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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

KEYSTONE'S PROTECTIVE MOTION
IN LIMINE REGARDING DAKOTA
RURAL ACTION'S EXHIBIT LIST
DATED JULY 7, 2015

Applicant respectfully moves the South Dakota Public Utilities Commission to enter its order prohibiting Dakota Rural Action from (1) offering any document, photograph, or other exhibit listed on its July 7, 2015, exhibit list that was not timely produced in response to Applicant's discovery requests; and (2) prohibiting any testimony regarding the foregoing, whether by way of foundation or substantive in nature, for the reason and on the grounds that Dakota Rural Action failed to comport with the Commission's discovery order with respect to certain documents and exhibits.

On December 18, 2014, Keystone served discovery requests on DRA. Document request number 1 asked DRA to produce “. . . all documents you intend to offer as exhibits at the evidentiary hearing.” On February 6, 2015, DRA responded “DRA has not determined which documents it intends to offer at this time.” On March 10, 2015, DRA supplemented its responses to document request 1, producing 543 pages comprised of 10 documents. Of the 10 documents, two were resumes of its potential witnesses and a third was a transcript from the 2007 Base Keystone Pipeline proceeding of the testimony of one of its experts. The balance of the documents consisted of reports and supporting appendices either produced by Applicant and/or its contractors, or otherwise in the public domain.

On July 7, 2015, DRA filed its witness and exhibit lists with the Commission. This exhibit list identifies 1,073 documents, the vast bulk of which have never been produced in discovery.

In the evening of July 9, 2015, after regular business hours, DRA e-mailed Applicant and other intervenors advising that through a “supplemental discovery response” it was posting 1,100 files containing 1.5 gigabytes of information on a website to which restricted and confidential access would be granted. As of this writing, Applicant has not yet reviewed any of the documents. Applicant does not yet know to what extent the supplemental document production corresponds to the exhibit list.

DRA’s belated production of more than 1,000 documents, the bulk of which may not have been produced in discovery, is a breach of the Commission’s discovery order, a blatant attempt to sand-bag Applicant and other parties. The Commission should accordingly enter an order prohibiting DRA from offering any exhibit or any testimony regarding the exhibits not otherwise produced in its discovery responses into evidence.

Applicant, on obtaining access to the July 9, 2015, after-hours production, and after reviewing the documents, will supplement this motion.

Dated this 10th day of July, 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/ James E. Moore

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 2015, I sent by United States first-class mail, postage prepaid, or e-mail transmission, a true and correct copy of Keystone's Protective Motion in Limine Regarding Dakota Rural Action's Exhibit List Dated July 7, 2015, to the following:

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