	:	BENJAMIN D. GOTSCHALL,
	:	AMY SCHAFFER, ROBERT G.
	:	ALLPRESS, CAROLYN P. SMITH,
	:	ARTHUR R. TANDERUP, TERRY
	:	AND CHERYL FRISCH, LOUIS T.
	:	(TOM) GENUNG, BRUCE
	:	BOETTCHER, WREXIE LAINSON
	:	BARDAGLIO, ROXANN
	:	BOETTCHER, AND BONNY
	:	KILMURRY

0-0

Cindy Myers, R.N., Jane Kleeb¹, Diana L. Steskal, Byron T. Steskal, Benjamin D.
Gotschall, Amy Schaffer, Robert G. Allpress, Carolyn P. Smith, Arthur R. Tanderup,

¹ Kleeb filed her application in her own name. The "applicant" is listed as Jane Kleeb. While she notes that she works with BOLD Nebraska and the Cowboy Indian Alliance, the application does not indicate that it is made on behalf of either one, nor does it disclose that Kleeb has authority to act for either. Similarly, Benjamin D. Gotschall filed an application in his own name, even though he refers to his work with BOLD Nebraska and the Cowboy Indian Alliance in the application. Both applications should be treated as requests by an individual for party status.

Terry and Cheryl Frisch, Louis T. (Tom) Genung, Bruce Boettcher², Wrexie Lainson Bardaglio, RoxAnn Boettcher, and Bonny Kilmurry have all filed applications for party status. Most are residents of Nebraska, and all reside out of state. TransCanada Keystone Pipeline, LP ("Keystone") respectfully requests that these applications be denied.

To be allowed party status, an applicant must be either (1) a person residing in the area where the facility is proposed to be sited; (2) a nonprofit organization promoting certain interests enumerated in the statute; or (3) an interested person. SDCL § 49-41B-17(3). Out-of-state residents do not meet either of the first two criteria³, so they can be granted party status only if they establish that they are "interested persons" within the meaning of the statute.

² Like Jane Kleebe and Benjamin Gottschall, Bruce and RoxAnn Boettcher filed individual applications, even though they identify Boettcher Organics as an organization with which they are affiliated. Boettcher Organics bills itself on the internet as an organic beef producer at Bassett, Nebraska; i.e. a commercial enterprise.

³ The jurisdiction of the Commission is limited to consideration of transmission facilities located "in this state." SDCL § 49-41B-1. The Commission's jurisdiction does not extend to Nebraska or Montana portions of the pipeline. The applicants who live near the pipeline *in Nebraska* do not live ". . . near the area where the facility is proposed to be sited" within the jurisdiction of the South Dakota Commission. A Nebraskan's recourse is in the Nebraska regulatory system or the on-going federal review process. Moreover, of the Nebraska landowners, only Byron Steskal and Arthur Tanderup identify themselves as living on or near the Nebraska right of way.

“Interested person” is not defined in Chapter 49-41B. However, “interested person” must mean more than a person simply curious about or attentive to the project. If it does not, then the first two provisions of § 49-41-17(3) affording party status to area residents and certain non-profits are pointless and unnecessary. Courts generally avoid defining statutory terms in a way that makes other terms meaningless. *See, e.g., Schnelke v. Belle Fourche Irrigation Dist.*, 840 N.W.2d 669, 675 (S.D. 2013). There is no reason for area residents and non-profits to be mentioned in the statute if any curious person can become a party for the asking.

South Dakota’s administrative procedures act, SDCL Ch. 1-26, applies to proceedings before the Commission.⁴ Under SDCL § 1-26-17.1, a person “. . . *whose pecuniary interests* would be directly and immediately affected by an agency’s order made upon the hearing may become a party to the hearing by intervention.” The statute clearly contemplates more than a general interest as a precursor to intervention.

Under the Commission’s own administrative rules, an “interested person” is someone with a particular interest in the project, as distinguished from the general public. Per ARSD 20:10:01:15.05,

⁴ SDCL § 1-26-1(1) defines agencies as “. . . each . . . commission of the state vested with authority to exercise any portion of the state’s sovereignty. . . .” The Public Utilities Commission is clearly exercising the State’s sovereignty, and accordingly is governed by the Administrative Procedures Act. Nothing in SDCL Ch. 49-1 exempts the PUC from the application of SDCL Ch. 1-26.

[a] petition to intervene shall be granted by the commission if the petitioner . . . will be . . . affected either favorably or adversely *with respect to an interest peculiar to the petitioner* as distinguished from an interest common to the public or to taxpayers in general.

Id. (emphasis added). The rule clearly requires that a petitioner's interest be distinct from that of the general public or taxpayers, and is consistent with an intervention standard higher than curiosity or general interest.⁵ Thus, an applicant for party status who does not reside in the siting area within the Commission's jurisdiction, and who is not a nonprofit entity, must show a particularized interest in the project distinct from the public.

PUC rules allow persons to appear and be heard without formal intervention and full party status. ARSD 20:10:01:15.06 addresses an individual's right to appear, as opposed to a right to intervene. The rule provides that an individual may appear, disclose their identity and interest in the proceeding, and, "if the contentions of the person are reasonably pertinent to the issues presented and the right to broaden the issues is disclaimed," speak to the Commission. Their comments become part of the record. ARSD 20:10:01:15.06. The rule supports Keystone's understanding of "interested person" for two reasons. First, it would be illogical if the standard for being heard while

⁵ The regulation cites SDCL § 1-26-17.1 as the "law implemented," so it is clear that the Commission adopted the rule with § 1-26-17.1 in mind. The Commission's interpretation of its own rules is entitled to deference, and its rules have the force of law. *Krsnak v. South Dakota DENR*, 824 N.W.2d 429, 436 (S.D. 2012).

not being granted party status (a person making contentions that are “reasonably pertinent to the issues”) were more stringent than the standard for intervention (any interested person). Second, a denial of party status does not mean that a person may not be heard. It merely means that a person may not participate in discovery or examine witnesses at a formal hearing.

An “interested person” under SDCL § 49-41B-17(3) is therefore a person with a pecuniary interest in the outcome of the proceeding or a person affected by the outcome in a way not shared by the general public. *See* SDCL § 1-26-17.1; ARSD

20:10:01:15.05. The out-of-state residents do not meet this standard. They are concerned about the health and environmental issues presented by the project, but as residents of some other state, they do not live in the siting area within the jurisdiction of the South Dakota PUC. Their opposition to the project is based on the same interests as other members of the public.

The out-of-state residents can all express their pertinent views and be heard by the PUC under ARSD 15:10:01:15.06, but their applications do not meet the statutory test for party status. Accordingly, Keystone respectfully requests that their applications be denied.

Dated this 22nd day of October, 2014.

WOODS, FULLER, SHULTZ & SMITH P.C.

By William Taylor
William Taylor
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
bill.taylor@woodsfuller.com
Attorneys for Applicant TransCanada

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of October, 2014, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Response to Applications of Party Status of Cindy Myers, R.N., Jane KleeB, Diana L. Steskal, Byron T. Steskal, Benjamin D. Gotschall, Amy Schaffer, Robert G. Allpress, Carolyn P. Smith, Arthur R. Tanderup, Terry and Cheryl Frisch, Louis T. (Tom) Genung, Bruce Boettcher, Wrexie Lainson Bardaglio, RoxAnn Boettcher, and Bonny Kilmurry, 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

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

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

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

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

Amy Schaffer
PO Box 114
Louisville, NE 68037

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

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

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

Peter Capossela
Peter Capossela, P.C.
PO Box 10643
Eugene, OR 97440
pscapossela@nu-world.com

South Dakota Wildlife Federation
PO Box 7075
Pierre, SD 57501
sdwfmncomm.com

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

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

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

Nancy Hildring
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

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

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

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

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

Duncan Meisel
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
86061 Edgewater Avenue
Bassett, NE 68714
boettcherann@abbnebraska.com

Bonny Kilmurry
47798 888 Road
Atkinson, NE 68713

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

Gena M. Parkhurst
2825 Minnewsta Place
Rapid City, SD 57702
gmpgb@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
86061 Edgewater Avenue
Bassett, NE 68714
boettcherann@abbnebraska.com

Ronald Fees
17401 Fox Ridge Road
Opal, SD 57758

Tom BK Goldtooth
PO Box 485
Bemidji, MN 56619
ien@igc.org

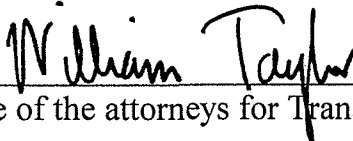
Case Number: HP 14-001

Name of Document: Keystone's Response to Applications of Party Status of Out-of-State Residents

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

Rosebud Sioux Tribe
RST Tribal Historic Preservation Office
RST Sicangu Oyate Land Office
Cyril Scott, President
PO Box 430
Rosebud, SD 57570
cscott@gwtc.net
ejantoine@hotmail.com

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



One of the attorneys for TransCanada