

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

IN THE MATTER OF TRANSCANADA
KEYSTONE PIPELINE, LP
FOR ORDER ACCEPTING CERTIFICATION
OF PERMIT ISSUED IN DOCKET HP09-001
TO CONSTRUCT THE KEYSTONE XL
PIPELINE

ROSEBUD SIOUX TRIBE'S
MOTION IN LIMINEE TO
EXCLUDE TESTIMONY

HP14-001

The Rosebud Sioux Tribe moves the Public Utilities Commission to exclude the testimony of the following Keystone witnesses: Heidi Tillquist, Meera Kothari and Jeff Mackenzie (Richard Kuprewicz). In support therein counsel states the following:

On April 24, 2015 the Rosebud Sioux Tribe filed the direct testimony of The Goodman Group (Ian Goodman and Brigid Rowan) and Accufacts (Richard Kuprewicz). On June 26, 2015 Keystone filed its rebuttal testimony for witnesses Heidi Tillquist, Meera Kithari and Jeff Mackenzie. The rebuttal testimony for Keystone's witnesses Tillquist (rebuttal testimony page 1 at paragraph 3), Kothari (rebuttal testimony at page 1, paragraph 3) and Mackenzie (page 2 at paragraph 3) is intended to rebut the direct testimony of Richard Kuprewicz (Accufacts) and The Goodman Group (Ian Goodman and Brigid Rowan). Keystone's rebuttal testimony is on file with the PUC at the following internet address:

<https://puc.sd.gov/Dockets/HydrocarbonPipeline/2014/hp14-001prefiledtestimony.aspx>

The Rosebud Sioux Tribe filed its Witness and Exhibit List with the PUC on July 7, 2015 and identified the following witnesses it intended to call at the evidentiary hearing in this matter – Paula Antoine, Jennifer Galindio and Chief Leonard Crow Dog. The Rosebud Sioux Tribe's Witness and Exhibit List is attached as Exhibit 1 and incorporated by reference. In its Witness and Exhibit List, the Rosebud Sioux Tribe did not identify The Goodman Group (Ian Goodman

and Brigid Rowan) or Accufacts (Richard Kupreqicz) as witnesses that the Rosebud Sioux Tribe will call at the evidentiary hearing. Because The Goodman Group and Accufacts will not be testifying in this matter there is no direct testimony for Keystone's witnesses Tillquist, Kithari and Mackenzie to rebut.

ARGUMENT

The admission of rebuttal testimony must be examined in the context of *State vs. Phillips*, 489 NW 2d 613 (S.D. 1992). The Court in *Phillips* stated that rebuttal testimony is improper where it does not rebut evidence presented by other witnesses in their direct testimony. It follows that where there is no direct testimony offered, there is no testimony to rebut and rebuttal testimony is improper. As the Rosebud Sioux Tribe will not present any testimony or evidence from The Goodman Group or Accufacts, the witnesses that Tillquest, Kithari and Mackenzie seeks to rebut, Tillquest's Kithari's and Mackenzie's testimony is not rebuttal testimony and must be excluded.

CONCLUSION

Based on the foregoing the Rosebud Sioux Tribe respectfully requests the PUC to grant its Motion in Liminee and exclude the rebuttal testimony of Heidi Tillquest, Meera Kithari and Jeff Mackenzie.

Dated this 9th day of July, 2015.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I certify that on this 9th day of July, 2015, the original of behalf of the Rosebud Sioux Motion in Liminee was filed on the Public Utilities Commission of the State of South Dakota e-filing website and also that on this day and a true and correct copy was sent via email and/or U.S. Mail first class postage prepaid to the following persons, as designated:

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ROSEBUD SIOUX TRIBE'S
WITNESS AND EXHIBIT
LIST

HP14-001

The Rosebud Sioux Tribe submits the following Witness and Exhibit list for the evidentiary hearing scheduled on the above referenced docket number:

Witnesses:

Paula Antoine; Rosebud Sioux Tribe - Sicangu Oyate Land Office – Director

Jennifer Galindo; Rosebud Sioux Tribe Tribal Historic Preservation Office – Archeologist

Chief Leonard Crow Dog

Exhibits

RST ____ Rebuttal Testimony of Paula Antoine.

RST ____ Rebuttal Testimony of Jennifer Galindo.

RST ____ Rebuttal Testimony of Leonard Crow Dog.

RST ____ May 5, 2010 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA-2009-0053.

RST ____ September 17, 2010 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA-2009-0061.

RST ____ June 27, 2011 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA-2010-0192.

RST ____ June 27, 2011 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA – 2010-0148.

RST ____ July 16, 2010 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA -2009-0055.

RST ____ July 16, 2010 PHMSA letter to David Chittick; Director Pipeline Engineering, TC Pipelines Limited re: Docket No. PHMSA -2009-0056.

RST ____ Madden Report “Assessment of Socioeconomic Impacts Expected with the Keystone XL Pipeline Project.”

RST ____ HP09-001 Prefiled Testimony of Michael Madden.

RST ____ Rosebud Sioux Tribe Resolution No: 2014-42.

RST ____ South Dakota Codified Laws 49-41B-1, 49-41B-11 and 49-41B-22.

RST ____ CV/Resume Jennifer Galindo.

RST ____ Map from Programmatic Agreement.

RST ____ Rosebud Sioux Tribe Historic Preservation Office emails and letter to South Dakota State Historic Preservation Office.

RST ____ TransCanada’s Native American Policy.

RST ____ Keystone’s Responses and Objections to Rosebud Sioux Tribe’s First and Second Set of Interrogatories and Requests for Production of Documents and all supplemental responses and objections.

RST ____ HP09-001 Prefiled Testimony of Paige Olson.

Dated this 7th day of July, 2015.

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