

Kelsch Kelsch Ruff & Kranda

C.F. Kelsch
1890-1987

Attorneys at Law
Mandan, North Dakota

William C. Kelsch
Retired

THOMAS F. KELSCH
ARLEN M. RUFF, P.C.
THOMAS D. KELSCH, P.C.
TODD D. KRANDA, P.C.*
WILLIAM J. DELMORE
DANIEL NAGLE

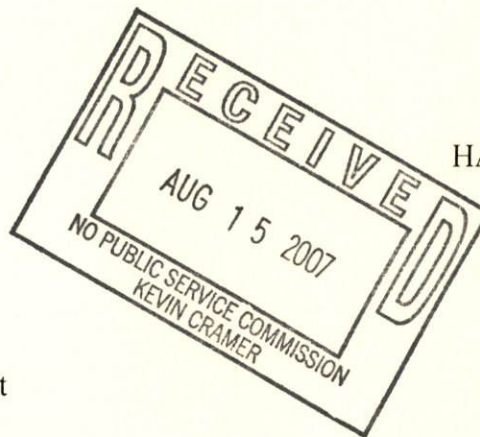
*Also Licensed in Minnesota

 MERITAS LAW FIRMS WORLDWIDE

103 Collins Avenue
P.O. Box 1266
Mandan, ND 58554-7266
Phone (701) 663-9818
1-888-663-9818
Fax (701) 663-9810
Website www.kelschlaw.com

August 15, 2007

MS ILLONA A JEFFCOAT-SACCO
EXECUTIVE SECRETARY
PUBLIC SERVICE COMMISSION
600 EAST BOULEVARD, DEPT 408
BISMARCK ND 58505-0480



HAND DELIVERED

Re: TransCanada - Keystone Pipeline Project
Case No: PU-06-421
Our File No. 11815

Dear Ms. Jeffcoat-Sacco:

Enclosed is the original sealed Public Service Commission Hearing Transcript from the Valley City meeting on Monday, July 23, 2007.

If you have any questions, please feel free to contact me.

Sincerely,



Todd D. Kranda

TK:ls

Enc

c: TransCanada Keystone



94 PU-06-421 Filed: 8/7/2007 Pages: 384
Transcript of Hearings held in Valley City on July 23,
2007

Public Service Commission

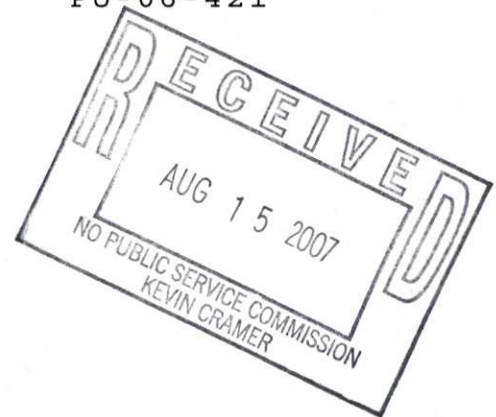
STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

TransCanada Keystone Pipeline, LP
Keystone Pipeline
Public Convenience & Necessity

Case No.
PU-07-152

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/
Cavalier to Sargent Counties
Siting Application

Case No.
PU-06-421



PUBLIC SERVICE COMMISSION HEARING

DATE: Monday, July 23, 2007

TIME: 9:05 a.m.

PLACE: Valley City Auditorium, Valley City, ND

BY: Charla A. Pawlik, R.P.R.

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A P P E A R A N C E S

ADMINISTRATIVE LAW JUDGE:

Mr. Al Wahl
Office of Administrative Hearings
1707 North Ninth Street
Bismarck, North Dakota 58501

NORTH DAKOTA PUBLIC SERVICE COMMISSION:

Ms. Susan E. Wefald
Mr. Kevin Cramer
Mr. Tony Clark

FOR THE NORTH DAKOTA PUBLIC SERVICE COMMISSION:

Mr. William W. Binek
Attorney at Law
State Capitol
Bismarck, North Dakota 58505

FOR TRANSCANADA KEYSTONE PIPELINE, LP:

Kelsch, Kelsch, Ruff & Kranda
Attorneys at Law
103 Collins Avenue
P.O. Box 1266
Mandan, North Dakota 58554
By: Thomas D. Kelsch
Todd D. Kranda

AND

Sidley Austin, LLP
Attorneys at Law
1501 K Street Northwest
Washington, D.C. 20005
By: James P. White

FOR THE INTERVENORS:

Rinke Noonan
Attorneys at Law
U.S. Bank Plaza, Suite 300
P.O. Box 1497
St. Cloud, Minnesota 56302
By: Nicholas R. Delaney

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P R O C E E D I N G S

(Whereupon, the Public Service Commission hearing commenced at 9:05 a.m. as follows:)

MR. WAHL: Good morning. I am Al Wahl, the administrative law judge designated by the Office of Administrative Hearings pursuant to the request of the North Dakota Public Service Commission to act as a hearing officer for the hearing of the application of a certificate of public convenience and necessity to operate and -- well, to construct and operate the Keystone pipeline in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom and Sargent Counties, North Dakota.

This is Public Service Commission Case No. PU-07-152. We have a very large group here this morning, more than I expected, but doubtless not as many as others may have expected. So I'm going to try and do what I can to be sure that everybody can hear. And we're going to take a little bit extra time to get started so that I can explain the -- the hearing to you and the procedure and the provisions that we'll make for public testimony.

Before proceeding with the hearing I will ask the commissioners for their comments and for

1 any directions for the hearing beginning with
2 Commission President Susan Wefald.

3 MS. WEFALD: Good morning. It is very
4 good to be here in Valley City this morning and to
5 have a chance to proceed with this hearing. The
6 commission has been receiving information about this
7 hearing for about the last six months, and this
8 hearing today, the one on case No. PU-07-152, the
9 public convenience and necessity, is a very important
10 part of this case. Every company who decides that
11 they want to build any type of an energy conversion
12 facility in the state of North Dakota has to have a
13 public convenience and necessity certificate from the
14 commission, and so that's why we're meeting here
15 today, to go over those details.

16 And there's been a number of parties
17 who have expressed interest in this case, and we're
18 glad to have their participation today. These
19 types of -- the hearing that you're going -- you're
20 attending today is a very formal hearing. This is
21 not a -- what we call a public input meeting from the
22 commission, but it is a chance for people who want to
23 offer testimony on the record under oath to have a
24 chance to be able to do that and to present that
25 information to the commission.

1 We are -- we have passed out
2 information sheets, but they're not about this
3 particular case. The information sheet that you
4 received at the back of the room is about the siting
5 hearing that will be held this afternoon starting at
6 1:00. However, they both do -- the information on
7 that sheet relates to the very same pipeline that
8 we're holding the public convenience and necessity
9 certificate on this morning.

10 Welcome. I'm looking forward to a good
11 record. It is a hot day. We're a lot of people in
12 a -- in a good-size room, but again we're all
13 interested in staying as cool as possible. It will
14 be up to the hearing officer to determine when we
15 have breaks in the hearing, but of course anyone
16 who's sitting in the audience has the opportunity to
17 get up and leave and come and go as they wish. I
18 notice there's a pop machine and a water cooler up on
19 the first floor, lavatories around the side of each
20 room, and there is a free water cooler on the side --
21 on this side of the auditorium. So make yourself as
22 comfortable as possible.

23 We don't promise any entertainment here
24 this morning. This is a professional hearing for us
25 just to get the facts on the record. The way the

1 commission proceeds is we make no decision today. We
2 will hold a working session at the end of this
3 hearing. You know, not at the end of this hearing,
4 but a working session in -- probably in several weeks
5 after other material has come into the commission,
6 and we'll make a final decision probably within six
7 weeks or so. Thank you.

8 MR. WAHL: Commissioner Tony Clark.

9 MR. CLARK: Well, I would just like to
10 welcome everyone here today. Thank you for turning
11 out. Thank you for your interest in these cases.
12 Similar to what Commissioner Wefald said, one of the
13 things that you'll probably be struck by, I know I
14 was a number of years when I attended my first
15 regulatory proceeding, is how much more these look
16 like a sort of court, quasijudicial proceeding than
17 maybe what you're used to in going to a county
18 commission proceeding or a -- a city commission or
19 legislative hearing or something like that.

20 And there's a -- there's a very
21 important reason for it, and that is the way that
22 utility commissions operate and -- and have to
23 operate under the law is on the basis of a record.
24 So, in other words, when we make a decision on
25 this -- this public convenience and necessity permit

1 or the siting's permit that we'll be hearing later
2 today, we do so on the basis of only the evidence
3 that's brought before us under sworn testimony and
4 has the ability to be cross-examined by intervenors
5 and other people who are interested in, in the case,
6 those folks who have formally intervened.

7 And so what you'll see is -- is really
8 a fairly formal proceeding as Commissioner Wefald
9 said, and the rationale for that is -- is as this
10 moves along anyone who reviews it, a court, anyone
11 else up the line, has to be able to take the decision
12 that we make and tie it back to the formal record.
13 And if it's not in that formal record, then we're not
14 able to make a decision based on it, and so the
15 success or failure of this application will -- will
16 fall or stand on the basis of the record that's built
17 here today and one that we'll have at the continued
18 hearing tomorrow in Park River.

19 So again I thank you for your
20 participation and -- and interest and involvement in
21 this case and look forward to a good afternoon of
22 hearings.

23 MR. WAHL: Commissioner Kevin Cramer.

24 MR. CRAMER: Thanks, Judge Wahl. The
25 pipeline portfolio is my portfolio, and I have

1 probably spent as much and I'm certain probably more
2 time studying this record than any I've studied in
3 the four years I've been on the commission. Not only
4 because it's in my portfolio, not only because it's a
5 major investment in not only North Dakota but in our
6 country, but also because it affects my home area.

7 Just as recently as Sunday I spent some
8 time in Little Yellowstone Park. I drove up the
9 Kathryn road as I often do. My home is in Kindred,
10 and that's where my parents live. I have brothers
11 and sisters there as well. So the impact on the
12 environment and on people is very important to me.
13 It's important to all of us.

14 And that's why it warms my heart to see
15 so many of you. It's great to see all of the
16 attorneys and the intervenors and of course the
17 expert witnesses, but it's also important to see many
18 people in the public participate. My fellow
19 commissioners have already outlined and the judge
20 will further outline your involvement in this, but
21 let me say this for sure.

22 Whether your input becomes evidence or
23 not, you can be certain that your input certainly to
24 this point -- and there's been a lot of it. I've
25 talked to many of you on the phone. I've read your

1 e-mails. I've talked to several of you I know on the
2 radio. And the fact is your questions and your
3 comments have helped formulate the questions in my
4 mind and in my heart.

5 So whether or not your testimony gets
6 on the record, believe me your concerns will be
7 through -- through the Q and A that will take place
8 through -- throughout the hearing. Thank you very
9 much for being here. We hope that there is at least
10 this much participation in the afternoon hearing as
11 well. We look forward to a very thorough record.

12 MR. WAHL: The record will show that it
13 is some after 9:00 a.m. July 23, 2007, the time and
14 the date noticed for a hearing of the application of
15 TransCanada Keystone Pipeline, LLC, for a certificate
16 of public convenience and necessity to construct and
17 operate the Keystone pipeline in Cavalier, Pembina,
18 Walsh, Nelson, Steele, Barnes, Ransom and Sargent
19 Counties, North Dakota.

20 The commission's notice of hearing
21 specified the following issues to be considered and
22 determined upon this hearing: First, whether public
23 convenience and necessity will be served by
24 construction and operation of the pipeline
25 facilities; and, second, whether the applicants are

1 fit, willing and able to provide the service.

2 Counsel, please state your appearance
3 for the record. Mr. Kelsch.

4 MR. KELSCH: Thomas D. Kelsch here on
5 behalf of TransCanada Keystone. Also with me are --
6 are Jim White and Todd Kranda.

7 MR. WAHL: Mr. Delaney.

8 MR. DELANEY: Nicholas R. Delaney here
9 on behalf of the intervenors, the Dakota Resource
10 Council, Ramona Klein, Merle and Linette Kratochvill,
11 Janie and John Capp and Mark Novak.

12 MR. WAHL: And, Mr. Binek, please, and
13 identify also commission staff who will participate
14 in the hearing.

15 MR. BINEK: My name is William Binek.
16 I'm counsel for the Public Service Commission.
17 Seated to my left is Patrick Fahn, public utility
18 analyst. And to my right is Mike Diller, the chief
19 accountant for the commission.

20 MR. WAHL: For the record, I notice
21 that John Capp and Janie Capp were granted intervenor
22 status by order of the commission. And speaking with
23 Mr. and Mrs. Capp this morning, I'm advised by them
24 that Mr. Delaney will represent their interests along
25 with the other interests of the other intervenors.

1 And that Mr. and Mrs. Capp will offer their testimony
2 as public testimony. Do I understand that correctly,
3 Mr. Capp?

4 MR. CAPP: Correct.

5 MR. WAHL: Your answer is yes?

6 MR. CAPP: (Indicating yes.)

7 MR. WAHL: And, Mrs. Capp, do I
8 understand that correctly?

9 MRS. CAPP: Yes.

10 MR. WAHL: And your answer is yes.
11 Thank you.

12 Well, I need to stand up to talk to you
13 for the rest of this. I -- I understand certainly
14 that -- there we go. I understand certainly that
15 there are many of you who plan to testify for the
16 hearing. Let me speak just briefly and in general
17 about how the hearing will be conducted and when you
18 will be able to offer your testimony and how you can
19 do that.

20 We will begin this morning with the
21 presentation by TransCanada Keystone. As TransCanada
22 presents its witnesses, the other parties, the
23 intervenors will be allowed to cross-examine those
24 witnesses followed by questions from Mr. Binek as the
25 commission's counsel and then followed by questions

1 from the commissioners.

2 When TransCanada has completed its
3 presentation, then the intervenors, they make their
4 presentation. After the intervenors have made their
5 presentation, then I will ask for public testimony.
6 First I will ask for the testimony of any persons --
7 in the same order that we presented testimony
8 earlier, for people who support the pipeline. If --
9 if there's anyone here who -- from the public who is
10 going to testify in support of the application, I
11 would ask them to testify first. After those people
12 have testified, I would then ask people who are
13 opposed to the application.

14 And there's no particular order. I
15 would ask that you stand and be recognized. You can
16 do one of two things, however you're most
17 comfortable. You can use that lectern, and I expect
18 that for most of you you will feel most comfortable
19 doing that. There will be a -- a sheet on the
20 lectern for your name and your address so that you
21 can -- we can have a record of your testimony.
22 Preliminary to your testimony I will ask -- for the
23 record I will simply ask you your name and your
24 address so that it can be recorded by the court
25 reporter and recorded on the audio recording that's

1 also being made of the hearing.

2 After -- after I have asked you your
3 name and your address, you should proceed with your
4 testimony. Your testimony is required to be under
5 oath. So I will administer the oath to you at -- as
6 soon as you have signed in. And by law I am required
7 to advise you regarding perjury before administering
8 the oath. Well, to save time I am going to do that
9 right now.

10 I'm going to advise all of you, and
11 specifically any of you who will testify for this
12 hearing, that perjury is a false statement of
13 material fact that you do not believe to be true; in
14 other words, generally speaking a lie. In North
15 Dakota perjury is a class C felony punishable by a
16 fine up to \$5,000, imprisonment for a period of up to
17 five years or both. I will ask you before I
18 administer the oath whether you heard my advice of
19 perjury. You need simply say yes, and I will proceed
20 to administer the oath to you and you can then
21 proceed with your testimony.

22 Now, as a witness for this hearing, the
23 lawyers, TransCanada -- counsel for TransCanada,
24 counsel for the intervenors and counsel for the
25 commission, can ask you questions. And the

1 commissioners may each ask you questions. Now, I
2 want to tell you that I -- I can -- I think I can
3 promise you that you will not be cross-examined.
4 Forget about what you see on television, what you
5 have seen on television. Nobody is going to
6 cross-examine you, but I suspect that -- that one or
7 another of the lawyers and I certainly think the
8 commission may have some questions for you to clarify
9 some part of your testimony or to ask your thoughts
10 on something else that the commissioners may feel is
11 relevant. So while you should expect to be
12 questioned about your testimony, as I said, you
13 should -- you will not be cross-examined. The
14 commissioners welcome your testimony. In fact I
15 expect the commissioners are looking forward to your
16 testimony as probably the more important part of
17 this -- of this hearing.

18 Please -- if I don't happen to remind
19 you, please don't forget to sign the register. That
20 will be helpful if somebody wants to go back and try
21 and find your testimony on -- either in the record of
22 the court reporter or in the record of the recording.
23 And otherwise take your time with your testimony.
24 You should be comfortable. I -- I suspect this may
25 be a rather long hearing, and I would encourage you,

1 it will be very helpful if you try to avoid repeating
2 information that has been provided by other people.

3 I understand of course that you have
4 your own particular view. You may have your own
5 particular information even though it may have been
6 mentioned by someone else. I don't say that's not
7 important. And you should -- you should let the
8 commissioners know. You should tell them. But on
9 the other hand, if you can avoid repeating
10 information, that will help move things along.

11 Does anyone have any particular
12 question about -- about how I will conduct the
13 hearing or about your testimony?

14 If not, let's proceed.

15 Mr. Kelsch, when you're ready.

16 MR. KELSCH: Thank you. Thank you,
17 your Honor. I would like to call Dean Cowling to the
18 stand.

19 MR. WAHL: Mr. Cowling. Mr. Cowling, I
20 am told by the people who are operating our sound
21 that it's important that we move the microphone close
22 to our face in order to get a good recording.

23 Mr. Cowling, as you heard me advise the
24 people who are here, your testimony is required to be
25 under oath, and I am required by law to advise you

1 regarding perjury before administering the oath.
2 Perjury is a false statement of material fact which
3 you do not believe to be true; in other words, a lie.
4 In North Dakota perjury is a class C felony
5 punishable by a fine up to \$5,000, imprisonment for a
6 period of up to five years or both.

7 Will you raise your right hand, please?
8 Being advised regarding perjury, Mr. Cowling, do you
9 swear that the testimony which you're about to give
10 in this matter shall be the truth, the whole truth
11 and nothing but the truth?

12 MR. COWLING: I do.

13 MR. WAHL: Mr. Kelsch.

14 MR. KELSCH: Thank you, your Honor.

15 EXAMINATION

16 BY MR. KELSCH:

17 Q. Mr. Cowling, could you please state
18 your name for the record?

19 A. My name is Dean Cowling.

20 Q. And what is your position with
21 TransCanada Keystone?

22 A. I am the project director for the
23 Keystone pipeline project.

24 Q. Okay. And what -- in what capacity
25 today are you testifying?

1 A. I am filing my testimony today on
2 behalf of Keystone in support of its application for
3 a certificate of public convenience and necessity.
4 Keystone's parent company is TransCanada's
5 Corporation.

6 Q. And that's TransCanada?

7 A. Yes.

8 Q. Do you have a resume with your
9 professional qualifications?

10 A. Yes. I have attached a copy of my
11 resume and educational qualifications which I believe
12 you have a copy of.

13 MR. KELSCH: Judge -- Judge Wahl, just
14 for procedural, we have filed -- excuse me, we have
15 filed the written testimony, and attached to that is
16 a copy of the resume. Do you -- is that sufficient
17 or do you want a separate document marked?

18 MR. WAHL: I would prefer to have your
19 exhibits marked as exhibits.

20 MR. KELSCH: Okay.

21 (Whereupon, Exhibit No. T1
22 was marked for identification by
 the court reporter.)

23 Q. (Mr. Kelsch continuing) Mr. --
24 Mr. Cowling, I have placed in front of you an exhibit
25 marked T1. Could you tell the commission what that

1 is?

2 A. This is my qualifications and resume.

3 Q. Can you briefly just indicate what your
4 education and -- and history is?

5 A. I have been -- I have approximately 17
6 years' experience in the areas of pipeline project
7 development, pipeline and power operations and
8 maintenance and pipeline business development. My
9 educational summary, I have a bachelor of science
10 degree in business in 1989 from Ferris State
11 University in Big Rapids Michigan.

12 MR. KELSCH: Okay. I would move to
13 admit Exhibit T1.

14 MR. DELANEY: No objection.

15 MR. WAHL: Mr. Delaney?

16 MR. DELANEY: No objection, your Honor.

17 MR. WAHL: Mr. Binek?

18 MR. BINEK: No objection.

19 MR. WAHL: Exhibit T1 is received.

20 Q. (Mr. Kelsch continuing) Can you
21 describe -- Mr. Cowling, can you describe the
22 application for public convenience and necessity?

23 A. TransCanada filed an application for a
24 certificate of public convenience and necessity to
25 construct and operate the Keystone pipeline in North

1 Dakota, in particular in the counties of Cavalier,
2 Pembina, Walsh, Nelson, Steele, Barnes, Ransom and
3 Sargent.

4 Q. Where will the pipeline cross North
5 Dakota?

6 A. The pipeline will cross North Dakota --
7 approximately 218 miles of North Dakota from the
8 Canadian-U.S. border to the border of North Dakota
9 and South Dakota.

10 Q. What is the purpose of the pipeline?

11 A. The purpose of the pipeline is to
12 transport crude oil from Hardesty, Alberta, Canada,
13 to Patoka, Illinois, with an extension into Cushing,
14 Oklahoma.

15 Q. In this pipeline process is Keystone
16 required to obtain any United States, federal permits
17 and -- and....

18 A. As a cross-border pipeline, crude oil
19 pipeline, Keystone is required to obtain a
20 presidential permit from the United States Department
21 of State authorizing the construction, operations and
22 maintenance of its pipeline border crossings. In
23 order to grant a presidential permit, the Department
24 of State must find that a proposed project will serve
25 the national interest in the United States.

1 In its application for a presidential
2 permit filed with the Department of State in
3 April 2006, Keystone explained that the construction
4 of the Keystone pipeline project, including the
5 proposed border crossing facilities, will serve the
6 national interest of the United States by providing
7 refineries and markets with access to a substantial
8 and reliable incremental supply of Canadian crude oil
9 to meet growing U.S. demand for petroleum products.

10 As summarized in the environmental
11 report submitted with Keystone's presidential permit
12 application and attached as an appendix to Keystone
13 application to the North Dakota Public Service
14 Commission for a certificate of corridor capability,
15 the need for the project is dictated by: Increasing
16 crude oil supplies combined with --

17 MR. DELANEY: Your Honor, I'm going to
18 object to foundation.

19 MR. WAHL: Mr. Kelsch.

20 MR. KELSCH: Your Honor, this -- this
21 witness has testified as to his position in
22 TransCanada Keystone. He's certainly qualified to
23 testify why the -- the pipeline -- their company has
24 decided to build the pipeline and what the reasons
25 and support and need for that pipeline are. It's a

1 business decision for the company, and he's certainly
2 qualified to testify to that.

3 MR. WAHL: The objection's overruled.

4 MR. DELANEY: Your Honor, I don't want
5 to be an obstructionist on this matter so I would
6 just at this point note a standing objection to any
7 testimony related to any economic benefit to the
8 nation or North Dakota for that matter from this
9 witness.

10 MR. WAHL: The objection is noted for
11 the record.

12 Q. (Mr. Kelsch continuing) You may
13 answer.

14 A. The need for the project being as
15 follows: Increasing Canadian crude oil supplies
16 combined with inefficient (sic) export pipeline
17 capacity in Canada. Increasing crude oil demand in
18 the U.S. coupled with decreasing domestic supply.
19 The opportunity to reduce U.S. dependence on foreign
20 offshore oil through increased access to stable,
21 secure crude oil supplies from Canada. Demonstrated
22 shipper interest in the Keystone pipeline project.

23 Q. Mr. Cowling, are you familiar with the
24 crude oil resources in -- or reserves in western
25 Canada?

1 A. Yes.

2 Q. And what are those?

3 A. Well, in Section 1.2.1 of our
4 environmental report, it discusses crude oil supplies
5 in the Western Canadian Sedimentary Basin, and in
6 particular in Canada's vast oil sands reserves
7 located in northern Alberta. The Canadian
8 Association of Petroleum Producers reports that
9 established crude oil reserves in Western -- in the
10 Western Canada Sedimentary Basin are estimated at
11 179 billion barrels.

12 Over 97 percent of those reserves are
13 sourced from Canada's oil sands regions. The Alberta
14 Energy and Utilities Board estimates that there are
15 175 billion barrels of established reserves
16 recoverable from the oil sands. The Oil and Gas
17 Journal has reported that Alberta has the second
18 largest crude oil reserves in the world, second only
19 to Saudi Arabia.

20 Q. Is there a need for additional pipeline
21 export capacity from Canada to the U.S.?

22 A. Existing crude oil pipeline export
23 capacity out of the Western Canadian Sedimentary
24 Basin is insufficient to accommodate the forecasted
25 crude oil supply growth. The Keystone pipeline

1 project initially will provide 435,000 barrels of
2 incremental export capacity to address this
3 deficiency.

4 Moreover, TransCanada recently
5 announced that it has received adequate shipper
6 support commitments to go forward with its plans for
7 a proposed expansion of the Keystone -- of Keystone's
8 capacity to 590,000 barrels per day through the
9 addition of incremental pumping capacity and an
10 extension of the proposed pipeline to Cushing,
11 Oklahoma.

12 Q. Do you have any knowledge about the
13 U.S. demand for petroleum?

14 A. Section 1.2.2 of the environmental
15 report notes that according to the Energy Information
16 Administration, U.S. demand for petroleum products
17 has increased by over 17 percent or 3 million barrels
18 per day over the past ten years and is expected to
19 increase further. The Energy Information
20 Administration estimates that total U.S. petroleum
21 consumption will increase by approximately
22 5.3 million barrels per day over the next 20 years
23 representing average demand growth for approximately
24 265,000 barrels per year.

25 Q. Is the United States crude oil

1 production decreasing?

2 A. At the same time domestic U.S. crude
3 oil production continues to decline. According to
4 CAPP, the Canadian Association of Petroleum
5 Producers, domestic crude production in the Petroleum
6 Area for Defense District II, PADD II, is declining
7 at an average rate of about 3 percent per year. Over
8 the past 20 years PADD II crude oil production has
9 decreased by over 600,000 barrels per day or
10 60 percent.

11 Q. In what ways will the Keystone pipeline
12 help the United States?

13 A. The Keystone pipeline project will
14 provide the United States with access to secure and
15 growing Canadian crude oil supplies. Access to
16 incremental crude oil supplies will provide the
17 United States with an opportunity to offset declines
18 of domestic crude oil production and decrease in
19 dependence on offshore foreign crude oil supplies
20 consistent with national policies.

21 Q. Will the Keystone pipeline be a common
22 carrier pipeline?

23 A. Oil pipelines operating in
24 interstate --

25 MR. DELANEY: Objection, your Honor.

1 The question calls for a legal conclusion.

2 MR. WAHL: Overruled.

3 Q. (Mr. Kelsch continuing) You can
4 answer.

5 A. Oil pipelines operating -- operating in
6 interstate commerce are subject to regulation by the
7 Federal Energy Regulatory Commission, FERC, under the
8 Interstate Commerce Act, under the ICA, or Interstate
9 Commerce Act, oil pipelines are statutory common
10 carriers. Keystone is willing and able to entertain
11 discussions also with North Dakota producers
12 concerning entering into interconnection agreements.

13 Q. Will Keystone -- Keystone pipeline
14 benefit the people of North Dakota?

15 A. Keystone will acquire pipeline
16 right-of-way easements from landowners in
17 predominantly rural areas. Landowners will receive
18 compensation for the easements as well as
19 compensation for crop loss or other damages.

20 Other areas of benefit include
21 construction will involve two spreads of pipeline
22 construction in North Dakota with 500 to 600 workers
23 working on each spread.

24 Q. Will additional workers be hired after
25 construction of the pipeline or for the pump

1 stations?

2 A. Yes. An additional 20 workers will be
3 hired for construction of each pump station that
4 we -- that will be built.

5 Q. Will some of these workers be local
6 North Dakota citizens?

7 A. We forecast or anticipate that 10 to
8 15 percent of the workforce will be hired locally.

9 Q. How long will the construction be going
10 on, and will there be a benefit to North Dakota
11 during that time?

12 A. There will be a net positive impact on
13 the local economy for approximately 18 months of
14 construction.

15 Q. What are the estimated construction
16 costs of the Keystone project in North Dakota?

17 A. In North Dakota capital construction
18 costs will be in excess of \$300 million.

19 Q. Will there be food and -- and lodging
20 expenses as well?

21 A. Food and lodging for the construction
22 will -- we forecast at approximately \$3.25 million.

23 Q. Will Keystone be purchasing
24 construction equipment materials and supplies in
25 North Dakota?

1 A. Yes. Construction materials and other
2 supplies will be approximately \$750,000 in North
3 Dakota.

4 Q. Once the Keystone pipeline is -- is
5 completed, will Keystone pay property tax to the
6 state and local governments?

7 A. Yes. Based on 2005 property assessment
8 and tax rate information, Keystone's North Dakota
9 property taxes will be approximately 5.2 million in
10 the first year after construction and will be
11 continued to be paid over the lifetime of the
12 pipeline.

13 Q. What's the estimated lifetime of the
14 pipeline?

15 A. Right now 30 years is -- is the way
16 that we run financial models. But as -- as of course
17 you know, TransCanada has been in operations for over
18 50 years, and we are still operating and maintaining
19 the same pipelines that we've had in the ground for
20 over 50 years.

21 Q. Will there be additional taxes paid by
22 Keystone other than property taxes?

23 A. In addition Keystone will pay
24 ad valorem taxes to the local governments during the
25 years of operation of the pipeline.

1 Q. Once the pipeline is -- is constructed
2 and in operation, will there be -- Keystone continue
3 to have employees in the state and -- and hire
4 services from people in the state?

5 A. Yes. We would expect to have both
6 direct and contract employees which will be hired
7 locally for pipeline operations.

8 Q. Now, you -- you just previously
9 testified about purchasing materials and construction
10 costs in the state. Will Keystone pay taxes on those
11 items purchased?

12 A. Keystone will pay sales and use taxes
13 as well.

14 Q. Are you familiar with the current North
15 Dakota crude oil pipelines that are in existence
16 today?

17 A. I am familiar.

18 Q. Is there a pipeline bottleneck in the
19 state of North Dakota?

20 A. Pipeline bottlenecks currently exist in
21 North Dakota which inhibits area producers from
22 readily accessing markets with their production.

23 Q. Does that bottleneck have an effect on
24 the price of -- that the producers receive?

25 A. This has caused depressed prices for

1 western North Dakota crude oil.

2 Q. Will the Keystone pipeline have any
3 impact on this bottleneck?

4 A. The Keystone pipeline could play a role
5 in resolving this problem by providing another
6 transportation route for moving crude oil to
7 refineries in the United States.

8 Q. Do you know whether the North Dakota
9 Industrial Commission has taken any position on the
10 Keystone pipeline?

11 (Whereupon, Exhibit No. T2
12 was marked for identification by
the court reporter.)

13 A. Yes. The North Dakota Industrial
14 Commission, acting in its capacity as the North
15 Dakota Pipeline Authority, is in support of the
16 TransCanada Keystone Pipeline project. A letter
17 stating the North Dakota Industrial Commission's
18 position has also been provided and attached.

19 Q. (Mr. Kelsch continuing) Mr. Cowling,
20 in -- in front of you is Exhibit T2. Is that the
21 letter that was submitted by the North Dakota
22 Industrial Commission?

23 A. Yes, it is.

24 MR. KELSCH: I would move to admit
25 Exhibit T2.

1 MR. WAHL: Mr. Delaney?

2 MR. DELANEY: Could I have just one
3 minute to read it?

4 MR. WAHL: You may.

5 MR. KELSCH: Your Honor, we can -- we
6 can wait. We do have the -- the individual who wrote
7 the letter. Perhaps it's best to put it in through
8 him.

9 MR. DELANEY: I have no objection, your
10 Honor.

11 MR. WAHL: Mr. Binek?

12 MR. BINEK: No objection.

13 MR. WAHL: Exhibit T2 is received.

14 Q. (Mr. Kelsch continuing) How many --
15 Mr. Cowling, how many miles of pipeline does
16 TransCanada have currently?

17 A. TransCanada has 36,500 miles of wholly
18 owned pipeline.

19 Q. And how -- I think you testified to
20 this before, but how long has TransCanada been in
21 existence?

22 A. TransCanada has more than 50 years' of
23 pipeline construction and operating experience.

24 Q. Does TransCanada have experience in
25 cold weather pipeline?

1 A. TransCanada has developed significant
2 experience in large-diameter cold-weather pipeline,
3 design, construction, operations and maintenance.

4 Q. Could you just generally describe the
5 TransCanada pipeline operation?

6 A. Well, it is our belief TransCanada
7 operates one of the largest, most sophisticated
8 remote-controlled pipeline networks in the world with
9 a solid reputation for safety and reliability.

10 Q. What about the TransCanada employees?

11 A. TransCanada also has skilled and expert
12 people located across North America.

13 Q. With all those miles of pipeline, does
14 Canada have -- or TransCanada have relations with the
15 property owners that your pipeline goes across?

16 A. Currently TransCanada has
17 relationships with approximately 40,000 landowners.

18 Q. Has TransCanada taken efforts to -- to
19 try to be a good neighbor to -- to those landowners?

20 A. Through its annual customer
21 satisfaction survey, TransCanada received feedback
22 from customers served by it's Canadian pipelines.
23 The survey found that TransCanada maintained high
24 levels of overall -- of overall customer
25 satisfaction.

1 Q. Does Keystone have a pipeline
2 management program?

3 A. Keystone has a pipeline management
4 program that meets or exceeds federal requirements
5 and includes in-line inspection, repair criteria and
6 ongoing monitoring.

7 Q. What type of monitoring does Keystone
8 do for its pipelines?

9 A. Keystone has 24-hour monitoring 365
10 days a year through the use of a dedicated leak
11 detection system.

12 Q. As -- does Keystone have an emergency
13 response plan or is it developing one?

14 A. As required by the United States
15 Department of Transportation, Pipeline Hazardous
16 Materials and Safety Administration, acronym PHMSA,
17 Keystone is developing a detailed emergency response
18 plan that will include response equipment
19 prepositioned at manned locations, first responders
20 located along the route able to respond in compliance
21 with 49 CFR part 194 and remediation of the -- of the
22 area of any spill in coordination with both federal
23 and state agencies.

24 Q. Before Keystone -- assuming -- or if
25 this commission authorizes the pipeline and before

1 commencing operation of the pipeline, will Keystone
2 have a completed and filed emergency response plan?

3 A. Yes. We have filed a preliminary
4 emergency response plan, and we will file with PHMSA
5 prior to Keystone commencing operations a final
6 emergency response plan.

7 Q. One of the issues that the commission
8 has to look at is the -- I guess the fitness and
9 financial ability of Keystone or TransCanada to
10 operate this -- this pipeline. What can you tell me
11 about TransCanada's financial ability to -- to manage
12 a pipeline or financial worth?

13 A. TransCanada in 2006 annual financial
14 report in Canadian dollars: 25,909,000,000 in total
15 assets. 7,520,000,000 in gross revenues. And
16 1,079,000,000 in total net income.

17 Q. So does -- in your opinion does
18 TransCanada have the financial ability to provide the
19 pipeline service?

20 A. Yes.

21 MR. KELSCH: I have no further
22 questions of this witness.

23 MR. WAHL: Mr. Delaney.

24 MR. DELANEY: Thank you, your Honor.

25

EXAMINATION

1

2 BY MR. DELANEY:

3 Q. Good morning, Mr. Cowling.

4 A. Good morning.

5 Q. What I'm going to do is I'm going to
6 walk through some of the testimony that you gave so
7 it may even help for you to follow along in your
8 submitted testimony.

9 A. Sure.

10 Q. But first and foremost, what is your
11 role exactly as project director with respect to the
12 application and preparing the application?

13 A. My role as project director for
14 Keystone is I am responsible for the permitting, the
15 land, the environment, the engineering, the
16 construction and the commissioning of the pipeline
17 project.

18 Q. Are there portions of the application
19 that you yourself prepared or did you take more of a
20 I guess overseer's role?

21 A. I took more of the oversight of the
22 preparation.

23 Q. Okay. And you referenced in your
24 testimony Section 1.2.1 of the environmental report
25 and also Section 1.2.2 of the environmental report.

1 This environmental report that you're speaking of, is
2 that the environmental report prepared by Keystone in
3 conjunction with the application?

4 A. Yes.

5 Q. Mr. Cowling, do you have any degrees in
6 economics?

7 A. No, I do not.

8 Q. Okay. Have you had any specialized
9 training on economics?

10 A. Just through my education and through
11 my experience working for TransCanada over the last
12 number of years.

13 Q. Let's walk through your experience with
14 TransCanada. When were you first employed?

15 A. If you don't mind, what I'll -- I'll
16 start with -- or do you want to just talk about
17 TransCanada?

18 Q. Yeah, for right now.

19 A. Okay. I became a TransCanada employee
20 in -- in and around 2000.

21 Q. And what did you do at that time?

22 A. At that time I was -- I managed our
23 eastern business development on the natural gas side
24 of our business.

25 Q. And then I see in 2003 you became the

1 director of field operations. What -- can you
2 explain what the director of field operations does?

3 A. Yes. It -- in and around 2000 I was
4 charged with the responsibility of overseeing our
5 northern Alberta operating region. This operating
6 region included a significant amount of pipelines,
7 compressor stations, meter stations and power plants.
8 We were responsible for operating and maintaining
9 that equipment as well as the health, safety and
10 environment and of course managing -- managing costs.

11 Q. And currently you're the director of
12 the Keystone pipeline project. Have you ever been
13 the director of any other projects that Keystone has
14 done?

15 A. Prior to this role I was the director
16 of pipeline projects implementation which looked
17 after all of TransCanada's other pipeline projects.
18 This is -- this is a larger project, and the way that
19 we're organized we have our pipeline projects that
20 support all of our other businesses in North America
21 reporting to another business and that's where I had
22 come from. So looked after a number or was
23 responsible for the implementation of a number of
24 pipelines across North America.

25 Q. Now, in your testimony you stated that

1 the Keystone pipeline project will serve the national
2 interest of the United States by providing refineries
3 and markets with access to a substantial and reliable
4 incremental supply of Canadian crude oil to meet
5 growing U.S. demand for petroleum products. Upon
6 what do you -- you base that on?

7 A. I base that on forecasts that are
8 outlined in my testimony as well as information --
9 public information as it relates to the growing
10 supply in northern Alberta. I believe today the
11 Western Canadian Sedimentary Basin currently produces
12 I believe about 2.6 billion barrels of oil, and
13 this -- that number is forecast to grow
14 significantly.

15 Q. Okay. What I want to key in on is the
16 national interest, and you mentioned you're basing
17 that comment or your testimony on forecasts. What
18 forecasts?

19 A. The forecasts that are outlined in my
20 testimony.

21 Q. Can you point me to what forecasts
22 you're talking about?

23 MR. KELSCH: I believe it's the bottom
24 of page 3, second paragraph from the bottom.

25 Q. (Mr. Delaney continuing) Well, I'll

1 read -- I'll start reading the last paragraph of your
2 testimony on page 3.

3 The Keystone pipeline project will
4 provide the United States with access to secure and
5 growing Canadian crude oil supplies. Access to
6 incremental Canadian crude supplies will supply (sic)
7 the United States with an opportunity to offset
8 declines in domestic crude oil production and to
9 decrease its dependence on offshore foreign crude oil
10 supplies consistent with national policies.

11 And my question is, upon what do you
12 base that upon? Did you do a study? Did Keystone do
13 a study that they're basing this upon?

14 A. We -- we have used information provided
15 by the Canadian Association -- Association of
16 Petroleum Producers and their forecasts as well as
17 forecasts from the Alberta Energy and Utilities Board
18 as well as TransCanada has -- has its own forecasts.

19 Q. Okay. And these Canadian forecasts are
20 speaking to the issue of the United States'
21 interests?

22 A. No, they're not. Those forecasts are
23 forecasting the -- the supply growth in the Western
24 Canadian Sedimentary Basin.

25 Q. Okay. And the purpose for this hearing

1 today is the necessity of this project here in the
2 United States, and what I -- what I'm curious to know
3 is on -- on what grounds do you state that this will
4 serve a national interest?

5 A. Well, I think outlined in my -- in my
6 testimony we had four -- four points as it relates to
7 national interest. The first point being increasing
8 Canadian crude oil supplies combined with inefficient
9 export pipeline capacity. That really is probably
10 focused in on -- on the growing supply in Canada
11 and -- and the need to push that supply to a very
12 large market. Increasing crude oil demand in the
13 U.S. coupled with decreasing domestic supply. Of
14 course when you have demand going up and supply going
15 down -- going down domestically, that will have
16 implications on price.

17 Q. Well, let me -- let me stop you right
18 there.

19 A. Yeah.

20 Q. Have you done a study on the current
21 demand and supply of oil in the United States?

22 A. Not part of this testimony, no.

23 Q. Okay. Because I'm reading your general
24 comments here and -- but I don't see where they're
25 supported by any study or specific --

1 A. Well.

2 Q. -- research done by Keystone pipeline.

3 A. Actually I'll point to -- actually I'll
4 point to my testimony. And if you don't mind,
5 I'll -- I'll -- I'll read it to you.

6 At the same time domestic crude oil
7 production continues to decline. And this is
8 according to CAPP, the Canadian Association of
9 Petroleum Producers, domestic crude oil production in
10 Petroleum Area for Defense District (PADD) II, which
11 is really the U.S. Midwest which is the -- the area
12 that Keystone will be -- will be delivering crude oil
13 to, is declining at an average rate of about
14 3 percent per year. Over the past 20 years, PADD II
15 crude oil production has decreased by approximately
16 600,000 barrels per day or a 60 percent reduction.

17 Q. Okay. And this is according to CAPP,
18 and remind me again what CAPP stands for.

19 A. The Canadian Association of Petroleum
20 Producers.

21 Q. Okay. And so you're basing your
22 statement that increasing crude oil demand in the
23 U.S. coupled with decreasing domestic supply is based
24 upon this CAPP report; am I -- am I right?

25 A. That's correct.

1 Q. Has Keystone done any studies on their
2 own or are you relying upon other reports?

3 A. TransCanada has done studies on its own
4 as well. This is a very large project for
5 TransCanada, and we typically do not make large
6 investment decisions and work with a lot of folks
7 unless we feel very comfortable that there's a
8 business need and a national interest in this case
9 for the United States.

10 Q. And there is a business need in this --
11 in this instance for TransCanada; correct?

12 A. Yes. We're a publicly traded company.

13 Q. How much profit do you anticipate
14 TransCanada will make off of this pipeline?

15 A. I don't have that information here with
16 me today.

17 Q. Okay. I want to point to a statement
18 on the -- line 7 of page 3. You testified: Existing
19 crude oil pipeline export capacity out of the WCSB is
20 insufficient to accommodate the forecasted crude oil
21 supply growth. Now, first, remind me, what does the
22 WCSB acronym stand for?

23 A. That's the Western Canadian Supply
24 (sic) Basin.

25 Q. And upon what do you base that

1 statement?

2 A. Today -- in my opinion, today we've got
3 a number of pipelines that transport crude oil out of
4 the Western Canadian Sedimentary Basin of which
5 include Express-Platte and include Enbridge. I
6 believe over the last number of years Express-Platte
7 has been in apportionment over the last few years
8 which really means that you have more oil wanting to
9 get onto the system than the system has capacity for.

10 Secondly, Enbridge is actually running
11 at capacity. So that -- with that in mind, the
12 pipelines are full today and actually in
13 apportionment with -- for one of them at times. And
14 with the demand -- or the supply growth in the
15 Western Canadian Sedimentary Basin there is a
16 requirement to build pipeline capacity out of the
17 basin.

18 Q. Did you do any independent studies or
19 research to -- to base these statements upon?

20 A. I did not. TransCanada, again as I've
21 mentioned earlier, would have completed studies on
22 this -- on this topic.

23 Q. You stated that you're familiar with
24 the reserves in Canada. How is it exactly that
25 you're personally familiar with the -- the oil

1 reserves in Canada?

2 A. I'm familiar with the reserves in
3 Canada as it relates through information --
4 information that's shared to me through TransCanada.

5 Q. Have you visited the reserves in
6 Canada?

7 A. When I operated -- when I was part of
8 the operating group in northern Alberta, I actually
9 had an asset that was -- that was a host site to one
10 of these plants.

11 Q. The actual pipe that is anticipated to
12 be used for the project, where is that coming from?

13 A. The pipe will be sourced from a number
14 of different actually countries. Today we're
15 finalizing our -- our -- our pipe commitments and our
16 pipe order. I would anticipate that pipe will be
17 coming from the domestic North American market. I
18 also anticipate that pipe will be coming from
19 overseas markets.

20 Q. Do you know this for a fact or -- where
21 the pipe's coming from at this point or do you not?

22 A. I have a very good idea that it's --
23 that it's coming from the North American domestic
24 market and overseas market.

25 Q. Okay. Are there any -- are you getting

1 any pipe from anywhere in North Dakota?

2 A. No, we are not.

3 Q. Okay.

4 A. I don't believe that there's that
5 opportunity for the -- for the pipe that we're --
6 that we're building.

7 Q. Okay. When do you anticipate your
8 emergency response plan will be completed?

9 A. Our emergency response plan will be
10 completed in the first quarter of 2009.

11 Q. You testified that Keystone is willing
12 and able to entertain discussions with North Dakota
13 producers concerning entering into interconnection
14 agreements. Have there been any agreements or
15 contracts for such interconnections?

16 A. There has been no -- there have been no
17 agreements or contracts for such interconnection
18 agreements.

19 Q. You also testified that 10 to
20 15 percent of the workforce will be hired locally.
21 Who is going to be hired locally?

22 A. More than likely we will have -- we
23 will supplement our workforce with labor. If you
24 think about the amount of -- for example, gravel that
25 we'll need for our project, that type of service will

1 be hired locally.

2 Q. So you haven't as of yet hired anyone
3 locally?

4 A. For operations -- construction and
5 operations, no.

6 Q. Okay. Well, for any reason for that
7 matter. Have you hired anyone locally for any reason
8 whatsoever?

9 A. There's a couple sitting at the table
10 beside you.

11 Q. Are you speaking of your attorneys?

12 A. Yes.

13 Q. Oh, okay. The -- you testified that
14 there will be a net positive impact on the local
15 economy for the approximately 18 months of
16 construction. What do you base that upon?

17 A. That is based on experience, and that's
18 also based on some work that we undertook along with
19 our engineering contractors to put that information
20 together.

21 Q. Have you done any studies to indicate
22 this net positive impact that will occur?

23 A. It's tough to find study. We've
24 estimated that these benefits will be realized in
25 North Dakota.

1 Q. Can you -- can you speak a little bit
2 to this estimation process and how you went about
3 estimating that there will be \$3.25 million for
4 lodging and construction, capital construction costs
5 of \$300 million and construction materials and other
6 supplies of approximately \$750,000?

7 A. Yes. As an example, for the capital
8 construction costs for the -- for the lodging for
9 construction, I had folks that work for the project
10 actually go through -- and understanding the amount
11 of manpower that it takes to build pipeline, I think
12 we -- we tried to count just about every hotel along
13 our pipeline route in North Dakota, and we also
14 forecasted the amount of time that a typical pipeline
15 spread would take. And -- and we're forecasting
16 today or anticipate today that we'll -- that we will
17 be using hotel lodging to -- to lodge all of the
18 workers.

19 Q. This must have taken some time to come
20 up with these numbers. Do you have any of your
21 calculations? Have any calculations been submitted
22 to the PSC?

23 A. I do not believe so.

24 Q. So I guess -- I guess what I'm asking,
25 are these numbers just tongue-in-cheek or did you sit

1 down in a room and just throw out numbers or what are
2 you -- what are you basing them on?

3 A. No, the numbers are not
4 tongue-in-cheek. With our -- with our over 50 years'
5 of pipeline experience and building pipelines and
6 pipeline spreads, this is what we would typically see
7 as it relates to benefit to the local communities.

8 Q. For this project my understanding is
9 that it originates in Canada and it ends in Illinois;
10 is that correct?

11 A. The project originates in -- in
12 Hardesty, Alberta, which is southeast of Edmonton,
13 Alberta. The project will deliver crude oil into
14 Illinois at two deliver points as outlined in our
15 application, Wood River and Patoka. And also as I
16 highlighted in my -- my testimony, we have
17 subsequently went out for an open season and were
18 able to acquire additional contracts to Cushing,
19 Oklahoma. What we filed with the North Dakota Public
20 Service Commission is actually that expanded case.

21 Q. And this will not be delivering any
22 crude oil to anywhere in North Dakota specifically?

23 A. No, not today.

24 Q. Okay. And there's -- there's no
25 agreement or contract that would -- at this point

1 that would indicate that there will be?

2 A. Not today.

3 MR. DELANEY: Okay. I have no more
4 questions, your Honor.

5 MR. WAHL: Mr. Binek.

6 MR. BINEK: Yes, I have a few
7 questions.

8 EXAMINATION

9 BY MR. BINEK:

10 Q. Are you familiar with the common
11 pipeline carrier statute in North Dakota?

12 A. Yes, I am.

13 Q. And under what provisions of that
14 section is the Keystone pipeline a common carrier?
15 And I'll refer specifically to Section 49-19-01 which
16 sets forth the definition of the common pipeline
17 carrier.

18 MR. DELANEY: And again I'm just going
19 to note an objection for the record that it calls for
20 a legal conclusion.

21 MR. WAHL: The objection is noted.

22 A. Just give me a second here, and I'll
23 just take a look at it.

24 Q. (Mr. Binek continuing) Certainly.

25 A. Under 49-19-01 item 1, "Owning,

1 operating or managing any pipeline or any part of any
2 pipeline within this state for the transportation of
3 crude petroleum, gas, coal or carbon dioxide to or
4 for the public for hire, or engaged in the business
5 of transporting crude petroleum, gas, coal or carbon
6 dioxide by pipelines."

7 So I think item 1 as well as item or
8 No. 4. "Made a common carrier by or under the terms
9 of a contract with or in pursuance of the laws of the
10 United States."

11 Q. Under No. 4, in your testimony you
12 talked about the Keystone pipeline being a common
13 carrier, and I'm referring specifically to the
14 paragraph beginning on line 3 of page 4 of your
15 testimony. You refer to the -- that it's -- it's
16 subject to regulation under -- under the Federal
17 Energy Regulatory Commission under the Interstate
18 Commerce Act, and that under the Interstate Commerce
19 Act oil pipelines are statutory common carriers.
20 Could you give the citation for that provision in the
21 act?

22 A. At this time I -- I cannot.

23 MR. KELSCH: We would be happy to
24 provide that after that in the a briefing, your --
25 your Honor.

1 MR. WAHL: Noted for the record.

2 Q. (Mr. Binek continuing) You
3 testified --

4 MR. WAHL: In fact -- I'm sorry,
5 Mr. Binek. Why don't we be careful. Let's -- let's
6 do that as a late-filed exhibit --

7 MR. BINEK: Very good.

8 MR. WAHL: -- T3. You may proceed,
9 Mr. Binek.

10 MR. BINEK: Thank you.

11 Q. (Mr. Binek continuing) I believe you
12 testified that Keystone is willing and able to
13 entertain -- I can't read my own writing here --
14 entering into an interconnection agreement. Are
15 you -- are you referring to interconnection
16 agreements with North Dakota producers or North
17 Dakota pipelines?

18 A. If you -- what I -- if you don't mind,
19 I'll -- I'll review the -- the statement that I made.
20 Keystone is willing and able to entertain discussions
21 with North Dakota producers concerning entering into
22 interconnection agreements was the statement that I
23 made.

24 Q. Okay. And I believe you also said that
25 there haven't been any agreements made?

1 A. That is correct. There --

2 Q. Have you --

3 A. There have not been any agreements
4 entered into.

5 Q. Have there been any discussions with
6 any producers?

7 A. I can say that there has been
8 discussions.

9 Q. Will there be taps or points along the
10 pipeline where North Dakota-produced crude oil can be
11 put into the pipeline?

12 A. The way that the system is designed, we
13 are not prebuilding taps or interconnections per say.
14 Through discussions those types of details would be
15 part of any discussions with any business or person
16 wanting to discuss with us connection to Keystone.

17 Q. Would it -- how difficult is it to put
18 in those connections or taps, whatever you want to
19 call it, after the pipeline has been built?

20 A. I -- to -- to simply put a tap in --
21 and again maybe I'll go back a little bit more. As
22 it relates to our pipeline, there are certain
23 requirements that we have as it relates to our
24 tariff, et cetera, so we'd have to chat about or
25 discuss our tariff.

1 A pipeline -- based on what I know
2 today, an additional pipeline capacity would be
3 required from the basin to access Keystone, and more
4 than likely there would be additional infrastructure
5 once you got to Keystone. For example, a storage
6 tank, et cetera, would be required as part of that
7 discussion.

8 Q. All right. I guess basically my
9 question is, is it possible -- if there aren't any
10 taps or points of interconnect in the -- in the
11 pipeline at the time it's -- it's constructed, how
12 difficult is it to -- to create that interconnection
13 at a later time if a North Dakota producer says, I --
14 I -- I would like to use your pipeline to transport
15 crude oil to Illinois or....

16 A. What I can say is it is very practical
17 and feasible to -- to engineer that solution.

18 Q. As a common pipeline carrier in North
19 Dakota, Keystone does have an obligation to -- to
20 carry crude for North Dakota producers; doesn't it?

21 A. I'm sorry. Could you repeat that?

22 Q. As a common pipeline carrier under
23 North Dakota law, Keystone does have an obligation to
24 transport crude petroleum for North Dakota producers
25 if they wish to have that transported and -- and are

1 willing to enter into an agreement with you; is that
2 correct?

3 A. That's what I understand.

4 Q. You said that TransCanada has done
5 studies regarding the need for the pipeline. Are
6 those studies available?

7 A. Typically those studies are -- internal
8 to TransCanada are confidential as we make these
9 investment decisions. There are a number -- and
10 we've tried to provide you with a number of other
11 sources that actually fall in line with -- with
12 TransCanada's understanding.

13 Q. Well, do you have any reports or -- or
14 forecasts, that sort of thing, that -- that were
15 talked about here that are not confidential
16 information that you could provide copies of? You --
17 you made statements about the need for -- for
18 pipeline capacity and it's based on -- on the
19 information that -- that you cited. Are -- are those
20 reports a part of your testimony or are they evidence
21 that -- that is being presented in this case?

22 MR. KELSCH: Your Honor, I -- we would
23 be willing to submit the EIA annual energy outlook
24 report that was cited in Mr. Cowling's testimony as
25 well. That shows EIA's, Energy Information

1 Administration -- it shows the demand in the U.S. and
2 then as well as the CAPP -- the 2005 CAPP report that
3 was cited by Mr. Cowling as well. Those are public
4 documents, and -- and we would be willing to submit
5 those as a late-filed exhibits.

6 MR. BINEK: I think that would be good.

7 MR. WAHL: TransCanada may submit that
8 information as late-filed Exhibit T4.

9 MR. KELSCH: They are two separate
10 documents. I guess I would request that the EIA be
11 T4 and the CAPP one be T5.

12 MR. WAHL: Mr. Kelsch, you'll have to
13 help me. Which exhibit do you wish identified as T4?

14 MR. KELSCH: The EIA annual energy
15 outlook 2006 would be T4, and the CAPP, C-A-P-P, 2005
16 report would be T5.

17 MR. WAHL: The record is noted.

18 Q. (Mr. Binek continuing) You mentioned a
19 date that the emergency response plan will be
20 available. It's the first quarter of something, and
21 I -- and I didn't jot that down. When -- when is
22 that due?

23 A. Yes, I'm sorry. Our -- our plan today
24 is to have -- will be to have that emergency response
25 plan in final order and sent to the appropriate

1 agencies in Q1 of 2009.

2 Q. Excuse me. You also in your
3 testimony -- and I -- and I don't have noted where it
4 was, but you -- you talked about the dedicated leak
5 detection system. Would you explain how that works,
6 this leak detection system?

7 A. I can explain how that works at a high
8 level during this hearing or we can talk about it
9 this afternoon. We're going to go into that in some
10 detail.

11 Q. I think if you'd just give an overview,
12 that would be good.

13 A. TransCanada will have a dedicated leak
14 detection system located on its pipeline that will
15 relay real-time information to an operations control
16 center. And this information -- of course the
17 operations control center will be manned 24 hours a
18 day, seven days a week, 365 days a year, and this
19 leak detection system will -- will relay information
20 back to that operations control center and....

21 Q. How small a leak can be detected by
22 this leak detection system, if -- if you can answer
23 that?

24 A. Well, I -- I'd like to -- subject to
25 check, my -- the group that will have -- discussing

1 it this afternoon, but typically you're talking in
2 the neighborhood of I believe 2 percent.

3 Q. What -- what was that -- the last part?

4 A. Typically I -- you would anticipate
5 that you would -- you would be able to identify a
6 leak at 2 percent over a certain time period.

7 Q. What -- what if there's -- let's -- a
8 small -- a leak smaller than 2 percent, how is -- how
9 will that be detected?

10 MR. WAHL: Mr. Binek, I hesitate to
11 interrupt, but this is probably outside the scope of
12 this hearing.

13 MR. BINEK: It was just part of his
14 testimony. I'm just --

15 MR. WAHL: It was also outside the
16 scope of this hearing but....

17 MR. BINEK: I'm -- we can go into it
18 this afternoon.

19 MR. WAHL: I would recommend that.

20 All right. We're going to change the
21 tapes, Mr. Binek. Just a moment, please.

22 MR. BINEK: Okay.

23 MR. WAHL: Proceed. You may proceed
24 when you're ready, Mr. Binek.

25 MR. BINEK: Thank you.

1 Q. (Mr. Binek continuing) Under chapter
2 49-19 of the North Dakota Century Code there -- there
3 are different provisions that relate to -- to the
4 carrier's acceptance of the provisions of this
5 chapter. For instance, 49-19-12 deals with eminent
6 domain, and it says, "Every common pipeline carrier
7 which shall have filed with the commission its
8 acceptance of the provisions ... has, subject to
9 chapter 32-15, the right and power of eminent
10 domain." And 49-19-11 states that "a common pipeline
11 carrier, in the acceptance of the provisions ...
12 shall agree expressly that it, without
13 discrimination, will ... carry or purchase the oil,
14 coal, gas," et cetera.

15 Does TransCanada accept the provisions
16 of chapter 49-19?

17 A. And are we talking -- so specifically
18 49-19-10?

19 MR. KELSCH: Your Honor --

20 Q. (Mr. Binek continuing) I'm referring
21 to chapter -- the statute -- and we -- I can
22 reference specifically Section 49-19-12 which is the
23 one that deals with eminent domain. It specifically
24 says that "a common pipeline carrier which shall have
25 filed with the commission its acceptance with the

1 provisions of this chapter," et cetera.

2 And my question to you is, does
3 TransCanada accept -- accept the provisions of
4 chapter 49-19 of the North Dakota Century Code?
5 And -- and that would be all provisions of that
6 chapter.

7 MR. KELSCH: Your Honor, I guess this
8 is really a legal conclusion. We certainly will
9 comply with North Dakota law if this pipeline is
10 approved.

11 MR. BINEK: The law talks about
12 acceptance of the provisions. My --

13 MR. WAHL: Yeah.

14 MR. BINEK: My question simply is
15 whether TransCanada will agree to accept the
16 provisions of chapter 49-19.

17 MR. WAHL: Right. That's the question,
18 Mr. Kelsch. And Mr. Cowling is asked to answer on
19 behalf of the corporation.

20 MR. KELSCH: As I understand, that
21 if -- if we accept the provisions of this chapters,
22 then we do the right of eminent domain. If we don't
23 need eminent domain, whether we would be doing that
24 or not, I'm not sure. So there are -- is some legal
25 questions there that I'm not sure that this witness

1 has --

2 You know, certainly if we are going to
3 accept the benefits of 49-19, we have to accept all
4 the -- the regulations concerned in 49-19. You can't
5 have the benefits without whatever burden is there,
6 and -- and certainly we would accept -- accept that.
7 But as I read that, it's a -- it's a -- if you choose
8 to do this, you have to do -- if you choose these
9 rights, you have these obligations as well, and
10 certainly that would be the case.

11 MR. BINEK: Your Honor, I believe that
12 Mr. Cowling previously testified that this -- that
13 TransCanada is a common pipeline carrier in North
14 Dakota, and all I'm asking is whether they agree
15 to -- to comply with the provisions of the pipeline
16 common carrier chapter and -- which is chapter 49-19
17 of the North Dakota Century Code. It's pretty
18 simple.

19 MR. WAHL: I agree, Mr. Kelsch. If --
20 if it that was an objection, it's overruled. The
21 witness may answer the question.

22 A. I haven't reviewed this in over 24
23 hours, but I would -- I would suggest to you, yes.

24 MR. BINEK: Thank you. I have no
25 further questions.

1 MR. WAHL: All right. And I think that
2 this is a time to stretch and move around a little
3 bit. But we really are going to be terribly jealous
4 of our time so let's say five minutes, please. And
5 by my watch at 10:40.

6 (A recess was taken from 10:32 a.m. to
7 10:39 a.m.)

8 MR. WAHL: Back on the record. We'll
9 proceed with questions from the commissioners
10 beginning with Commissioner Cramer.

11 MR. CRAMER: Thank you, Judge Wahl.

12 EXAMINATION

13 BY MR. CRAMER:

14 Q. A couple of my questions have been
15 answered -- or asked and answered I guess, especially
16 as the relates to the EIA forecast, but I have kind
17 of a couple of different lines of questions. And,
18 Mr. Cowling, your original testimony has kind of
19 dragged you into some legal questions that have
20 obviously become a bit of an issue so I may ask some
21 similar questions that may require a legal
22 conclusion. I'll try to ask them in such a way as
23 to -- to not come to that point.

24 But the first one getting back to
25 Mr. Binek's line of questioning regarding common

1 pipeline carriers and -- and the four criteria. And
2 just leaving 1, 2 and 3 for a minute, the fourth
3 criteria reads, "or made a common carrier by or under
4 the terms of a contract with or in pursuance of the
5 laws of the United States."

6 So my question is, if -- if you didn't
7 meet -- if Keystone didn't meet the first three
8 criteria as relates to North Dakota access and all of
9 those things holding yourself out to the public
10 generally, if FERC or the State Department through
11 the presidential permit were to determine that
12 Keystone is in fact a common carrier, do we -- is it
13 your understanding that this commission would have no
14 choice but to determine that you're a common carrier?
15 And I realize again that is a legal conclusion. And
16 if you can't answer it, at least the question is on
17 the record; is that fair?

18 A. Yeah, I -- at this point in time I
19 cannot answer that.

20 Q. All right. Then my next one is, if the
21 State Department conclude that Keystone does in fact
22 serve the national interest again through its permit,
23 presidential permit, do you believe it's this
24 commission's obligation to determine that the project
25 serves the North Dakota public interest even if all

1 the pipeline does is runs through the state?

2 A. I do.

3 Q. Then you've testified at some length to
4 the economic impact and value to this construction
5 project, the construction jobs, the tax revenue
6 generated, the lease payments. Is it your
7 understanding that economic impact or value as a
8 result of the construction and the lease payments and
9 the taxes that are -- that are received are part of
10 the standard of public interest or public
11 convenience? Because I'm not sure that they are.

12 A. My -- the benefit to North Dakota that
13 we have tried or attempted to show here are real
14 value as it relates to construction and operations.
15 There's also another benefit to North Dakota as it
16 relates to the basin, the oil basin, and the -- and
17 the pipe capacity around the oil basin. And it is --
18 it is my view that when Keystone is built it will
19 free up pipeline capacity, actually free up pipeline
20 capacity outside of North Dakota that North Dakota
21 producers require to actually leave the state of
22 North Dakota, and with that that will alleviate some
23 of the -- some of the issues or potential issues that
24 North Dakota producers have today with regards to
25 pricing.

1 Q. So even if no North Dakota crude gets
2 on your pipeline, the relief in -- of the bottlenecks
3 in other places could have some value to North Dakota
4 exports?

5 A. I believe that to be true, yeah.

6 Q. All right. Now, you testified earlier
7 about -- you referred to apportionment, and
8 apportionment -- those of us on the commission are
9 very familiar with apportionment and certainly people
10 in the energy industry in North Dakota are. But
11 that's when supply and demand exceeds capacity on the
12 pipeline, and then you have got to through historic
13 apportions and things to determine whose oil gets on.
14 I understand all of that.

15 A. That's correct.

16 Q. Now, you've also testified that
17 the first 435,000 barrels per day of capacity on the
18 Keystone project are spoken for, you have contracts
19 for them through the open bid process which is why
20 you have made this decision in Patoka, Illinois;
21 correct?

22 A. Yeah. No, I'll just -- I will -- we
23 are designing a pipeline for 435,000 barrels per day
24 of nominal capacity. We have contracts for
25 340,000 barrels a day.

1 Q. Okay. So they -- okay. Thank you for
2 that.

3 A. So we do --

4 Q. So there's 95,000 barrels of capacity
5 still remaining on the pipe?

6 A. That is correct.

7 Q. Now, the Cushing piece is an
8 additional, what, 155,000 barrels or did I miss....

9 A. You're correct. We concluded our open
10 season earlier this year in approximately -- it was
11 approximately three weeks ago now so that we received
12 155,000 barrels of firm commitments for Cushing.

13 Q. If at -- well, if at some point there
14 would be more availability or more opportunity for
15 this Alberta crude that will be going through the
16 Keystone pipeline to be utilized by refineries in
17 Patoka, Cushing or other more -- I'll call them
18 industrial Midwest areas so that that pipe would will
19 be filled to capacity, how would that impact the
20 availability of that pipe for North Dakota crude
21 should shippers contact you and wish to tap into it
22 and -- and the common carrier obligations compel you
23 to -- to allow them on the pipe?

24 A. Typically we would manage and operate
25 our pipes so that we would have some excess capacity

1 as it relates to managing our operations and
2 maintenance and downtime. So typically, you know,
3 your availability or load factor is probably in that
4 90 percent so there will -- there will be excess on
5 our pipeline.

6 Q. There will be you said. I mean, and
7 the reason I ask that, you know, so firmly and ask
8 for a firm --

9 A. Yeah.

10 Q. -- answer is obviously you've testified
11 that there's apportionment on all --

12 A. Yeah.

13 Q. -- many of the existing pipelines. We
14 know that you've testified and the EIA concludes that
15 there is a growing demand so are we certain that
16 there will always be that capacity?

17 A. And maybe I will preface that. Based
18 on where we're at today with our project, our
19 project -- the original project had a design of
20 435,000 barrels, and we have 340 in contract. When
21 you add in the addition of Cushing, we still have a
22 nice portion of excess capacity in our pipeline.
23 TransCanada, slash, Keystone, if there are
24 opportunities again in the future as the U.S. demand
25 for oil continues to rise -- and if -- if you look at

1 today's environment with regards to uncertainty and
2 unrest in other parts of the world of which the U.S.
3 relies on today, I would anticipate that supply will
4 grow from Canada, a reliable supply will grow from
5 Canada. And I -- I would anticipate that in the
6 next -- I would anticipate in the next five to ten
7 years there will be additional pipelines from Canada
8 built down through to the Midwest and -- and other
9 parts of -- of -- of the U.S.

10 Q. Okay. I have a question then about the
11 type of oil that -- that is produced from the tar
12 sands of Alberta that will be on this pipeline. Is
13 it true that it is a rather sour oil?

14 A. We've got -- the tariff that -- that we
15 have we can ship depending upon what customers want.

16 Q. I was going to get to that, yes.

17 A. We're able to ship different products.
18 Essentially to simplify it, we will -- we anticipate
19 shipping synthetic and heavy crude oil blends.

20 Q. Okay. I want to flesh this out a
21 little more. Is it -- before -- before the
22 refineries in places like Patoka or Cushing signed
23 the contract with you for your type of oil or for --
24 for your product, do they have to retrofit or if
25 they're -- if they're expanding their refinery

1 capacity, do they customize it to a specific type of
2 oil to make sure that they're maximizing productivity
3 and efficiency?

4 A. I would certainly anticipate that
5 the -- that the delivery points off our system that
6 there would be investment at those facilities to --
7 both to retrofit and actually I think probably there
8 may be some expansion. So I think there will be a
9 need to invest in those -- in those refineries.

10 Q. But in that investment then, are they
11 investing or customizing the process that they use to
12 meet the specs of your oil? And the reason I ask
13 that is probably obvious. As you look to provide
14 more capacity on the pipeline -- or say that North
15 Dakota is a very sweet North Dakota crude from the
16 Bakken clay which is a different type of oil than
17 you're receiving --

18 A. Yes.

19 Q. -- would you have a conflict if your
20 customers on the other end require your type of oil
21 versus this sweet crude? Does that ever -- does that
22 ever enter in?

23 A. Yeah, the way that -- the way the
24 pipeline is actually designed and will be operated is
25 we will have batches of -- of commodity going down

1 our pipeline. So that if a customer has a type of
2 oil, we will send that oil down our pipeline, and we
3 will -- the way that we've got the system designed is
4 to alleviate any comingling between batches so that
5 we're keeping the -- the product as per our -- what
6 our customers are expecting.

7 Q. So a North Dakota shipper that wanted
8 to put Bakken sweet crude on the pipeline would have
9 to have their own customer at the other end probably
10 that may not be yours?

11 A. Yeah. I -- you know, I'm not -- again
12 I think the key for us is that we are dealing with --
13 first of all, we don't own the oil.

14 Q. Right.

15 A. We're dealing with upstream producers,
16 and we're dealing with downstream refiners. And we
17 would leave it up to the producers of North Dakota to
18 manage that -- that type of transaction.

19 Q. Do you -- do you happen to know off the
20 top of your head -- and it's -- it may be referenced
21 in the EIA study. I've read that study three or four
22 times, the newest one, and I don't recall, but do you
23 have any idea what percentage of the United States
24 consumption comes from places that we have -- I think
25 you referred to it, unrest, the Middle East,

1 Venezuela, places where we might have some conflict?

2 A. I -- I think -- and if I -- if my
3 memory serves me correct, as it relates to
4 macroeconomics --

5 Q. Yes.

6 A. -- five of the top six oil reserves are
7 found outside of North America. Today, as outlined
8 in my testimony, Canada is currently second as it
9 relates to known oil reserves.

10 Q. But in terms of what we import, you
11 don't know what percentage of that comes from the
12 Middle East?

13 A. Actually at this point in time I don't.

14 Q. All right.

15 A. I can certainly --

16 Q. I just have one other question then as
17 it relates to new sources of supply. Has TransCanada
18 done any studies or does the EIA report that you know
19 of reference the impact that alternative forms of
20 products and/or forms of fuel, refined product or
21 energy, what role that might play in meeting the
22 growing demand and how that impacts your investment
23 decisions?

24 A. I'm sorry. I -- I'm having -- I had a
25 little bit of difficulty understanding your question.

1 Q. Sure. The question is, do you know --
2 do you know what is it -- the anticipated impact of
3 alternative forms of energy moving forward on meeting
4 the growing demand and perhaps a diminishing demand
5 for traditional products?

6 A. I can certainly say I'm not an expert
7 at that --

8 Q. Uh-huh.

9 A. -- and I -- I cannot answer that
10 question as it relates to the United States.

11 Q. Uh-huh.

12 A. I do know that a lot of companies like
13 ourselves are -- think that's very important, and we
14 have in one of our portfolios, energy portfolios,
15 wind assets and -- and hydrodams, et cetera, to -- so
16 we believe that's important, but I can't answer your
17 question.

18 Q. All right. I just have one final
19 question then, and this might be one of those legal
20 conclusions. Is it your understanding if it was
21 determined that this is not -- that the Keystone
22 pipeline is not a common carrier that a PC & N
23 certificate is not necessary? Do you know anything
24 about that? Again I know you're not an attorney --

25 A. Yeah, I'm --

1 Q. -- and you don't know the answer.

2 A. I'm not an attorney. I -- all I --
3 what I would respond to that is based on the
4 discussions that I've had with -- with our attorneys
5 is that I believe that we are a common carrier
6 pipeline in North Dakota.

7 MR. CRAMER: Thank you. I have nothing
8 further.

9 MR. WAHL: Commissioner Wefald?

10 MS. WEFALD: Yes.

11 EXAMINATION

12 BY MS. WEFALD:

13 Q. In terms of commitments from producers
14 who wish to have you transport their oil, you said
15 that the open season is done and you've gotten a
16 number of commitments. What's the next time frame
17 if -- what is the next time frame for people to
18 get -- to make arrangements with you for transporting
19 their product?

20 A. In particular for Keystone we are -- we
21 are focused now on building this project as it
22 relates to TransCanada. TransCanada Corporation or
23 TransCanada continues to look at opportunities
24 throughout North America, and I'm not privy to any
25 other open seasons and in particular for Keystone

1 that -- the project that we have in front of us
2 today.

3 Q. So what does that mean when you
4 answered earlier that you're still open to any
5 negotiations and agreements from North Dakota
6 producers for North Dakota oil products?

7 A. From -- that is not, quote, unquote,
8 what I would call an open season. That is daily
9 business transactions and activities that would --
10 that would occur between the North Dakota producers
11 and TransCanada.

12 Q. But help me understand this. They
13 don't need to sign up under the open season?

14 A. They would -- the open season is a term
15 when -- and it's a long process that you go out to
16 the entire market --

17 Q. Yes.

18 A. -- for. What we're talking about here
19 specifically with the North Dakota producers would be
20 a relationship between the North Dakota producers and
21 TransCanada and a negotiation on an interconnection
22 agreement, and then subsequent to that a contract if
23 both parties found that it was reasonable.

24 Q. Thank you. This has -- this -- these
25 questions relate to the labor force that you referred

1 to in No. -- on page 4 under -- under line 16: 10 to
2 15 percent of the workforce will be hired locally.
3 How will you be doing this? Will these be contracts
4 that will go out for different product that's needed
5 and work that's needed? How will people in North
6 Dakota be hired? What is that process?

7 A. I can't go into detail today about the
8 process. Currently what we are -- we're currently
9 undergoing detailed construction planning for the
10 project. And as we go through that detailed
11 construction planning putting together our spread
12 plans for the construction of the pipeline and the
13 pump stations, it will be a by-product of that as it
14 relates to the type of -- the type of individual
15 or -- or contractor company or core person that we
16 would require as well as any materials that would --
17 that we would require, and we would go through that
18 through detailed execution planning of the project.

19 Q. Are those listed through North Dakota
20 Job Service or through -- if it's a contract for bid
21 listed in the -- somewhere in a public notice?

22 A. I don't know yet. I haven't -- I
23 haven't given a lot of thought with regards to how we
24 would -- how we would go to the marketplace whether
25 it would be in local newspapers or -- or bid -- bid

1 contracts. More than likely it could be all of the
2 above as we work through the process.

3 Q. And are you willing to go through North
4 Dakota Job Service and to put things in the paper
5 regarding bids that are needed from contractors and
6 public notices?

7 A. Well, again I think what we need --
8 what -- what we need to do as a company is -- is
9 fine-tune our construction, implementation plan. I
10 would suggest to you that I would not be -- I would
11 not -- I think that that may be a useful product for
12 us or a useful media for us.

13 Q. But you can't commit to that at this
14 time?

15 A. I -- that's a tough one. I think I --
16 if you can tell me a little bit more about -- I'm not
17 sure I even know what the product is that you're
18 talking about or the -- the North Dakota media.

19 MR. KELSCH: Are you -- are you asking
20 about laborers and workers?

21 MS. WEFALD: Yes, I am. Laborers and
22 workers, uh-huh.

23 MR. KELSCH: So finding laborers and
24 workers for the --

25 MS. WEFALD: Right.

1 MR. KELSCH: -- for the job --

2 MS. WEFALD: Uh-huh.

3 MR. KELSCH: -- and where they would
4 find those?

5 MS. WEFALD: Uh-huh. Yes, I am.

6 A. I think -- you know, again I think at
7 this time we've -- we've got to understand how we
8 will go out to the marketplace. Be rest assured that
9 we will be hiring folks from North Dakota. Now, how
10 we -- how we go about hiring them I think is still
11 something that we need to go into -- into more
12 detail.

13 Q. (Ms. Wefald continuing) Do you hire
14 union workers?

15 A. Yes. Again the pipeline construction
16 business, in particular in the United States, the
17 bulk of our -- our construction crews will be -- will
18 be coming from -- from unions.

19 Q. And it -- on page 4, line 13:
20 Construction will involve two spreads of North Dakota
21 with 500 to 600 workers for each spread. Describe
22 for us what a spread is, please.

23 A. And we're going to go into that in
24 detail this afternoon with pictures, et cetera,
25 for -- for everybody. A spread is essentially, if

1 you think about it, a construction crew that goes
2 through and prepares the right-of-way that digs the
3 ditch for the pipe, that lays the pipe, welds the
4 pipe, lays the pipe in the -- in the -- in the
5 pipeline ditch, and then actually goes through and
6 remediates the work. And -- and we will go into that
7 in -- in a little bit more detail this afternoon with
8 some -- some graphics and pictures.

9 MS. WEFALD: Thank you. That's all the
10 questions I have at this time.

11 MR. WAHL: Commissioner Clark?

12 MR. CLARK: Just a few.

13 EXAMINATION

14 BY MR. CLARK:

15 Q. Could you define again for me the
16 Petroleum Area for Defense District II?
17 Geographically what area are we talking about?

18 A. It's -- I'd have to -- actually have to
19 show you a picture. Do we have a....

20 Q. Maybe I'll ask. Will that be in the --
21 the late-filed exhibit?

22 A. I think it is. And if it's not, I
23 will -- I will --

24 Q. Okay.

25 A. -- make sure that it's in there.

1 Q. Okay. Thanks.

2 MR. WAHL: And I'm sorry, Commissioner.

3 As part of what exhibit, please?

4 MR. CLARK: T5 I think.

5 MR. KELSCH: The --

6 MR. WAHL: T5?

7 MR. KELSCH: That's -- that's in the

8 CAPP T5.

9 MR. WAHL: T5. All right.

10 A. So -- I believe it is in there.

11 Q. (Mr. Clark continuing) Okay. Thank

12 you. In your testimony on page 4 you had some

13 discussion of oil pipelines operated as interstate

14 commerce subject to FERC, and there were questions

15 later on by intervenor counsel about the profit that

16 Keystone TransCanada would make off this. Are there

17 tariffs filed with the FERC for what you can charge

18 as a pipeline for folks who are going to be using

19 your services?

20 A. Those have not been filed with the FERC

21 yet.

22 Q. But they will be?

23 A. They will be.

24 Q. And as I understand it, those are

25 subject to challenge; correct? So if a -- if a

1 shipper felt that what it is being charged by
2 Keystone is out of line, there would -- the redress
3 would be to file a rate complaint in front of the
4 Federal Energy Regulatory Commission; is that
5 correct?

6 A. That is -- that is my understanding.

7 Q. Okay. So -- just so I understand it,
8 the profit that Keystone makes is not off the oil
9 production itself? It's -- it's a regulated product
10 as a common carrier so your -- your profit is a
11 regulated profit by the federal government, U.S.
12 government, and is -- is made off what you charge
13 those shippers?

14 A. The way that -- the way that we look
15 at -- at -- this is there's -- there's three -- three
16 components to kind of the value chain. That you've
17 got the producers upstream, and you've got the
18 refiners downstream. And really what we are is -- is
19 we're -- we're really just the trucking company
20 between them. So we do not own the -- we do not own
21 the product. We own -- we own the facilities that --
22 we own the trucks. So, no, we do not make profit off
23 per say the oil.

24 Q. Okay. There have been some questions
25 about taps. Does -- does North Dakota crude and the

1 oil sands crude, does that -- does that mix well? As
2 I understand, the -- the viscosity of the oil sands
3 oil is very -- it's almost like cold molasses. Do
4 you -- how do you -- how would you -- a tap work in
5 theory?

6 A. Well -- well, again it goes back to the
7 operational framework for the pipeline in that
8 actually our -- our design is built around not having
9 them comingle. What we want to do for -- for
10 customers is actually have batches of oil that the
11 customer actually puts into -- into our pipeline, and
12 what that customer gets out was really -- was really
13 their -- their commodities.

14 Q. So you run something through that --
15 that actually differentiates the product in the
16 pipeline itself?

17 A. The way that the hydraulics and system
18 design work, that's -- that's what we've -- that's
19 what we've tried to design.

20 Q. Okay. On the bottom of page 4 and the
21 top of page 5 in your testimony you talked about
22 taxes that are paid to local governments in North
23 Dakota, and you had mentioned property taxes of
24 5.2 million in the first year and thereafter, and
25 then in addition Keystone will pay ad valorem taxes

1 to local governments. How would that be different
2 from the property tax? As I understand -- I mean,
3 property tax is an ad valorem tax; correct? I'm just
4 trying to get a sense for what the -- the difference
5 between that ad valorem tax you reference and
6 property taxes are.

7 MR. KELSCH: We can respond to that
8 in -- in our briefing afterwards.

9 MR. CLARK: Okay.

10 A. I was -- I was advised that they were
11 different.

12 Q. (Mr. Clark continuing) Okay.

13 A. -- so I can -- I can respond to that.

14 Q. And there may be a different forms of
15 ad valorem tax.

16 A. Yeah.

17 Q. I think property is just one of them.
18 I'm curious what the difference is.

19 A. Yes.

20 Q. Just to -- to clarify, are you -- you
21 had mentioned that -- the depressed oil prices in
22 western North Dakota because of the bottleneck. Are
23 you familiar with that situation in the western part
24 of our state?

25 A. I have read numerous media on that --

1 on that issue and have also had the opportunity to
2 review presentations from folks around North Dakota
3 and -- and some of the folks out -- out west.

4 Q. Okay. Just to clarify, the -- the
5 decreased price that western North Dakota oil
6 producers receive does not reflect a decreased price
7 at the pump for North Dakota consumers; does it?

8 A. That -- that is correct.

9 Q. So somewhere it's being captured in the
10 middle, but it's not -- well, I guess what I'm -- the
11 point I'm making is is folks shouldn't be worried
12 here that an increased price that North Dakotans
13 receive for their production doesn't equate to an
14 increased price at the retail pumps?

15 A. That is correct. When you take a look
16 at the -- this is really a world market. And -- and
17 pricing is driven by -- as in my testimony, when you
18 take a look at the big oil -- oil producers, it's
19 really a macroeconomics discussion.

20 Q. And just two final questions.
21 TransCanada you mentioned is a public company. It's
22 traded on which exchange?

23 A. TransCanada is traded on -- on both the
24 Toronto Stock Exchange and the New York Stock
25 Exchange.

1 Q. And are you familiar with TransCanada's
2 corporate bond ratings?

3 A. I am familiar. However, maybe a little
4 bit dated.

5 Q. Okay. Could -- could the applicant
6 provide the most recent corporate bond ratings?
7 I'd -- I assume probably the three major firms rate
8 the company, if those could be provided, and maybe
9 with a, I don't know, ten-year historical average or
10 whatever a sample would be.

11 A. We will -- we will undertake to provide
12 that information to you actually overnight.

13 Q. Okay. Great.

14 MR. WAHL: For the record, that will be
15 late-filed Exhibit T6.

16 Q. (Mr. Clark continuing) Thank you. And
17 with that trend line so we have a sense for whether
18 it's been upgraded or downgraded recently.

19 A. We -- I'll -- I'll wait and let you see
20 numbers.

21 Q. Okay. Thank you. And would -- as part
22 of this would Keystone be willing to agree to some
23 sort of progress report on the laborer questions that
24 Commissioner Wefald had asked so that throughout the
25 process the commission is kept up to date on North

1 Dakota hires, things like that, the process that's
2 being taken to....

3 A. Certainly.

4 MR. CLARK: Okay. Thank you. That's
5 all I have.

6 MR. WAHL: Any follow-up from any
7 commissioner?

8 MR. CRAMER: Nothing more for me.

9 MS. WEFALD: No.

10 MR. CLARK: Thank you.

11 MR. WAHL: Mr. Kelsch, follow-up?

12 MR. KELSCH: Yes. Thank you, your
13 Honor.

14 EXAMINATION

15 BY MR. KELSCH:

16 Q. Mr. -- Mr. Cowling, in the
17 cross-examination from the -- Mr. Delaney, he asked
18 you about your I guess role in preparing the
19 application, and I think you -- you testified that
20 you hadn't -- you didn't actually do all the work but
21 you were more of an oversight role. Could you tell
22 the commission what basically your oversight role
23 entailed?

24 A. The oversight that I provided in
25 putting the -- the application together was that of

1 policy. I was very much engaged in reviewing the
2 application. And of course at the end of the day I
3 signed my name to the application so I did review the
4 entire filing.

5 MR. KELSCH: Just to get -- if I may
6 ask a procedural question, your Honor. Is the
7 application -- or can the application be treated as
8 an exhibit in this action? I think it probably
9 should because we're -- we're -- a lot of references
10 to that. Could I offer that as an exhibit?

11 MR. WAHL: You may. I'm not sure that
12 it's necessary, Mr. Kelsch, but I -- if -- fine, make
13 your record.

14 MR. KELSCH: Okay. I would offer the
15 application as T7. I apologize. I don't have an
16 extra copy right here, but we can -- I think it's --
17 we have a number of them filed with the -- the
18 commission, and we can get -- get a separate one that
19 can be marked.

20 MR. WAHL: I might ask a little
21 assistance from commission counsel. But I wonder if
22 we shouldn't for the record mark -- have the -- have
23 the commission's official application marked as
24 Exhibit T6, Mr. Binek -- or T7.

25 MR. BINEK: We can do that.

1 MR. WAHL: T7.

2 MR. BINEK: We can do that.

3 MR. WAHL: Is that satisfactory to the
4 commission?

5 MR. BINEK: Yes, that is commonly the
6 way we do it.

7 MR. WAHL: All right. For the record
8 then, the application for the certificate of public
9 convenience and necessity in case No. PU-07-15 (sic)
10 will be marked for the record as Exhibit T7.

11 MR. KELSCH: And I would offer that.

12 MR. DELANEY: No objection.

13 MR. WAHL: Mr. Binek?

14 MR. BINEK: Would -- would you like
15 that right now?

16 MR. WAHL: No. You don't need to --

17 MR. KELSCH: No.

18 MR. WAHL: We don't need to do that
19 now. Exhibit T7 is received.

20 Q. (Mr. Kelsch continuing) Mr. Cowling,
21 there was some talk about demand and also some --
22 some talk about shipper contracts that -- that have
23 already been signed. Does the fact that you have
24 contracts that are signed, does that indicate that
25 there's some demand for the product?

1 A. Yes, I think -- I think it's important
2 to note that through the testimony filed as well as
3 two of the exhibits that will be filed with the EIA
4 and the CAPP forecasts, that's one piece of -- of --
5 of information. The second piece of information is
6 we do have contracts that underpin the pipeline so
7 that the market and the demand for the crude oil,
8 this is required.

9 Q. In those contracts, if I understand it,
10 the contract would be with the -- the -- I guess the
11 producer as well as the -- the end user down in the
12 United States?

13 A. Those contracts actually can be with
14 either a producer or a refiner, a lot of companies,
15 big oil companies or both. At this point in time
16 what I can tell you is that it can be producer driven
17 or -- or driven by the market.

18 Q. You testified some about the contacts
19 that you've had in North Dakota concerning Keystone
20 taking or accepting North Dakota crude in the
21 pipeline. Could you go into a little more detail as
22 far as when North Dakota individuals you've dealt
23 with or had contacts with? Did you have the -- did
24 you meet with the North Dakota governor concerning
25 that possibility?

1 A. I did not meet with the North Dakota
2 governor, but I am aware that TransCanada Keystone
3 did.

4 Q. Okay. And how about the North Dakota
5 attorney general as well?

6 A. I did not meet with those folks, but I
7 do know that TransCanada Keystone did as well.

8 Q. Okay. The -- does the same go with
9 the -- and whether it's you or your company -- the
10 company I guess that --

11 A. Yeah.

12 Q. -- you're representing, did they have
13 meetings with the Industrial Commission?

14 A. Yes.

15 Q. How about the -- some of the North
16 Dakota patroller -- petroleum marketers groups or
17 organizations?

18 A. My understanding is, yes.

19 Q. The -- in response to a question by the
20 commission, Commissioner Wefald, she was asking about
21 the spreads. And correct me if I'm -- are you
22 basically having two separate operations -- pipeline
23 operations going on at the same -- roughly the same
24 time in the state?

25 A. That is correct.

1 Q. So two separate crews?

2 A. That's correct. So when you take a
3 look at -- at the -- the information filed in my
4 testimony, there would probably be in the
5 neighborhood of a thousand workers.

6 MR. KELSCH: I have no further
7 questions.

8 MR. WAHL: Follow-up, Mr. Delaney?

9 MR. DELANEY: Yes. Thank you.

10 EXAMINATION

11 BY MR. DELANEY:

12 Q. I want to flesh out this comingling or
13 your avoidance of comingling in the pipeline. So are
14 you saying you would be able to deliver Canadian oil
15 to Illinois and also deliver North Dakota oil to
16 somewhere else in the country at the same time or
17 would you have to shut -- shut it off for the
18 Canadian oil while you're delivering the North Dakota
19 oil?

20 A. Operationally there -- there is
21 operational steps that you would go through so that
22 there -- our goal would be not to have comingled
23 crude in that, as an example for the North Dakota
24 producers, more than likely there would be
25 operational tankage required. And then, for example,

1 to simplify it, a batch of Canadian crude goes by,
2 and then you open up a -- a valve or a delivery point
3 and the North Dakota oil is then delivered into the
4 pipeline system.

5 Q. Okay. So you would have to close a
6 valve I presume on -- from the oil coming from Canada
7 in order to allow the North Dakota oil to go into the
8 pipeline without intermingling the two?

9 A. Operationally we'll get into that more
10 this afternoon and I'll have folks here to speak
11 specifically about operations, but it would not
12 impact the upstream customers --

13 Q. So there would be --

14 A. -- in my opinion.

15 Q. So there would be a consistent flow of
16 this 345,000 barrels per day to Illinois while
17 you're -- you know, if hypothetically North Dakota
18 were to connect, you would have that consistent flow
19 of 345,000 barrels per day to Illinois while you're
20 also transporting North Dakota oil?

21 A. Actually we have 340,000 barrels of
22 contracts. And if the North Dakota producers had an
23 interconnection or -- we would have more than
24 340,000 barrels a day because that would -- any --
25 any oil that they would bring on to the system would

1 increase the throughput of the system.

2 Q. And I understand that. But I
3 understand these contracts that you have currently
4 are for Canadian crude oil from the oil sense;
5 correct?

6 A. They are contracts for receipt of crude
7 oil that meets TransCanada's spec at a receipt point
8 called Hardesty, Alberta.

9 Q. Okay. But the North Dakota oil would
10 be a different type of oil that you would not want
11 intermingled with the Canadian oil; correct?

12 A. I wouldn't say not want. I think
13 operationally and the way that the value that is
14 being added by Keystone is that we're trying to batch
15 different types of -- of product and -- and ensure
16 that there's as minimal amount of comingling as
17 possible.

18 Q. Okay.

19 A. Typically when you get high-grade
20 crude, if you comingle it with something of -- of
21 lesser value, your high-grade crude gets discounted
22 heavily.

23 Q. Okay. And so I guess my question very
24 simply is this: You currently have contracts for
25 Canadian oil, the delivery of a certain amount of

1 Canadian oil. Are you going to be able to maintain
2 consistent delivery of whatever it's for -- I think
3 you said 340,000 barrels a day -- if and when North
4 Dakota wishes to use your pipeline to deliver its
5 oil?

6 A. I think I answered this question a
7 little bit differently early in my testimony --

8 Q. Okay.

9 A. -- but what I'm suggesting is is that
10 TransCanada, slash, Keystone is open to discussions
11 with North Dakota producers. If there is an
12 opportunity to actually have North Dakota oil go down
13 Keystone, we are fully open to that discussion.

14 Q. And I understand that, Mr. Cowling. I
15 guess maybe I can better explain it this way. You've
16 testified that you don't want North Dakota oil
17 comingling with your Canadian oil; correct?

18 A. Actually I'll reword it. We don't --
19 actually as it relates to Hardesty, we have different
20 customers and different types of oils.

21 Q. Okay.

22 A. So it actually -- we've got batches
23 going down our pipeline system even from Hardesty.
24 So different customers, we've tried to batch their
25 oil so this is not a North Dakota phenomenon. It's

1 back to Hardesty, Alberta.

2 Q. Okay. So adding oil from North Dakota
3 or South Dakota or any one of the other states along
4 the line will not impede in any way your ability to
5 get the oil that you've currently contracted for to
6 your customers?

7 A. That certainly is our -- is our plan.
8 We've got certain contracts in place right now, and
9 we -- we've got contracts in place and that's -- our
10 plan is not to impede or not to be able to deliver on
11 our contractual commitments.

12 Q. And maybe I'll try to articulate my
13 concern. My concern would be that you currently have
14 an obligation right now. You've got contracts in
15 place. And if you are indeed a common carrier and
16 you have an obligation to North Dakota, South Dakota,
17 whatever other states you're going through, are you
18 going to be able to fulfill your obligation to those
19 you've contracted with yet at the same time add or
20 allow for that matter these other states or other
21 suppliers to use your pipeline?

22 A. Well, I think I already mentioned that
23 as well. We're -- we're building our pipeline to a
24 nominal capacity of 435,000 barrels initially. The
25 contract's for 340. We're not going to enter --

1 we're not going to -- the contracts that we sign, we
2 will -- we will follow through on so, no.

3 Q. Okay. Let's talk about supply. In
4 North Dakota are you aware of what -- the quantity of
5 supply North Dakota has and how much -- how much
6 capacity they would take up if they were to
7 interconnect?

8 A. Generally I think the Williston Basin
9 subject to check I think is 200,000 barrels a day and
10 I think when you take a look at North Dakota, I think
11 about half of that is -- is produced in North Dakota,
12 at least half. Currently today there's a pipeline
13 that actually takes that oil out of North Dakota from
14 the western side of North Dakota moving it east. And
15 there is -- so there is a pipeline today that does
16 that. I believe that pipeline has actually -- has
17 been operating at or very close to -- to capacity,
18 and I believe that pipeline actually has expansion
19 plans, at least if I can recall that I have read
20 in -- in newspapers or -- or other articles that I
21 have read.

22 Q. So have you explored how much capacity
23 North Dakota would need if -- if and when they were
24 to interconnect?

25 A. No. I think that's going to be up to

1 the North Dakota --

2 Q. Okay.

3 A. -- producers to -- to let us understand
4 what business model they might have and what
5 requirements they might have.

6 Q. Now, we've talked a little bit about
7 the North Dakota common carrier statutes. This
8 pipeline is going through a number of states. Are
9 there similar -- you're in charge of permitting and
10 that sort of thing so I guess if you don't -- if you
11 don't know, then you don't know. But are there
12 similar statutes or obligations that you have in
13 other states where you would have to allow them to
14 interconnect with your pipeline?

15 MR. KELSCH: Your Honor, I'm going to
16 object to this question. I think it's certainly
17 beyond the scope of any direct and questions from
18 this commission. It's also probably beyond the scope
19 of this proceedings talking about other states.

20 MR. DELANEY: I guess if I could
21 respond briefly, your Honor.

22 MR. WAHL: Go ahead.

23 MR. DELANEY: My concern is -- is their
24 capacity. And if they have an obligation to North
25 Dakota and they have similar obligations to other

1 states, I think that would have a direct impact on
2 their ability or lack thereof to allow North Dakota
3 to connect.

4 MR. WAHL: The objection's overruled.
5 You may have to restate the question for the witness.

6 MR. DELANEY: I'll -- I'll try. And
7 it's confusing, I'll try and rephrase.

8 Q. (Mr. Delaney continuing) I'm -- we've
9 talked about the North Dakota common carrier statutes
10 and your obligation as a pipeline company to allow
11 North Dakota to connect if -- if they desire to. Are
12 there similar obligations that you have to suppliers
13 in other states?

14 A. I think --

15 MR. KELSCH: Your Honor, he has
16 testified that he is aware that there's a federal
17 FERC obligation that controls the operation of the
18 pipeline, but to expect this witness to -- to know
19 the state-by-state regulations....

20 MR. WAHL: Well, but then, Mr. Kelsch,
21 his answer is he doesn't know. You should try to
22 answer the question as best you can, Mr. Cowling. If
23 you don't know, you don't know.

24 A. Actually subject to check, the way that
25 I would answer that question is actually each state

1 has different state regulatory requirements, and
2 we're currently working our way through those
3 regulatory requirements, including North Dakota.

4 Q. (Mr. Delaney continuing) Have you
5 looked at or studied the quantity of supply in the
6 other states that the pipeline is passing through?

7 A. The company -- I would suggest to you
8 that we've done preliminary review. I would suggest
9 to you that today as it relates to supply, North
10 Dakota is -- is -- has probably the biggest supply
11 out of -- out of the states that we go through.

12 Q. So are you representing to this
13 commission that regardless of what regulations govern
14 any other states and regardless of what quantities of
15 oil they may wish to have you transport, you are
16 guaranteeing that any oil North Dakota wishes to
17 transport they will be able to do so through your
18 pipeline?

19 A. No, I'm not. I'm suggesting to you
20 that -- or is that we will have discussions with the
21 North Dakota producers and that we would -- that we
22 would need to sit down and work through their
23 requirements, what the -- what the pipeline
24 requirements are as it relates to pricing and -- and
25 spec, et cetera. What I said in my testimony is

1 TransCanada Keystone is willing and able to start
2 those discussions, and in subsequent testimony
3 we've -- we've actually had some initial
4 conversations.

5 Q. Okay. So hypothetically speaking if
6 North Dakota were to -- a North Dakota supplier were
7 to approach you and say, "I -- I want to use your
8 pipeline to transport oil. I have a hundred thousand
9 barrels per day that I want delivered through your
10 pipeline," what's the process then? I mean in terms
11 of figuring out whether you have capacity for that.

12 A. Well, it's -- it's a negotiation, and
13 we would run and look at our pipeline system. First
14 of all let me start with, I don't think that's
15 probably realistic.

16 Q. Okay. Well, and I'm just throwing out
17 a number.

18 A. What's -- you know, based on what I had
19 suggested earlier, that number is -- is very high.
20 What we would do is we would sit down with the
21 customer, and we would work out a commercial
22 transaction that made sense to both parties. And
23 there's two alternatives. One alternative is you
24 have spare capacity and you complete the facilities
25 required upstream. That would be pipe and other

1 auxiliary equipment, and you would provide the
2 service. As -- as we move forward -- and that's --
3 you know, based on where we're at today, at least my
4 understanding of the -- of the business here in North
5 Dakota, that's -- that's the way that that -- that
6 process would work.

7 Q. Okay. You mentioned it's a
8 negotiation. But my understanding is Keystone would
9 have an obligation if indeed there is a supplier in
10 North Dakota that wishes to use the pipeline; am I
11 right?

12 A. Yeah, there's two issues. We -- we
13 have a contract, and we have a tariff so we will
14 utilize that as part of our discussion. Now, when I
15 talk about negotiation, there will be other
16 facilities that would -- that potentially would be
17 required to get the product from to Keystone. So the
18 answer is we've got a -- we've got a contract, we've
19 got a tariff so those would be utilized in those
20 discussions.

21 Q. So am I correct in saying that
22 TransCanada Keystone Pipeline, LP, hasn't not done
23 any studies to assess the full potential capacity
24 needed to fulfill obligations to all of the states
25 along the line to allow them to transport oil?

1 A. The answer to that I believe is you're
2 correct.

3 Q. Okay.

4 A. And, you know, I'd just maybe close off
5 by saying the oil -- and again I believe North Dakota
6 is in actually a very -- very nice position here
7 where North Dakota actually has what I would call a
8 significant amount of oil resource compared to some
9 of your other state companions.

10 Q. Would you consider yourself an expert
11 in economics?

12 A. Absolutely not.

13 Q. Okay. You spoke -- you spoke of the
14 world market and that oil prices are dictated by a
15 world market; is that correct?

16 A. Yes. Well, if you take a look at
17 pricing, there's -- there's pricing out of OPEC,
18 there's pricing out of New York City and a bunch of
19 other different exchanges. It -- the pricing
20 typically does not get down into -- at -- from an oil
21 perspective down into the -- the regional and driven
22 by more global indicators.

23 Q. Okay. So am I correct in saying that
24 this pipeline project will not in any way affect the
25 world market price of oil?

1 A. This pipeline project will -- as per my
2 testimony, with the declining production in -- in the
3 U.S. and the increasing production in Canada, will
4 alleviate a portion of that -- of that production
5 shortfall in the U.S. And just give me one second
6 here, and I'll -- I'll pull this out.

7 Q. Well, I guess that doesn't really
8 answer my question. My question is, will the
9 pipeline project and its delivery of oil to Canada --
10 from Canada to the U.S. in any way change the price
11 of oil that's been set by the world market? And I'm
12 just talking change the price, not alleviate need or,
13 you know, supply and demand but the price.

14 A. I think at the world level, no. I
15 think at the regional level with regards to PADD II
16 there will be -- at least in my opinion there will be
17 benefits.

18 Q. Is there a difference in refining costs
19 with respect to the crude oil coming from Canada
20 versus the oil that would come from offshore sources?

21 A. I think I've already answered that
22 question earlier where at least I'm -- I believe that
23 our delivery points would need to invest in -- or in
24 the delivery points that we'd be delivering to to
25 take our crude.

1 Q. They would have to make investments
2 and --

3 A. -- retrofit --

4 Q. Okay.

5 A. -- the refinery as an example.

6 Q. Okay. And so that there could be
7 increased costs in refining this particular type of
8 oil that's going to be transported?

9 A. In my opinion, no.

10 Q. What do you base that opinion on?

11 A. That is -- I base that on my experience
12 and knowledge.

13 Q. With oil refining, what experience and
14 knowledge do you have in the refinery process?

15 A. I -- based on my experience with
16 regards to the world or the U.S. domestic consumption
17 of oil which I believe is about 20 million barrels a
18 day, I don't think this will have a significant
19 impact.

20 Q. Do you consider yourself an expert on
21 the cost of the oil refinery process?

22 A. No.

23 Q. Are there any agreements in place with
24 Conoco with respect to this pipeline?

25 A. ConocoPhillips is a shipper on this

1 pipeline.

2 Q. Okay. Is there any agreement with
3 Conoco as to the future purchase of the pipeline?

4 MR. KELSCH: Your Honor, again I'm
5 going to object. I know that there's some latitude,
6 but we have long hearings here this afternoon and
7 tomorrow and I -- I think that we need to have some
8 restraint in some of these areas that are totally
9 beyond any of the direct testimony or questions by
10 the commission or staff and have really no relation
11 to the issues set forth by the commission for this
12 issue of public convenience and necessity.

13 MR. WAHL: That was actually my
14 thought, Mr. Delaney. What's the purpose? What's
15 the relevance of this testimony?

16 MR. DELANEY: I wanted to follow up on
17 the testimony regarding the taxes that would be paid
18 and whether or not that obligation would at all
19 change in the event that a separate entity were to
20 purchase the pipeline.

21 MR. WAHL: Notwithstanding my -- my
22 advice to counsel for the prehearing conference, I --
23 the objection is sustained.

24 MR. DELANEY: Okay.

25 MR. WAHL: I mean, let's -- let's move

1 ahead and focus.

2 MR. DELANEY: I guess I have no further
3 questions then.

4 MR. WAHL: All right. Follow-up,
5 Mr. Binek?

6 MR. BINEK: No.

7 MR. WAHL: Anything further from the
8 commission?

9 MS. WEFALD: No.

10 MR. WAHL: Commissioner Clark?

11 MR. CLARK: Well, just very briefly.

12 EXAMINATION

13 BY MR. CLARK:

14 Q. I mean, there was some discussion about
15 where the pipeline's going through and other
16 producing regions of the country. This pipeline is
17 going through North Dakota, South Dakota. It then
18 enters --

19 A. Nebraska.

20 Q. Nebraska. Iowa.

21 A. Kansas.

22 Q. Okay.

23 A. And then turns easterly through Kansas,
24 Missouri and Illinois. And the Cushing extension
25 from Kansas through to Oklahoma.

1 Q. Is it safe to say that the only major
2 other oil-producing region that it's running close to
3 is the Kansas-Oklahoma region?

4 A. Yes.

5 MR. CLARK: Okay. Thank you.

6 MR. WAHL: Anything further from the
7 commission?

8 MR. CRAMER: Nothing.

9 MS. WEFALD: Nothing.

10 MR. WAHL: Quickly, Counsel, any
11 follow-up to Commissioner Clark?

12 MR. KELSCH: No.

13 MR. WAHL: Mr. Delaney?

14 MR. DELANEY: No.

15 MR. WAHL: Mr. Binek?

16 MR. BINEK: No.

17 MR. WAHL: All right. Thank you very
18 much, Mr. Cowling.

19 MR. COWLING: Thank you.

20 MR. WAHL: Mr. Kelsch.

21 MR. KELSCH: I would call Mike Diller
22 to the stand.

23 (Whereupon, Exhibit No. T8
24 was marked for identification by
the court reporter.)

25 MR. WAHL: Mr. Diller, as you are well

1 aware from your experience, your testimony is
2 required to be under oath, and I am required by law
3 to advise you regarding perjury before administering
4 the oath. Perjury is a false statement of material
5 fact which you do not believe to be true; in other
6 words, generally speaking a lie. In North Dakota
7 perjury is a class C felony punishable by a fine up
8 to \$5,000, imprisonment for a period of up to five
9 years or both.

10 Will you raise your right hand, please?
11 Mr. Diller, do you swear that the testimony which you
12 are about to give in this matter shall be the truth,
13 the whole truth and nothing but the truth?

14 MR. DILLER: I do.

15 MR. WAHL: Mr. Kelsch.

16 MR. KELSCH: Thank you, your Honor.

17 EXAMINATION

18 BY MR. KELSCH:

19 Q. Mr. Diller, could you please state your
20 name for the record?

21 A. Mike Diller.

22 Q. And what's -- you -- you work with the
23 Public Service Commission?

24 A. I'm the director of accounting.

25 Q. Okay. And what are your

1 responsibilities as -- generally in that position?

2 A. Sure. I am responsible for internal
3 accounting matters as well as analyzing rate cases
4 and prudency cases and things of that nature.

5 Q. What's your educational background?

6 A. I have a degree in accounting. I'm
7 also a certified public accountant. And as far as
8 experience, I've been working for public utility
9 commissions for about 25 years.

10 Q. How long have you been with the North
11 Dakota Public Service Commission?

12 A. Nineteen.

13 Q. Have you had a chance to -- or as part
14 of your -- your job or -- and position at the North
15 Dakota Public Service Commission, did you have a
16 responsibility to review the Keystone -- TransCanada
17 Keystone pipeline application?

18 A. Yes.

19 Q. And what did that review entail?

20 A. Well, it entailed looking at the
21 application for one. And attached to the application
22 of course is the company's last annual report
23 prepared by their external auditors. And so looking
24 at the financial information that is in there. I
25 mean, normally I also go out on the Internet and --

1 and look at some financial Web sites just to get
2 some -- some feeling of security I guess in making a
3 recommendation.

4 Q. So as part of your position for the
5 commission, you make a recommendation to the
6 commission concerning the, what, fitness of the
7 company or financial ability of the company?

8 A. Financial viability, yes.

9 Q. Okay. And did you make a
10 recommendation concerning TransCanada Keystone to the
11 commission?

12 A. I did. I -- for purposes of this
13 hearing, I think TransCanada has plenty of equity to
14 make this investment.

15 Q. Okay. Did -- did you prepare a written
16 memorandum for the commission?

17 A. I did. That's dated June 5, 2007.

18 Q. And I think in front of you or just off
19 to the side of you is one that's marked Exhibit -- I
20 believe it's T8. Is that the memo -- or a copy of
21 the memo that you prepared?

22 A. Looks -- it looks like the same one.

23 Q. Okay. In -- in looking at the
24 viability of Keystone, you also looked at the -- the
25 I guess financial viability of the -- their parent --

1 its parent company TransCanada?

2 A. Well, I -- yeah, let me make myself
3 clear here. I look at the parent company. I'm not
4 looking at -- at a subsidiary or Keystone
5 specifically.

6 Q. Okay. So that -- so when you make --
7 made your recommendation, you're looking at -- at
8 TransCanada's?

9 A. That's correct.

10 Q. And did -- did you in this case go out
11 on the Internet and do other checking concerning
12 TransCanada's financial status?

13 A. A little bit.

14 Q. Okay. What -- what type of things did
15 you look at?

16 A. Well, one thing that I like to look
17 at -- there's a number of things, but -- but one you
18 get off the Internet, you get up-to-date information,
19 and I like to -- to see what the -- the market places
20 a value on TransCanada as opposed to, you know, what
21 the company has acquired over time what the value
22 of the -- of the property might be, book value if you
23 want to use that word. But -- so the -- you know, I
24 found out that the market capitalization is around
25 20 billion as opposed to stockholder equity reported

1 in the 2006 annual report of 7 billion. So basically
2 what that tells me is the market values the company
3 at about three times what it has paid for its assets,
4 the net assets.

5 Q. Is that a sign of a good company or a
6 good investment or....

7 A. It's something you want, yes.

8 MR. KELSCH: Okay. I would offer
9 Exhibit T8.

10 MR. WAHL: Mr. Delaney?

11 MR. DELANEY: I have no objection.

12 MR. WAHL: Mr. Binek?

13 MR. BINEK: No obligation.

14 MR. WAHL: Exhibit T8 is received.

15 Q. (Mr. Kelsch continuing) Mr. Diller, is
16 it your opinion that TransCanada has sufficient
17 capital to service and provide service for a pipeline
18 in North Dakota?

19 A. That's my recommendation to the
20 commission.

21 Q. Do you -- did you see any financial
22 reason for the commission to deny the -- this request
23 for a public convenience and necessity?

24 A. Could you restate that question?

25 Q. Did -- I guess looking at the financial

1 ability of TransCanada Keystone, do you see any
2 reason for that to recommend -- to deny the -- the
3 public --

4 A. The reason I asked for a restatement, I
5 just wanted to make sure you understand I'm just here
6 as a witness as far as financial viability, and
7 that's -- I think I concluded in my memo that there's
8 no reason to deny TransCanada a PC & N as far as
9 financial viability is concerned.

10 MR. KELSCH: Okay. Thank you. No
11 further questions.

12 MR. WAHL: Mr. Delaney.

13 MR. DELANEY: Very briefly, your Honor.

14 EXAMINATION

15 BY MR. DELANEY:

16 Q. So you just did an assessment on
17 financial viability; is that correct?

18 A. That's correct.

19 Q. So in that memorandum where you're
20 stating you see no reason why their application
21 should be denied, you're basing that only upon your
22 review of their financial viability; correct?

23 A. That's correct.

24 Q. You're not touching at all on the issue
25 of public necessity or economic benefit to North

1 Dakota?

2 A. No.

3 MR. DELANEY: Okay. That's all I have.

4 MR. WAHL: Mr. Binek.

5 MR. BINEK: No questions.

6 MR. WAHL: Does any commissioner have
7 any question of the witness? Commissioner Cramer?

8 MR. CRAMER: I don't because I think we
9 have a late-filed exhibit that's going to address it
10 so I don't have any.

11 MR. WAHL: Anything further --

12 MS. WEFALD: No.

13 MR. WAHL: -- from the commission?

14 All right. Thank you very much,

15 Mr. Diller.

16 MR. DILLER: Thank you.

17 MR. WAHL: Mr. Kelsch.

18 MR. KELSCH: I would call Mark Makelky
19 to the stand.

20 MR. WAHL: Mr. Makelky, as you have
21 heard me advise previous witnesses, your testimony is
22 required to be under oath, and I am required by law
23 to advise you regarding perjury before administering
24 the oath. Perjury is a false statement of material
25 fact which you do not believe to be true; in other

1 words, generally speaking a lie. In North Dakota
2 perjury is a class C felony punishable by a fine up
3 to \$5,000, imprisonment for a period of up to five
4 years or both.

5 Will you raise your right hand, please?
6 Being advised regarding perjury, Mr. Makelky, do you
7 swear that the testimony which you are about to give
8 in this matter shall be the truth, the whole truth
9 and nothing but the truth?

10 MR. MAKELKY: I do, your Honor.

11 MR. WAHL: Mr. Kelsch.

12 MR. KELSCH: Thank you, your Honor.

13 EXAMINATION

14 BY MR. KELSCH:

15 Q. Mr. Makelky, could you please state
16 your name for the record?

17 A. My name is Mark Makelky. I'm the
18 director of the North Dakota Pipeline Authority.

19 Q. Okay. And how long have you been in
20 that position?

21 A. About a month and a half.

22 Q. What were you doing before that time
23 just generally?

24 A. Prior to that time I spent
25 approximately 30 plus years working for MDU Resources

1 Group mostly in their pipeline entity, Williston
2 Basin Interstate Pipeline Company.

3 Q. What's your educational background
4 generally?

5 A. I have a bachelor of science degree in
6 civil engineering from the University of North
7 Dakota. I'm a registered professional engineer in
8 North Dakota and three other states.

9 Q. And -- and this is a new position; is
10 that -- that's been established; is that correct?

11 A. That's correct. Actually I brought a
12 new statement to read into the record, and I have
13 some of this intro stuff at the beginning, if I could
14 be allowed to read my statement into the record.

15 Q. I have no objection.

16 A. And I have copies for whoever....

17 MR. WAHL: Mr. Delaney.

18 MR. DELANEY: I have not seen the
19 statement.

20 MR. WAHL: Yeah. Why don't -- and,
21 Mr. Delaney, in the interest of time, why don't
22 you -- may I have one too, please? Let's see what it
23 looks like.

24 Mr. Delaney, if you'd just scan this
25 quickly, let's see whether that might not be more

1 productive.

2 MR. CLARK: Can I -- is this -- is this
3 intended to replace the previous testimony or just
4 supplement?

5 MR. WAHL: Well, I think -- Mr. Kelsch.

6 MR. KELSCH: Well, the other one's
7 already an exhibit so I guess this would be a --

8 MR. WAHL: No. What's an exhibit?

9 MR. KELSCH: The previous letter from
10 Mr. Makelky was Exhibit --

11 MR. WAHL: Oh, I'm sorry.

12 MR. KELSCH: -- admitted --

13 MR. WAHL: All right.

14 MR. KELSCH: -- as an Exhibit T2.

15 MR. WAHL: Well, then I suggest -- I'm
16 sorry. I misunderstood that. Then I suggest,
17 Mr. Kelsch, that you consider offering this as an
18 exhibit to supplement T2.

19 On second thought, that's not a good
20 idea. If this -- Mr. Kelsch, just looking at this
21 now, if Keystone -- if TransCanada Keystone would
22 offer this as Mr. Makelky's testimony, then he will
23 have to read it into the record.

24 MR. KELSCH: He will have to read it
25 into the record?

1 MR. WAHL: Yes. Now, I'm not
2 suggesting, I'm not implying that it -- that it has
3 to be offered. But if it will be offered, then it
4 has to be read for the benefit of the public
5 attendees.

6 MR. KELSCH: Yes, we would offer it,
7 and I would request this witness read it in as --

8 MR. WAHL: It's T8.

9 MR. KELSCH: -- as T9.

10 MR. WAHL: Or T9. T9. I'm sorry.

11 (Whereupon, Exhibit No. T9
12 was marked for identification by
the court reporter.)

13 MR. WAHL: Mr. Delaney?

14 MR. DELANEY: I have no objection.

15 MR. WAHL: Mr. Binek?

16 MR. BINEK: No objection.

17 MR. WAHL: Mr. Kelsch. I'm sorry. T9
18 is received. You may proceed, Mr. Kelsch.

19 Q. (Mr. Kelsch continuing) Okay. Then,
20 Mr. Makelky, I guess you're authorized to read your
21 statement into the record.

22 A. I guess to restate: My name is Mark
23 Makelky. I am the director of the North Dakota
24 Pipeline Authority. During the 2007 legislative
25 session, the North Dakota Pipeline Authority was

1 created for the purpose of diversifying and expanding
2 the North Dakota economy by facilitating development
3 of pipeline facilities to support the production,
4 transportation and utilization of North Dakota
5 energy-related commodities thereby increasing
6 employment, stimulating economic activity, augmenting
7 sources of tax revenue, fostering economic stability,
8 and improving the state's economy.

9 The North Dakota Industrial Commission,
10 Governor John Hoeven, Attorney General Wayne
11 Stenehjem and Agricultural Commissioner Roger
12 Johnson, acting as the North Dakota Pipeline
13 Authority has previously submitted a letter
14 indicating their support of the TransCanada Keystone
15 Pipeline project.

16 Canada is the largest exporter of crude
17 oil to the United States comprising over 11 percent
18 of our imports. Growing oil production in Canada has
19 the potential to decrease our dependence on crude oil
20 from more unstable parts of the world. Pipeline
21 projects such as Keystone are essential in order to
22 move that crude oil into the United States to ensure
23 secure future supplies of energy.

24 The Keystone pipeline could provide a
25 direct benefit to North Dakota if its producers or

1 pipeline companies are able to connect their
2 facilities to it. That would provide another
3 delivery path for North Dakota-produced crude oil to
4 access Midwest markets that pay premium prices for
5 light sweet crude oil. Capacity bottlenecks on
6 present pipeline infrastructure have created a
7 situation where North Dakota crude oil has suffered
8 price penalties of 5 to \$30 per barrel. We are aware
9 of at least one company -- North Dakota company that
10 has expressed an interest in connecting its
11 facilities to the Keystone system.

12 In addition, Keystone provides the
13 indirect benefit of relieving some capacity problems
14 on other parts of the crude oil pipeline system. The
15 majority of North Dakota crude oil is shipped through
16 the Montana-Wyoming-Colorado-Nebraska pipeline
17 infrastructure referred to as Guernsey Hub which is
18 filled to capacity with oil supplies from Canada.
19 Construction of the Keystone pipeline is expected to
20 relieve some strain on the Guernsey Hub. This would
21 allow more North Dakota production and -- excuse me,
22 more production and thereby increase mineral
23 royalties paid to North Dakota citizens and increase
24 state tax revenues to help fund schools and other
25 government functions across the state.

1 According to the U.S. Transportation --
2 U.S. Department of Transportation statistics,
3 pipelines are the safest method of transporting
4 petroleum products. Pipelines are the most efficient
5 and economical method of shipping large quantities
6 needed by this country on a daily basis.

7 If due care is provided during
8 construction to prevent damage to the pipe and its
9 coating system and adequate cathodic protection
10 methods are applied to the pipe with regular
11 monitoring to ensure its effectiveness, a pipeline
12 system can last for decades without significant
13 deterioration of the pipe itself. And with proper
14 pipeline patrol and inspection programs to minimize
15 chances of third-party mechanical damage to
16 facilities, the risk of failure is reduced even
17 further. Finally, appropriate emergency response,
18 spill prevention and containment programs can
19 minimize the effects of any leak and prevent
20 significant environmental damage on the remote chance
21 that something does happen to that pipe. Keystone
22 has gone on record as planning to meet or exceed
23 industry standards in all these regards.

24 I am not here to comment on routing
25 issues. The physical location of the pipeline is a

1 matter best resolved by the company representatives,
2 the affected landowners and the Public Service
3 Commission.

4 Thank you for this opportunity to
5 appear before the Public Service Commission and
6 express the position of the North Dakota Industrial
7 Commission acting in its capacity as the North Dakota
8 Pipeline Authority.

9 Q. I -- just have I think one further
10 question, Mr. Makelky. As this letter indicates,
11 that the Industrial Commission has -- and in the
12 previous letter that is Exhibit -- Exhibit T2 that
13 you had sent in on June 27th of '07, the Industrial
14 Commission did support the TransCanada Keystone
15 Pipeline project and it still supports it currently;
16 is that right.

17 A. Yes, sir, that's correct.

18 MR. KELSCH: Okay. I have no further
19 questions, your Honor.

20 MR. WAHL: Mr. Delaney?

21 MR. DELANEY: Yes.

22 EXAMINATION

23 BY MR. DELANEY:

24 Q. Mr. Makelky, you've -- you stated
25 you've been the director of the North Dakota Pipeline

1 Authority for a month and a half; is that right?

2 A. Correct.

3 Q. Perfect timing. I guess I want to
4 touch on a few things in your testimony here. First
5 and foremost, you noted that these capacity
6 bottlenecks have caused some of the North Dakota oil
7 producers to suffer price penalties of \$5 to \$30 per
8 barrel. Where are those figures derived from?

9 A. That comes from North Dakota Oil and
10 Gas Commission.

11 Q. Okay. And who is the North Dakota
12 company that's expressed interest in connecting its
13 facilities with Keystone?

14 A. I'm not familiar with their name. We
15 just know that there have been conversations between
16 one company and Keystone. Certain of those --

17 Q. How did you -- oh, I'm sorry. Go
18 ahead.

19 A. Through the Oil and Gas Commission I
20 was aware of conversations.

21 Q. Are you at all aware of how the North
22 Dakota Oil and Gas became aware of these
23 conversations?

24 A. No, sir, I'm not.

25 Q. Okay. So you don't have any direct

1 knowledge of any negotiations or conversations that
2 Keystone's had with a North Dakota oil supplier?

3 A. No personal knowledge, that's correct.

4 Q. Okay. You also note that the
5 construction of the Keystone pipeline is expected to
6 relieve some strain on the Guernsey Hub. So am I
7 correct in saying that some of the oil that's now
8 shipped through this other pipeline would potentially
9 go through the Keystone pipeline if indeed there was
10 a connection?

11 A. That's possible.

12 Q. Well, then what's the basis for the
13 statement that it would relieve some of the strain on
14 the Guernsey Hub?

15 A. If the Keystone pipeline is not
16 constructed, this supply would have to come to the
17 United States some way, possibly placing further
18 pressure on the existing facilities that are in the
19 western part of the state and in Montana that come
20 from Canada now.

21 Q. Okay. So you're saying if this
22 pipeline isn't constructed, the crude oil from Canada
23 that they intended to -- to ship through the Keystone
24 pipeline would have to potentially go through the
25 Guernsey Hub?

1 A. Or at least compete with other
2 suppliers there.

3 Q. Okay. I -- I presume there's other
4 alternatives such as putting a pipe -- putting in a
5 new pipeline in some other states? I mean, would
6 that be an alternative?

7 A. There aren't very many present
8 alternatives in North Dakota.

9 Q. Okay.

10 A. You know, and as I mentioned, the
11 majority of the pipelines are full to capacity now.

12 Q. Now, are you aware of any contract that
13 Keystone has with any North Dakota oil supplier?

14 A. No, sir, I'm not.

15 Q. Okay. You also -- you touched on a
16 number of safety measures that can be taken, and I'm
17 curious to know what your experience has been with
18 other Keystone pipelines.

19 A. I have no experience with Keystone
20 pipelines. My information comes from the public
21 record, the things they've gone on record as saying,
22 their Web site, their filings with the Public Service
23 Commission, other public documents.

24 Q. Okay. So your testimony here is based
25 on what Keystone is saying they will do, not

1 necessarily based upon their record in the past in
2 what they have done?

3 A. That's correct.

4 MR. DELANEY: Okay. I have no further
5 questions.

6 MR. WAHL: Mr. Binek?

7 MR. BINEK: I have no questions for
8 this witness.

9 MR. WAHL: Any questions from the
10 commission? Commissioner Cramer?

11 MR. CRAMER: I have one or two.

12 EXAMINATION

13 BY MR. CRAMER:

14 Q. Are the three elected members of the
15 Industrial Commission aware that you're here
16 testifying today?

17 A. Yes, sir, they are.

18 Q. Was the vote to support this and to
19 write this letter? Realizing all three signed it,
20 was that a unanimous vote by all three members of the
21 commission; do you know?

22 A. I do not.

23 Q. Okay. With regard to the company that
24 is unnamed that has had -- you know of has had
25 negotiation or at least has begun contact with

1 Keystone, are -- are any or all of them, elected
2 members of the commission, aware of who that company
3 is; do you know?

4 A. I am not certain, but I believe they
5 have the same knowledge I have.

6 Q. All right.

7 A. Maybe more so. Probably so.

8 MR. CRAMER: I have nothing else.

9 MR. WAHL: Anything -- any further
10 questions from the commissioners?

11 Mr. Kelsch, follow-up to Commissioner
12 Cramer's question?

13 EXAMINATION

14 BY MR. KELSCH:

15 Q. Would -- Mr. Makelky, would this
16 Keystone pipeline have any adverse effect on any
17 existing pipelines in North Dakota that you're aware
18 of, if you know?

19 MR. DELANEY: Objection. Foundation.

20 MR. WAHL: Overruled.

21 A. Please explain negative effect. I'm
22 not sure I understand the question.

23 Q. (Mr. Kelsch continuing) Is this
24 competing with any other producer that would be -- I
25 mean, are there any other pipelines in this area of

1 the state?

2 A. What's your question? Is there any
3 other pipelines in this area of the state?

4 Q. Yes. Yeah. As proposed.

5 A. Very few crude oil pipelines. Two
6 east-west ones that I'm aware of.

7 Q. No north-south pipeline?

8 A. No, sir.

9 Q. As -- in your position would your
10 agency be an entity that may help the North Dakota
11 producers put together an organization or a group to
12 get the crude over to this pipeline?

13 A. I believe it's the Pipeline Authority's
14 charge to assist all groups whether it be production
15 pipeline, anything that could be augmented by the
16 capacity of pipelines, energy-related pipelines.

17 MR. KELSCH: No further questions.

18 MR. WAHL: Follow-up, Mr. Delaney.

19 MR. DELANEY: Very briefly.

20 EXAMINATION

21 BY MR. DELANEY:

22 Q. As -- as to North Dakota oil suppliers,
23 are you aware of the closest North Dakota oil
24 supplier to the current proposed route by the
25 pipeline company?

1 Keystone pipeline?

2 A. I believe that's possible, yes, sir.

3 Q. And then --

4 MR. CRAMER: Well, I have nothing else.

5 MR. WAHL: Commissioner Clark?

6 EXAMINATION

7 BY MR. CLARK:

8 Q. Would it be -- would it be possible for
9 you to submit something perhaps late filed just
10 following up on Commissioner Cramer's question
11 regarding whether it was a unanimous vote of the
12 Industrial Commission or whether the individual
13 members of that have differences of opinion, whether
14 it's a split decision?

15 MR. CRAMER: Perhaps the minutes of the
16 meeting.

17 MR. CLARK: Or maybe, yeah, just the
18 minutes.

19 A. I cannot say what those gentlemen want.
20 The statement that you have that I read into the
21 record today, they have reviewed it, and they
22 understood that I was headed here to prepare -- or
23 to -- to read it into testimony and they gave their
24 approval.

25 Q. (Mr. Clark continuing) So individually

1 each -- each of the members gave their approval of
2 the....

3 A. They did not object to what I wrote
4 with the intention to present here today.

5 Q. Okay. Thank you. But there wouldn't
6 be a vote?

7 A. I don't believe there was a formal --
8 it was not a formal agenda item at any Industrial
9 Commission meeting, my presence here today. The
10 prior letter to Keystone in support of the project
11 was a topic at an Industrial Commission meeting where
12 it was formally approved.

13 Q. And that was unanimous?

14 A. I believe it was unanimous --

15 Q. Okay.

16 A. -- at that time, yes, sir.

17 MR. CLARK: Thank you.

18 MR. WAHL: Commissioner Cramer?

19 EXAMINATION

20 BY MR. CRAMER:

21 Q. Well, I -- is -- has there been any
22 discussion about the possibility that -- that
23 Canadian crude coming down the Keystone pipeline
24 could displace North Dakota sweet crude in any way in
25 any market?

1 A. No, sir, I'm not aware of any
2 displacement conversations.

3 MR. CRAMER: All right. That's all I
4 have.

5 MR. WAHL: Anything further from the
6 commission?

7 All right. Quickly, Counsel.
8 Mr. Kelsch?

9 MR. KELSCH: Nothing further.

10 MR. WAHL: Mr. Delaney?

11 MR. DELANEY: Nothing further.

12 MR. WAHL: Mr. Binek?

13 MR. BINEK: Nothing further.

14 MR. WAHL: All right. Thank you very
15 much, Mr. Makelky. Commissioner -- or Mr. Kelsch.

16 MR. KELSCH: That concludes our
17 witnesses here, your Honor.

18 MR. WAHL: All right. As you can see,
19 we're -- it's -- we're on the noon hour, and we have
20 just finished a portion of the -- of the hearing. We
21 are not obviously going to finish this hearing this
22 morning, and we are required to commence the hearing
23 on the siting application at its scheduled time at
24 1:00 this afternoon.

25 Now, there really -- there are no good

1 choices, but the best choice in my judgment is that I
2 will recess and continue this hearing to this
3 afternoon. And I -- I regret very much that that is
4 an inconvenience for you, but I really have no other
5 choice and provide a means for you to offer your
6 testimony.

7 Now, I also point out to you that I
8 suspect that anybody here who had evidence to offer
9 on the question of the certificate of public
10 convenience and necessity this morning also has
11 testimony to offer on the siting I rather expect.
12 And if that's the case, what we will do, what I will
13 do this afternoon is we will hear all of the
14 testimony regardless whether it relates to the
15 certificate of public convenience and necessity or
16 whether it relates to the siting.

17 But we -- I must convene the scheduled
18 hearing this afternoon according to the notice that
19 was given, and I will do that promptly at 1:00. We
20 will hear that -- we will hear that evidence or that
21 presentation. We'll see where we are with the
22 lawyers, I'll talk to them over the noon hour, and
23 then just as quickly as we're able to do that we will
24 hear the public testimony.

25 We will be in recess until 1:00. I

1 wish to talk to the lawyers, please, before you
2 leave. This hearing is recessed and continued until
3 a time later this afternoon.

4 (A recess was taken from 12:07 p.m. to
5 1:01 p.m.)

6 (Whereupon, Exhibit Nos. RS1-RS3
7 were marked for identification
8 by the court reporter.)

8 MR. WAHL: Good afternoon. Those of
9 you who were not here this morning, if anybody, I am
10 Al Wahl, the administrative law judge designated by
11 the Office of Administrative Hearings pursuant to the
12 request of the Public Service Commission to act as
13 the hearing officer for the hearing of an application
14 for a waiver of procedures and time schedules and
15 consolidated applications for a certificate of
16 corridor compatibility and route permit authority
17 authorizing construction of approximately 218 miles
18 of 30-inch crude oil pipeline and associated
19 facilities in Cavalier, Pembina, Walsh, Nelson,
20 Steele, Barnes, Ransom and Sargent Counties, North
21 Dakota.

22 This is Public Service Commission case
23 No. PU-06-421. Before proceeding with this hearing,
24 I will ask the commissioners for their comments and
25 any directions for the hearing. Commission President

1 Susan Wefald.

2 MS. WEFELD: Good afternoon once again.
3 We started out this morning at 9:00. I don't want to
4 take a lot of your time now with opening comments,
5 but this is now the siting portion of this meeting
6 and we're taking up a different case than we did this
7 morning. The siting involves many, many different
8 characteristics of a route as you're going to learn
9 in the near future by hearing the presentation by the
10 company. What I want to assure you is we did not get
11 to -- an opportunity to hear testimony this morning
12 in -- in the case preceding this on the public
13 convenience and necessity.

14 We are very interested in -- in
15 testimony from folks who have chosen to attend today.
16 So it's my understanding that at 2:00 this afternoon
17 after a one-hour presentation on the siting by the
18 applicant that we will have a chance to hear
19 testimony from people in the public who wish to
20 testify both on the public convenience and necessity
21 case that we heard this morning and/or the siting
22 application which is before the -- the commission
23 this afternoon. The hearing officer will give you
24 further direction about that as we come closer to
25 that time. Thank you very much for your patience.

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1 MR. WAHL: Commissioner Clark.

2 MR. CLARK: I too would just welcome
3 everyone again. I suspect that this may be the part
4 of the hearing that people have maybe a more specific
5 interest in because we -- we're moving from perhaps
6 the more general need for the pipeline to really the
7 site -- the site specific issues that I think a lot
8 of folks are probably interested in.

9 It's -- it's through this record that
10 we're going to look at the impact of the proposed
11 corridor, the proposed pipeline itself on North
12 Dakota's historic, cultural, environmental resources
13 and all of those agencies along the line that
14 permit -- permit the -- those -- those particular
15 activities with regard to the pipeline. So we
16 especially look forward to the testimony that you're
17 going to be providing, and I certainly individually
18 look forward to hearing your questions, your concerns
19 as we go through this process. Thank you.

20 MR. WAHL: Commissioner Kevin Cramer.

21 MR. CRAMER: Thank you, Judge Wahl. I
22 too just want to welcome you all back and welcome
23 those of you who are here for the first time today.
24 Your presence serves as tremendous testimony in and
25 of itself of the importance and the magnitude of this

1 project, and I appreciate it very much.

2 One of the things I often say is that
3 no one really knows what the Public Service
4 Commission does unless we do it poorly. And one
5 thing that this case has done, it has highlighted our
6 jobs, and we appreciate at least a little bit of
7 attention to -- to the important work that we have to
8 do here today.

9 This is a different hearing. Although
10 I assure you that anybody that has testimony that is
11 relevant to the PC & N as well as and maybe in
12 addition to or separate from the route permit, we
13 want to hear it all, and it is important and we will
14 not neglect any testimony on the PC & N that is
15 provided this afternoon.

16 We live in extraordinary times in an
17 energy-hungry society and world and nation with lots
18 of new technologies, new discoveries every day, and
19 it's our job to -- to look at it all in the context
20 of the whole. We will certainly be doing that, but
21 ultimately it is our job not so much to say yes or no
22 to the project as it is to make sure that if a
23 project is sited that it is sited properly with
24 minimal adverse effect on the economy and on people
25 and on the environment and on important cultural

1 resources. Those are things that we value in North
2 Dakota. Those are things that each of us as
3 individuals value and that we as a culture value.

4 So we look forward to a very thorough
5 record this afternoon and of course continuing on
6 tomorrow afternoon in Park River. Thank you for your
7 attention.

8 MR. WAHL: The record will show that it
9 is a little after 1:00 p.m., July 23, 2007, the time
10 and the date noticed for a hearing of the application
11 of TransCanada Keystone Pipeline, LLC, for a waiver
12 of procedures and time schedules and consolidated
13 applications for a certificate of corridor
14 compatibility and a route permit authorizing
15 construction of approximately 218 miles of 30-inch
16 crude oil pipeline and associated facilities referred
17 to as the Keystone pipeline in Cavalier, Pembina,
18 Walsh, Nelson, Steele, Barnes, Ransom and Sargent
19 Counties, North Dakota, as shown by the map which
20 is -- was -- is part of the notice of filing and the
21 notice of hearing.

22 The commission's notice of hearing
23 specified the following issues to be considered and
24 determined upon this hearing: First, will the
25 location, construction and operation of the proposed

1 pipeline produce minimal adverse effects on the
2 environment, natural resources and upon the welfare
3 of the citizens of North Dakota?

4 Second, is the proposed pipeline
5 compatible with the environmental preservation and
6 the efficient use of the resources?

7 Third, will the proposed pipeline
8 corridor and route minimize adverse human and
9 environmental impact while ensuring continuing system
10 reliability and integrity and ensuring that energy
11 needs are met and fulfilled in an orderly and timely
12 fashion?

13 And, fourth, is it appropriate for the
14 commission to waive the procedures as requested in
15 the application, including the request for a single
16 consolidated application for corridor certificate and
17 route permit?

18 Counsel, please state your appearance
19 for the record. Mr. Kelsch.

20 MR. KELSCH: Thomas D. Kelsch for
21 TransCanada Keystone, and with me is Jim White and
22 Todd Kranda.

23 MR. WAHL: Mr. Delaney.

24 MR. DELANEY: Nicholas R. Delaney here
25 on behalf of the intervenors, the Dakota Resource

1 Council, Ramona Klein, Merle and Linette Kratochvill,
2 Janie and John Capp and Mark Novak.

3 MR. KELSCH: And, Mr. Binek, will you
4 also please identify commission staff who will
5 participate in the hearing?

6 MR. BINEK: My name is William Binek.
7 I'm chief counsel for the Public Service Commission.
8 To my left is Patrick Fahn, a public utility analyst.
9 To my right is Mike Diller, chief accountant.
10 Actually Mr. Diller will not be participating in --
11 in this hearing, but he came with us so he's got to
12 stay.

13 MR. WAHL: Is there anybody here this
14 afternoon who was not here this morning and who
15 thinks -- who expects, who plans to testify this
16 afternoon or who may testify?

17 Okay. Let me tell you just -- there's
18 some people. All right. We -- we have changed our
19 plan just a little bit for everybody. We will
20 proceed this afternoon with the presentation by
21 TransCanada which will be a slide, PowerPoint
22 presentation that will I think give everyone here a
23 pretty good overview of the siting of the pipeline
24 location.

25 This morning we also heard evidence of

1 the requirements, the reasons for a certificate of
2 public convenience and necessity, and we were unable
3 to hear the public testimony then. We will hear that
4 testimony immediately after the presentation by
5 TransCanada Keystone.

6 That testimony will include both
7 testimony regarding the certificate of public
8 convenience and necessity. Those of you who want to
9 offer testimony on that question which you would have
10 had things moved a little quicker been able to do
11 this morning may do that this afternoon at the
12 completion of the presentation. If you also have
13 evidence that you wish to offer about the siting of
14 the pipeline, you may also do that.

15 Now, I understand some of you will be
16 in Park River tomorrow. Those of you who are going
17 to be in Park River and it would -- and are willing
18 to postpone your testimony tomorrow -- until tomorrow
19 in Park River, that would be very helpful. If you
20 decide to postpone your testimony to -- until Park
21 River tomorrow, you may offer testimony both on the
22 question of the certificate of public convenience and
23 necessity and the siting.

24 Now, those of you who were not here
25 this morning, your testimony is required to be under

1 oath, and I am required by law to advise you
2 regarding perjury before administering the oath.
3 Each of you must take the oath individually, but let
4 me tell you just quickly what perjury is and provide
5 you the advice regarding perjury.

6 Perjury is a false statement of
7 material fact which you do not believe to be true; in
8 other words, generally speaking a lie. In North
9 Dakota perjury is a class C felony punishable by a
10 fine up to \$5,000, imprisonment for a period of up to
11 five years or both. When you testify this afternoon,
12 I will simply ask you if you were here and if you
13 heard the advice regarding perjury. All you need do
14 is to say yes, I will administer the oath and you can
15 proceed with your testimony.

16 I will ask you please to sign at the
17 lectern. We'll get the lectern moved back here.
18 There will a sheet on the lectern for you to -- to
19 print your name -- print your name and address for
20 the record. I will then for the record simply ask
21 you to state your name and your address, and you may
22 then proceed with your testimony. I say again you
23 may testify both about the certificate of public
24 convenience and necessity if you have testimony
25 specific to that, and of course you may also testify

1 about the siting if you wish.

2 Does anyone have any questions about
3 their testimony for the -- for the hearing?

4 All right. Then we'll proceed.

5 Mr. Kelsch, when you're ready.

6 MR. KELSCH: Thank you -- thank you,
7 your Honor. I would call Dean Cowling to the stand
8 to be sworn in.

9 MR. WAHL: Mr. Cowling, I have personal
10 knowledge that you are informed and advised regarding
11 perjury. Accordingly will you raise your right hand,
12 please? Do you swear, Mr. Cowling, that the
13 testimony which you are about forgive in this matter
14 shall be the truth, the whole truth and nothing but
15 the truth?

16 MR. COWLING: I do.

17 MR. WAHL: Mr. Kelsch.

18 EXAMINATION

19 BY MR. KELSCH:

20 Q. Mr. Cowling, I guess for the record,
21 could you state your name?

22 A. Dean Cowling.

23 Q. And your position with TransCanada
24 Keystone?

25 A. I am the project director for the

1 Keystone pipeline project.

2 Q. And as part of your testimony here have
3 you and some other Keystone members prepared a
4 PowerPoint presentation that goes through the
5 overview of the application for the siting?

6 A. Yes, we have.

7 Q. Okay. And do you think that will be
8 helpful for the commission and the public to
9 understand the process?

10 A. I certainly do.

11 Q. Okay. Then I would request you start
12 the presentation.

13 A. Thank you. Can -- is that good? First
14 of all, I would like to take the opportunity to thank
15 everybody for coming out today, and thank you for the
16 opportunity to present our project. The first slide
17 that we're going to go through -- and I should say
18 what we have tried to do with this slide presentation
19 is provide an overview of the application that we
20 have filed before the North Dakota -- North Dakota
21 Public Service Commission.

22 The first slide, what we wanted to do
23 is give everybody more of an understanding of who
24 TransCanada is. TransCanada is one of the -- is one
25 of North America's leading energy infrastructure

1 companies with more than \$24 billion in assets, and
2 also with that we have more than 50 years' worth of
3 construction and operating experience as it relates
4 to pipelines.

5 TransCanada as can be seen on the slide
6 has more than 36,000 miles of pipeline in North
7 America, and we have relationships with over 40,000
8 landowners across North America. We believe we are
9 ideally positioned to supply markets, in this case
10 with crude oil, from the Western Canadian Sedimentary
11 Basin, and we'll talk about that in a little bit more
12 detail in an upcoming slide.

13 As indicated on -- on this slide,
14 Canadian supply is second only to Saudi Arabia with
15 approximately 175 billion barrels of proven oil
16 reserves. You will notice on the slide five of the
17 top six countries with large reserves are in the
18 Middle East.

19 A couple of other points of interest of
20 which for those that weren't involved in the -- in
21 the morning session, the U.S. economy consumes I
22 believe approximately 20 million barrels of oil every
23 day, and the U.S. demand for petroleum products
24 continue to increase. Canada today produces over
25 2.6 million barrels of crude oil per day. We

1 currently export approximately 1.6 million barrels
2 per day of crude oil to the United States primarily
3 to refineries in central -- in the central United
4 States and western United States.

5 What this equates to -- and I heard a
6 number this morning -- this equates to about
7 11 percent of the U.S. requirements for crude oil.
8 Just a point of interest as well just for -- for some
9 more background, the market for crude oil is
10 refineries. Refineries process crude oil into
11 products that we use every day. These products
12 include gasoline, diesel, lube oils, aviation fuel,
13 fertilizer, asphalt to name a few.

14 This slide here depicts work that we
15 completed through a number of our regulatory
16 processes that we have gone through. We actually
17 completed a system alternatives review as it relates
18 to transporting crude oil into the markets that
19 Keystone is actually going to be delivering into.
20 During that review we reviewed potential system
21 alternatives to serve the need that Keystone was
22 proposed for.

23 All -- the conclusion that we came to
24 is all identified alternatives involved construction
25 of new pipeline facilities. And I think what we

1 heard this morning is in our opinion capacity for
2 pipelines is very tight today, and this -- and this
3 goes hand in hand with that. The conclusion that we
4 came to was Keystone is the only alternative in a
5 position to meet increased demand for crude oil
6 within the time frame required for the contracts
7 that -- that -- that Keystone has, and we'll go into
8 that in a little bit more detail.

9 Keystone has received very strong
10 support from shippers which is demonstrated through
11 the binding contracts that we've been -- that we've
12 attained. TransCanada has now secured a total of
13 495,000 million (sic) barrels of firm long-term
14 contracts with an average duration of 18 years to
15 support the Keystone pipeline project. We did this
16 through two separate open seasons. In late 2005 and
17 early 2006, our first commercial open -- open season,
18 we secured 340,000 barrels of contracts. And just
19 last month we announced that we had secured an
20 additional 155,000 barrels of additional contracts.
21 And I just want to point out, the first -- the
22 340,000 barrels of contracts was to Illinois, and the
23 additional 155,000 barrels of contracts is an
24 expansion into Kansas and Oklahoma.

25 These long-term binding contracts

1 clearly demonstrate the Keystone pipeline is required
2 to serve U.S. energy needs. And I do want to point
3 out and I -- and we have pointed out previously just
4 so that everybody understand who TransCanada is,
5 there are really three components to the -- to the
6 value chain. You've got producers, oil producers,
7 which we do not produce any oil. And you've got
8 refiners at the -- at the -- at the delivery point
9 which we have no business in refineries. What we are
10 is we are the pipeline transporter, and those
11 different customers would come to us to actually just
12 ship their crude oil. We don't own the crude oil as
13 well. So we are just the trucker in -- in this
14 scenario.

15 This is a picture of the Keystone
16 pipeline project. Keystone is approximately an
17 1,800-mile pipeline in total, and for the initial
18 phase of Keystone about 1,100 miles in the United
19 States. What you'll notice up on -- on the chart is
20 our receipt point is an area called Hardesty,
21 Alberta, and that's a storage hub in -- in central
22 Alberta. The pipeline -- it's important to note as
23 it relates to a siting and routing, you will notice
24 the blue line in Canada. And I'll point to there.

25 That blue line was part of our thought

1 process as it relates to siting the project into the
2 United States. That blue line is a conversion
3 section of a -- of a current asset that TransCanada
4 owns, and from an environmental perspective and from
5 a cost perspective trying to balance the two of them,
6 that was an approach that we thought was very, very
7 innovative and was worthwhile for the project.

8 Once you get into -- once you move into
9 the United States, the first phase of the project
10 is -- which would be in service in November 2009
11 traverses North Dakota, South Dakota, Nebraska and
12 then actually turns east in through Kansas, Missouri
13 and Illinois, and that delivers product into the
14 Illinois area. Okay.

15 The second phase of the project that we
16 just announced binding commitments for here within
17 the last month is what we call the Cushing extension,
18 and that is the extension down into Cushing,
19 Oklahoma, that runs through Kansas and Oklahoma, and
20 that goes into a delivery hub in Cushing, Oklahoma.

21 It's also important to note that there
22 are numerous regulatory bodies that we will be
23 working with, including the North Dakota Public
24 Service Commission. The Keystone pipeline is
25 regulated and reviewed by numerous federal and state

1 agencies. In order to construct pipeline facilities
2 across the international border between Canada and
3 the United States, Keystone is required to obtain a
4 presidential permit from the United States Department
5 of State.

6 The Department of State is also
7 responsible for preparing an environmental impact
8 statement for the entire project. This environmental
9 impact statement is a requirement through the
10 National Environmental Policy Act, and we are
11 currently working through that process today.

12 Also the project will be reviewed by
13 other federal agencies including the Corps of
14 Engineers, Fish & Wildlife Service and the Department
15 of Transportation. And then more specifically in
16 North Dakota by the North Dakota Public Service
17 Commission, which as we went through this morning and
18 discussed the certificate of public convenience and
19 necessity and a certificate of corridor compatibility
20 and route permit that we will be moving towards here
21 later on this afternoon. Others that will be
22 involved with regards to reviewing the Keystone
23 pipeline project would include the North Dakota
24 Department of Health, the North Dakota Department of
25 Transportation and other authorities that would be

1 involved in the review process.

2 During construction there will be
3 short-term benefits resulting from a number of
4 different parts of the Keystone project. These would
5 include food, lodging during construction which we --
6 we did touch base this morning somewhat. Is
7 estimated at about \$3.25 million in North Dakota.
8 Construction materials and other supplies, we
9 estimate a benefit to North Dakota at approximately
10 \$750,000. And, lastly, we forecast that we will
11 require -- between 10 and 15 percent of our total
12 construction workforce would be hired locally in the
13 state of North Dakota in the counties and the
14 community -- and in the communities that we all live
15 in.

16 Long-term benefits, just to go over
17 them very quickly before we move into more detailed
18 information. Long-term operational benefits we
19 calculate approximately \$5.2 million in property tax
20 revenues in the first year, first full year of
21 operations, and that would continue on for the life
22 of the project. We also anticipate that once we move
23 into operations that we will -- there will be
24 employment opportunities in the operations either by
25 direct hire and/or contract services as we move in to

1 operating pipeline. Okay.

2 Now, with that, what -- the approach
3 that we're taking here is we have three individuals,
4 including myself, that will be presenting. So with
5 that I would ask that Mike Koski....

6 MR. KELSCH: I would call Mike Koski to
7 the stand to be sworn in.

8 MR. WAHL: Mr. Koski, I think if you're
9 going to wind up at the lectern, you can be there.

10 MR. KOSKI: Okay.

11 MR. WAHL: That's fine.

12 MR. KOSKI: Thank you.

13 MR. WAHL: Mr. Koski, as you have heard
14 me advise previous witnesses, your testimony is
15 required to be under oath, and I'm required by law to
16 advise you regarding perjury before administering the
17 oath. Perjury is a false statement of material fact
18 which you do not believe to be true; in other words,
19 generally speaking a lie. In North Dakota perjury is
20 a class C felony punishable by a fine up to \$5,000,
21 imprisonment for a period of up to five years or
22 both.

23 Will you raise your right hand, please,
24 Mr. Koski? Do you swear that the testimony which you
25 are about to give in this matter shall be the truth,

1 the whole truth and nothing but the truth?

2 MR. KOSKI: Yes, I do.

3 MR. WAHL: Mr. Kelsch.

4 MR. KELSCH: Thank you.

5 EXAMINATION

6 BY MR. KELSCH:

7 Q. Mr. Koski, could you state your name
8 for the record?

9 A. Michael Koski.

10 Q. And what's your title or position?

11 A. I am the project director of the
12 consulting team assigned to the Keystone project
13 responsible for environment, engineering and land
14 activities.

15 Q. And -- and what company do you work
16 for?

17 A. I'm with a company called Trow
18 Engineering.

19 Q. And just briefly, what's your
20 background?

21 A. Yes. I'm vice president of energy
22 services for Trow Engineering. I have 18 years of
23 experience in the routing, siting, permitting and
24 design of long-distance, large-diameter crude oil and
25 natural gas pipelines.

1 Q. And that's what you're going to address
2 here today?

3 A. Yes, it is.

4 Q. Okay. Thank you. You can go on.

5 A. Thank you. Well, I would like to thank
6 everybody for being here today and for having this
7 opportunity. Just a snapshot of the facilities
8 proposed by the Keystone project in the state of
9 North Dakota. We're proposing 218 -- approximately
10 218 miles of 30-inch pipeline, crude oil pipeline,
11 five pumping stations, a total of 13 main line valves
12 and four check valves, and the system will be
13 designed with a maximum allowable operating pressure
14 of 1,440 psi.

15 Now, the route selection process that
16 we follow for projects of this nature is an ongoing,
17 recurring process involving numerous iterations.
18 The first step in the process is to identify the
19 project objectives; that is, what it is the project
20 is to accomplish. And in this case it is to move
21 crude oil from a major supply source in -- in
22 Alberta, Canada, to delivery points in the states of
23 Illinois and Oklahoma. That's -- that's where we
24 start.

25 The next step is to identify what we

1 refer to as control points. These are points through
2 which the project must pass for various reasons.
3 Obviously the source of the oil is -- or the product
4 is a control point. It must start there. Obviously
5 deliveries are control points. The pipeline must end
6 there. But along the way there are other factors
7 that define very specifically where the project will
8 go.

9 Mr. Cowling described earlier the use
10 of an existing natural gas line in Canada which would
11 be converted to crude oil service. This -- the use
12 of this -- this facility defines to a large part
13 where the project enters the U.S. in North Dakota.
14 That serves as a control point. Other control points
15 tend to be associated with physical features such as
16 major river crossings or narrow areas between
17 national parks or things of that nature.

18 Another critical control point that --
19 that influences a route on Keystone is the Missouri
20 River crossing at Yankton, South Dakota. The
21 Missouri River is a large -- large river with a
22 limited number of locations that are suitable for
23 crossing for various reasons, and a crossing at that
24 point served as a control point defining much of the
25 route.

1 Now, with these control points we
2 then -- and the project objectives, we established a
3 study area which starts with the general region
4 within which all of these points are located. Having
5 that study area established, we begin a data
6 collection process. And that involves collecting a
7 lot of environmental and physical data such as
8 wetland data, species data, soils information, and
9 that is collected through the process of
10 identifying -- of literature searches, Internet
11 searches and most importantly through coordination
12 with -- with responsible agencies to obtain their
13 databases of information that's relevant to the
14 siting of a -- of a project.

15 Based on all of that information and
16 input from the agencies at the early stage, we
17 establish what we refer to as constraints and
18 opportunities. Constraints are areas that we prefer
19 to avoid or certainly minimize, and that could be a
20 sensitive environmental feature such as wetlands,
21 poor soils. Then we also identify opportunities
22 which are areas we prefer to go to, and that's
23 typically flat upland areas with a minimum -- minimum
24 amount of terrain or poor soil conditions.

25 Now, based on all of these data, the

1 constraints and opportunities, control points and
2 objectives, we develop a series of alternatives. And
3 this is a group of -- of professionals representing
4 various disciplines come up with a number of ways to
5 minimize constraints, maximize opportunities and meet
6 the project objectives and control points. These
7 alternatives then go through our own iterative
8 assessment of -- of features relevant to each of
9 those alternatives, and we come up with a preferred
10 alternative.

11 We then take that preferred alternative
12 and seek additional input. We hold open houses where
13 we invite public comment. We circle back through all
14 of the agencies and invite their comment on our
15 preferred alternative. We then refine that, and
16 through the recurring process of continually refining
17 that route option, we eventually end up with the
18 alternative that we file as part of our regulatory
19 obligations. And then through those processes the
20 alternative is further evaluated in forums such as
21 this.

22 Now, unique to North Dakota, the North
23 Dakota PSC has defined exclusion areas relevant to
24 the routing of a transmission facility such as
25 Keystone. Exclusion areas are defined by the PSC as

1 areas that should be excluded from consideration for
2 routing the facility. The proposed route of Keystone
3 does not cross any exclusion areas in North Dakota.
4 There is one exclusion area which is located within
5 the one-mile PSC corridor associated with the route,
6 but the route does not cross or impact that exclusion
7 area, and that's the Fort Ransom State Park.

8 Now, the PSC also specifies avoidance
9 areas. These are defined by the PSC as areas not to
10 be considered in routing a transition facility unless
11 there is no reasonable alternative. Now, the
12 Keystone project as proposed involves a couple of --
13 of avoidance areas. One is a state forest associated
14 with the Pembina River crossing. The route does
15 cross that state forest. However, in working with
16 the -- the forest service, the state forest service,
17 we have developed construction techniques and
18 mitigation procedures to avoid the forested areas of
19 the -- of that forest, that state forest. We are in
20 essence using horizontal directional drilling to
21 drill underneath the forest and the associated water
22 crossing.

23 Now, another criteria is avoidance of
24 areas within 500 feet of residences. The Keystone
25 project involves 23 throughout the state residences

1 that are potentially within 500 feet of the line.
2 Keystone has obtained waivers from the landowners
3 associated with 18 of those residences. Reroutes and
4 route refinement of the project has resulted in the
5 movement of the line to a point greater than 500 feet
6 away from four of those residences. And we have one
7 residence remaining where there is no reasonable
8 alternative to be greater than 500 feet away from
9 that residence. We're over 400, but we're not at
10 500. And I will provide more information associated
11 with that in my formal testimony later in this
12 proceeding.

13 Now, as Mr. Cowling mentioned, the
14 project has been the subject of extensive and
15 intensive regulatory review. The project is
16 undergoing review under NEPA, the National
17 Environmental Policy Act, with the Department of
18 State as the lead federal agency. And to initiate
19 that process, Keystone has filed extensive
20 environmental information, including detailed
21 biological, wetland, cultural, resource surveys in
22 support of its application obtained from actual field
23 work conducted throughout the state of North Dakota
24 and throughout the project for that matter.

25 And that information has also been

1 filed in support of Keystone's application to the
2 North Dakota PSC. That application to the North
3 Dakota PSC includes a summary of impacts associated
4 with the project which covers all major environmental
5 resource areas, and that is included in Table 3 of
6 the North Dakota PSC corridor application.

7 Now, key to our work today too is the
8 development of environmental mitigation strategies
9 which Keystone can and has committed to as part of
10 its regulatory processes. Keystone has prepared what
11 we call a construction mitigation and reclamation
12 plan. This is a detailed document consisting of all
13 the specifications by which we construct the pipeline
14 as it relates to various land uses encountered by the
15 project. This includes very detailed procedures for
16 crossing agricultural, cultivated lands, wetlands,
17 streams and the procedures for restoring or
18 reclaiming and monitoring those types of features
19 crossed by the project.

20 That plan has been submitted as part of
21 all of our major applications to the Department of
22 State, to the North Dakota PSC and to many other
23 federal and state applications. It is a summary of
24 commitments that the project has made for
25 environmental mitigation, restoration and

1 postmonitoring compliance, and the adoption of these
2 procedures minimizes the impact associated with the
3 project.

4 With that, I would like to turn this
5 over to Buster Gray for discussion on land
6 requirements and construction associated with the
7 project.

8 MR. KELSCH: I would call Buster Gray
9 to the stand for -- to be sworn in.

10 MR. WAHL: Mr. Gray, as you know, your
11 testimony is required to be under oath, and I am
12 required by law to advise you regarding perjury
13 before administering the oath.

14 Perjury is a false statement of
15 material fact which you do not believe to be true; in
16 other words, generally speaking a lie. In North
17 Dakota perjury is a class C felony punishable by a
18 fine up to \$5,000, imprisonment for a period of up to
19 five years or both.

20 Will you raise your right hand, please?
21 Being advised regarding perjury, Mr. Gray, do you
22 swear that the testimony which you are about to give
23 in this matter shall be the truth, the whole truth
24 and nothing but the truth?

25 MR. GRAY: Yes.

1 MR. WAHL: Mr. Kelsch.

2 EXAMINATION

3 BY MR. KELSCH:

4 Q. Mr. Gray, could you state your name for
5 the record?

6 A. My name is Loys Gray. That's L-o-y-s.
7 Nickname Buster.

8 Q. Mr. -- Mr. Gray, what's your position
9 with respect to the TransCanada Keystone pipeline?

10 A. I'm the engineering and construction
11 manager for the U.S. portion of the pipeline, just
12 the United States portion.

13 Q. And what generally is your
14 experience -- experience in this type of business?

15 A. I -- I am now entering my 30th year
16 of -- of being in the pipeline industry working on
17 large-diameter cross-country pipelines.

18 Q. Do you need that raised there a little
19 bit?

20 A. Please. It would make it a little more
21 comfortable.

22 MR. KELSCH: Could we raise the....
23 Thank you.

24 Q. (Mr. Kelsch continuing) Okay. You can
25 proceed with your presentation.

1 A. All right. And -- and as mentioned, my
2 role and responsibility on engineering and
3 construction, I'll also describe land and the land
4 use that we'll take on the project.

5 This particular slide represents a
6 typical construction right-of-way. It's comprised of
7 110 feet with -- that is up -- is made up of two
8 components. One is a 50-foot-wide permanent easement
9 or right-of-way that will stay with the life -- for
10 the life of the pipeline, and a 60-foot-wide
11 temporary work space that we will use during the
12 course of construction. But once construction is
13 completed, that will revert back to the landowner.

14 We also use other work space or
15 additional work space in the areas primarily where
16 there are large excavations, river and stream
17 crossings, highways, railroads, those types of areas
18 where we have to move a large amount of dirt and we
19 need a place to place it.

20 The last item on the slide is pipe
21 yards and contractor yards. We have to stockpile the
22 pipe along the pipeline route for our use. We will
23 locate pipe yards about every 30 miles along the
24 pipeline route, and these pipe yards will typically
25 be in the range of 20 to 30 acres. We typically try

1 and look for some land that's been previously used
2 for some type of commercial use. If we cannot find
3 it, we will certainly work towards using farmland or
4 other land.

5 The contractor yards for the state of
6 North Dakota, my estimate at this point we'll
7 probably have two to three. Those are typically
8 about 20 acres of use. Again we -- we tend to try
9 and find something that's been used as a warehousing
10 complex, a trucking company, something that's already
11 got a surface facility that we can use, and those
12 would be located strategically relative to where our
13 pipeline contractors would -- would resource or
14 warehouse.

15 Mr. Koski mentioned the construction
16 mitigation and reclamation plan, and that's a
17 document that's been filed with the -- with not only
18 the Department of State, but the Public Service
19 Commission here in North Dakota. It's -- it's a plan
20 that's been developed over -- through experience and
21 history of how we can construct pipelines to -- to
22 mitigate effects to the -- to land in particular but
23 also other issues.

24 The -- the plan actually covers all
25 lands. It covers forested, wetlands, range and

1 pasture and actually, although it's pretty minimal
2 along our pipeline, is where we -- where we would
3 construct near residences or commercial and
4 industrial areas. Some of the things that are -- are
5 covered by this plan are noise control during
6 construction, dust control during construction and --
7 and control of noxious weeds which is an issue in the
8 Midwest. Spill prevention and containment for our
9 construction equipment, hydraulic hoses that may
10 break or you have a leak of construction equipment
11 fluids.

12 Topsoil removal, storage and
13 replacement. Erosion and sediment control during the
14 course of construction if we have large rainfall
15 events to -- to contain work within the land that we
16 have acquired for -- for construction. And a big
17 part of the plan is reclamation, of how we restore
18 the land to the best of our ability to its original
19 productivity.

20 This graphic -- and I know it will be
21 difficult for some of you to see. And it is -- is a
22 graphic or an artist's rendition of a construction
23 spread. A construction spread is a construction
24 contract where there are a multitude of crews that
25 work beneath this -- this contract. And I use the --

1 the terminology of an assembly line. Ford Motor
2 Company builds automobiles on an assembly line, and
3 pipeline construction is an assembly line. The
4 opposite for us is is that at Ford Motor Company the
5 worker stays stationary and the assembly line passes
6 the worker inside a large facility or warehouse.

7 For us the pipeline or the line pipe
8 stays stationary once it's located on the
9 right-of-way, and our construction crews or workers
10 progress along the right-of-way as an assembly line.
11 This particular graphic, from the front-end crews, I
12 call it the clearing, thus the hauling and stringing
13 of pipe, is made up of some -- some 12 to 15 crews
14 all the way back to what we call backfill and tying
15 in and cleanup. These crews are typically spaced a
16 few days to a week apart therefore from the front end
17 to the back end of this assembly line is -- is -- for
18 a 30-inch pipeline, 50, 60, maybe 70 miles from the
19 front end to the back end.

20 The -- another component we get
21 questions about is it will progress we're estimating
22 in North Dakota with decent weather conditions around
23 one and a half miles per day all of these crews will
24 move. It's a very fast operation actually. The --
25 another thing landowners tend to ask us is how long

1 will you be impacted on your land. Typically for
2 this operation about 8 to 12 weeks. Certainly
3 dependent upon weather, but somewhere in that range
4 is pretty normal for this type of operation. There
5 are isolated operations like road crossings or a
6 stream crossing that may fall outside of that window,
7 but this assembly line is typically about that length
8 of time.

9 Mr. Cowling had mentioned earlier, oh,
10 with construction supervision, quality, environmental
11 and safety inspectors and all the supporting team
12 around 500 construction workers would be a -- a
13 reasonable estimate. There will be two of these
14 construction spreads working in North Dakota. We
15 anticipate one starting at the Canadian border
16 working southerly about 130 miles. The second one
17 would start northeast of Valley City I believe in
18 Barnes County working southerly towards the South
19 Dakota border.

20 The next series of -- of slides and
21 photographs I'm going to show you is -- is really
22 some of the crews or tasks that you see are along the
23 assembly line that I described, and one of the key
24 items particularly in the Midwest is -- is mitigation
25 of impacts to agricultural land where -- where we do

1 our best to minimize that damage to -- to preserve
2 topsoil and return it after construction.

3 I would point out to you this -- this
4 particular slide represents what we would call trench
5 and spoil site topsoil stripping. There are various
6 methods of topsoil stripping, and there's actually
7 difference in opinions about which is the best in it.
8 But my comments being is we -- we will work with the
9 landowner to whichever method you determine you want
10 done on your land, and we will construct according to
11 what you believe is best on your land.

12 This slide represents -- I mentioned
13 the pipe storage yards. We have to haul the pipe
14 from these yards to the construction right-of-way.
15 We have a term called stringing, and that's literally
16 where you're placing the pipe along the trench line
17 with the trucks that would travel down the
18 right-of-way.

19 The other photograph that you see here
20 -- and even for large-diameter pipe, we have to bend
21 the pipe to fit the topography of the earth. We also
22 have to bend the pipe to make horizontal turns in the
23 pipeline route. This is done with very large
24 hydraulic machines on the construction right-of-way.

25 This photograph represents the

1 trenching operation excavating for placement of the
2 pipe. We typically do it by two methods, one of two
3 methods, using large-wheel trenching machines or --
4 or backhoes. And soil conditions, the water table,
5 various things will dictate what's the best method.
6 From your -- from previous work in North Dakota and
7 ground water in North Dakota, I believe most of North
8 Dakota would probably be excavated with backhoes.

9 The next operations represented are
10 welding. This particular pipeline may either be
11 welded by use of manual welding much like you use
12 in -- in local communities, and on farms we call it
13 stick welding. Also we may automatic weld, and
14 that's where literally men drive machines that
15 install or make the weld. Regardless of the method
16 utilized, all welds will be reinspected for defects.
17 That's done by either radiography for manual welding
18 or ultrasonic inspection for automatic welding. When
19 we talk of x-ray or radiography and we talk of
20 ultrasonics, that technology is very similar to
21 what's used in local medical facilities.

22 Once the welding is completed, the pipe
23 is brought to the construction right-of-way with a
24 really tough, heavy-duty pipeline coating that's
25 actually fused to the pipe. And with vehicles and

1 equipment the technology on coatings over the past
2 ten years has greatly advanced. You don't have near
3 the issues with rusting on automobiles and farm
4 equipment that you used to have 15 and 20 years ago.
5 This technology is also greatly advanced in our
6 industry.

7 But where we make our construction weld
8 the pipe's bare. This coating has to be applied in
9 the field. It's typically done with a spray or a
10 brush coating application. Once the coating is
11 completed, we have an electronic device that's called
12 a holiday detector or jeep, and it's -- it's
13 traversed along the pipe. Where there's an anomaly
14 or a defect in the coating, it will make a spark or
15 jeeping sound that would be identified by the
16 operator. He will locate the nick or damage in the
17 coating and repair it prior to the pipeline being
18 picked up and lowered and placed into the trench.

19 Our next operation is called
20 backfilling. And we typically replace the soils
21 within the trench line with the soil that -- that
22 came out of it. And in North Dakota and some areas
23 with glacial till or cobble in accordance with its
24 size and angular geometry, we might elect to pad the
25 pipeline, and we do that with a machine here that's a

1 padding machine that is used like a sifter to sift
2 the fines out of the spoil material, and we'll place
3 it around the pipe to -- to 6 to 8 inches above the
4 pipeline prior to replacing the rest of the spoil.

5 This is just another photograph
6 indicating the topsoil replacement that I mentioned
7 earlier, and I think the key item that's here, a
8 couple things are is there -- this photograph is
9 actually in Minnesota. There's -- central Minnesota.
10 There's a great distinction in the topsoil and
11 subsoil in central Minnesota. And we placed the
12 topsoil back with -- with heavy equipment and large
13 equipment, but we do place it back to the best of our
14 ability to the depths that existed prior to
15 construction.

16 A few other things we've had a lot of
17 interest in are utility crossings and road crossings.
18 And with utility crossings, any time you build a
19 facility that's a thousand miles in length, you cross
20 literally hundreds, if not thousands, of existing
21 utilities. That can be as other existing pipelines,
22 it can be water lines and water systems, fiberoptic
23 cables, sewer lines, a multitude of utilities that we
24 deal with. We go through a very formal process of
25 contacting One Call systems in the local areas to

1 identify all utilities existing. We work with them
2 towards an agreement, if they desire one, about the
3 methods and the inspections by which we work under
4 when we cross those utilities.

5 Additionally as the photograph in the
6 top left-hand corner shows, for safety reasons we
7 excavate and expose all existing utilities prior to
8 the main construction operation so that you can
9 literally see them with your eyes prior to the start
10 of construction. The photograph in the right-hand
11 corner is a -- is a road crossing by which we cross
12 by a boring method and do not excavate or disturb the
13 surface of the road.

14 In North Dakota any paved,
15 well-traveled, well-maintained road in North Dakota
16 will be bored. The -- from prior work in North
17 Dakota for me, you have a lot of section lines with
18 what I call two tracts that are not necessarily
19 maintained that we may seek from the regulatory
20 authority, be it the county or the township, we may
21 seek permission to open cut that type of road. But
22 any well-maintained and well-used road we will
23 unequivocally bore.

24 This photograph represents -- at the
25 completion of construction under our codes we have to

1 fill the pipeline with water and hydrostatically test
2 it for leaks and for the integrity of the pipeline as
3 constructed. This water is typically taken from
4 rivers or streams along the pipeline route with
5 proper permitting from the -- from the responsible
6 agencies. Once it's filled, it is pressured to
7 125 percent of its maximum operating pressure.
8 Mr. Koski mentioned earlier 1,440 pounds per square
9 inch is the maximum operating pressure. 125 percent
10 of that is 1,800 pounds per square inch. The
11 pipeline will be tested to that, it will be
12 documented, and those records are required by federal
13 law to be kept for the life of the pipeline.

14 In the upper right-hand corner you see
15 a yellow device. We call it a caliper pig, and
16 that's a geometry device, electronic, that we -- at
17 completion of construction we send it along the
18 length of the pipeline. It can detect things like
19 dents, ovality, buckles, wrinkles, things we have may
20 have done during construction to damage the integrity
21 of the pipe. If this device finds such defects,
22 those defects will be removed prior to the pipeline
23 being put in service.

24 Oh, reclamation, this is just a few
25 slides with the many things that we do. And one of

1 the largest issues we have because of the heavy
2 equipment we move along the construction right-of-way
3 is compaction. And compaction, relieving that to
4 return agricultural fields to their productivity. We
5 rip the right-of-way with ripping tools or para-plows
6 very similar to what you do maybe on some periodic
7 basis. We -- we test the right-of-way for the
8 compaction relative to the adjacent land next to the
9 right-of-way to achieve an adjacent level of -- of
10 decompaction before this operation is completed.

11 In the lower left-hand corner, rock
12 picking or removal is certainly in our projects. We
13 bring rock to the surface. We typically remove that
14 rock to a density less than the adjacent right-of-way
15 and a diameter of stone or rock that's less than the
16 adjacent right-of-way. That's either done with
17 mechanical pickers or it's literally done by crews by
18 hand walking along the construction right-of-way.

19 Lastly, seeding, a key item in non --
20 nonagricultural cultivated areas is for us to get
21 some growth back to the construction right-of-way as
22 rapidly as possible, and working with local soil
23 conservation services or landowners seed mixes to be
24 put in place to get ground cover back as soon as
25 possible.

1 This photograph is a -- is a
2 during-construction and after-construction
3 photograph. And the key reason for putting this
4 slide in is that we -- we work very diligently and we
5 have proven over time in our history that we can do
6 very well to restoring the land to its original
7 functionality, its original productivity. Maybe not
8 the first year, but over a short period of time that
9 we can return the land to its productivity.

10 But the comment here is we cannot
11 return it to its original appearance. And we don't
12 want to mislead people when we talk about restoring
13 the land that and we can restore it to its original
14 appearance.

15 The last comment that I would make and
16 in conclusion, at the start of my presentation I
17 talked about the construction mitigation and
18 reclamation plan. It's attached to the various
19 filings. It's available to the public. It goes into
20 intimate detail about the mitigation techniques that
21 are available to us that we utilize to minimize
22 impact to the landowner and the environment.

23 My responsibility in this particular
24 project is, one, to see that that plan is followed as
25 well as any other permit conditions that come along

1 through our regulatory processes. In over 30 years,
2 and -- and it's certainly working with construction
3 contractors, we -- we are professionals, we are
4 experienced at doing this and we are confident that
5 we can return this land to its productivity. And
6 with that I'll turn it back to Mr. Cowling.

7 MR. KELSCH: Mr. Cowling can come back
8 to the stand and complete....

9 MR. WAHL: No, you can be at the
10 lectern, Mr. Cowling.

11 Mr. Cowling, you understand of course
12 that your testimony continues under oath and subject
13 to penalties of perjury?

14 MR. KELSCH: You already swore him in.

15 MR. WAHL: I did. But I -- the
16 question is whether he understands that his testimony
17 continues --

18 MR. KELSCH: I'm sorry.

19 MR. WAHL: -- subject to the penalties
20 of perjury and under oath.

21 MR. COWLING: Yes, I do. I understand.

22 MR. WAHL: You may proceed.

23 MR. COWLING: I'm a little bit shorter
24 than Buster, Mr Gray.

25 I want to talk briefly about pipeline

1 safety and integrity. The first thing, just to
2 highlight, is that Keystone is subject to compliance
3 with both federal regulations and national codes.
4 These regulations and national codes are intended to
5 ensure protection of the public and -- and prevent
6 pipeline failures.

7 And what you have seen listed up there
8 are a number of different codes that Keystone will
9 meet or exceed. Just want to highlight a couple
10 things for you. First is, to minimize the risk of
11 damage, Keystone will construct and actually bury the
12 pipeline 4 feet underground. I believe a typical
13 pipeline construction, at least in my experience, is
14 a lot of pipeline construction is -- is 3 feet. But
15 Keystone in its construction mitigation plan, we will
16 be burying it 4 feet.

17 I would also like to note that Keystone
18 will use high-strength steel pipe. From a corrosion
19 mitigation perspective, we will implement design
20 features as it relates to fusion-bond coating as well
21 as cathodic protection systems that will ensure
22 and -- and manage pipeline integrity and corrosion on
23 the pipeline.

24 Last, I would just like to highlight,
25 isolation valves will be engineered into the system

1 to ensure in the unlikely event of a leak that we're
2 able to manage the environment, and that will be
3 engineered into the system as well.

4 I just want to highlight a couple
5 things. First of all, the entire pipeline
6 transmission system as -- as we mentioned earlier
7 will be monitored 24 hours a day, 365 days a year by
8 highly trained professionals. We will also have a
9 state -- computer system that will detect changes in
10 pressure along the pipeline and ensure that all of
11 the facilities are operating properly, and this
12 information will be spent back through to -- through
13 our operations and control center.

14 We will also have a dedicated leak
15 detention system which detects volume imbalances on a
16 realtime basis. I believe the number subject to
17 tech -- check is -- is every four to six seconds.
18 And we can -- and we can check the output to what was
19 actually put into the pipeline system to understand
20 if there's any changes as it relates to what was put
21 into the pipeline and what was delivered.

22 I want to also highlight that
23 TransCanada has an extensive pipeline maintenance
24 program to monitor, inspect and repair our
25 pipeline -- our current pipeline facilities, and we

1 would expect we would use the same pipeline
2 maintenance on Keystone.

3 Inline inspection, some of these key
4 maintenance activities would include inline
5 inspection, also referred -- referred to as pigging
6 when -- when Buster was speaking earlier with regards
7 to construction. And prior to operations we would
8 use a pigging device to try to identify any anomalies
9 or features that we would need to fix.

10 Three years after -- I believe it's
11 three years after we are placed into operation, we
12 will actually do an inline inspection to do something
13 similar to that to ensure that the integrity of the
14 pipeline is managed. Keystone will investigate any
15 repair anomalies reported by this inline inspection
16 tool as per federal regulations.

17 We talked earlier about oil spill
18 response. The emergency response program that we
19 intend to implement for Keystone will protect the
20 health and safety of the public and avoid damage to
21 property and any company operations and/or the
22 environment. Keystone will submit a detailed oil
23 spill response plan to PHMSA in the first quarter of
24 2009 prior to -- prior to operations. Spill response
25 and cleanup equipment will be part of this plan and

1 will -- it will be highlighted in this plan and
2 prepositioned at locations identified by the spill
3 analysis and based on a worst-case discharge.

4 So what we've done with the United
5 States Department of State is we've done a detailed
6 spill analysis, and we're utilizing that analysis and
7 the output of that analysis to put together our
8 emergency response plan to ensure that we have the
9 proper equipment and the proper people situated
10 where -- where they need to be. In the event of a
11 leak, Keystone will remediate the area in
12 coordination with federal regulators and state
13 agencies.

14 I think in closing -- and I think we're
15 just -- we're right on an hour here. In closing, I
16 would just like to say TransCanada has worked hard to
17 be a good neighbor in each of the communities that we
18 are currently involved in. We take health, safety
19 and environment very seriously, and we look forward
20 to being part of the community here in North Dakota.
21 Thank you for your time, and that will end the
22 presentation.

23 MR. KELSCH: Thank you very much.

24 MR. WAHL: Mr. Kelsch, I understand
25 this concludes your presentation at this time?

1 MR. KELSCH: Yes. And I would I guess
2 request that a printed copy of this be marked and
3 admitted into the record.

4 (Whereupon, Exhibit No. TI
5 was marked for identification by
6 the court reporter.)

7 MR. WAHL: All right. Let's -- let's
8 stand up and take a break for about five minutes.
9 We'll move the lectern back in its place, and then
10 we'll reconvene the public convenience and necessity
11 hearing and proceed with public testimony.

12 (A recess was taken from 2:09 p.m. to
13 2:18 p.m.)

14 MR. WAHL: I'm going to reconvene the
15 hearing that was done this morning for the
16 certificate of public convenience and necessity.
17 That's commission case No. PU-07-152. That hearing
18 is reconvened for the purpose of hearing public
19 testimony. We're also going to continue with the --
20 with the hearing for the siting application.

21 That hearing continues, and so that
22 those of you who wish to offer public testimony may
23 do now whether you wish to offer testimony on the
24 certificate of public convenience and necessity or on
25 the siting application. Those of you who will be in
Park River tomorrow, it may be helpful if you will

1 postpone your testimony until tomorrow, and
2 additional evidence will be heard for both cases
3 tomorrow. The additional witnesses -- or the
4 additional testimony and additional witnesses on
5 behalf of TransCanada, cross-examination of those
6 witnesses and so on.

7 But so that those of you who came today
8 to offer public testimony would be able to do that,
9 we will do that now. I'm going to begin with two
10 people. Mr. Starke here who may have to leave, and I
11 understand Mr. Novak may have to leave. We'll begin
12 with those people.

13 But let me ask you first. How many
14 people will plan on testifying this afternoon? Can I
15 have a show of hands?

16 So I've got one, two, three, four,
17 five. Does that include Mr. Novak?

18 Six. And Mr. Starke is seven. All
19 right. So recall now that it will be helpful if you
20 could divide your testimony between the public and --
21 the certificate of public convenience and necessity,
22 you know, whether it's necessary and convenient for
23 the pipeline to be constructed at all and whether
24 TransCanada is willing and able to construct that.
25 If you have testimony specifically on those

1 questions, it would be good to address that first.
2 If you then have testimony on the question of the
3 location of the pipeline, to deal with that second
4 and separately.

5 Remember that your testimony has to be
6 under oath. Remember to try and avoid repeating
7 testimony, but by all means the commission is
8 interested in what you have to say. And if you have
9 information that's specifically related to you and
10 that you think the commission should know, even
11 though that may have been addressed by someone else
12 you should feel free to do that. Remember also that
13 the lawyers and the commissioners may ask you
14 questions.

15 Those of you who were here this
16 morning, I said this is not cross-examination. You
17 won't be cross-examined. Forget about whatever you
18 have seen on television, but the commissioners and
19 the lawyers may have some question to clarify some
20 information you provided or want to ask you about
21 some -- something related to your testimony.

22 Finally, this only works one way. The
23 lawyers and the commissioners get to ask you
24 questions, but you don't get to ask them questions.
25 This is -- this is testimony so you will need to

1 present your statements and answer any questions that
2 may be offered, and that will then conclude your
3 testimony.

4 There's a sign-in sheet on the lectern.
5 When you use it, please print your name and address.
6 I will in effect introduce you by asking -- for the
7 record asking you for your name and address and
8 then -- and I will administer the oath and you may
9 then proceed with your testimony. Mr. Starke, I have
10 your name so we're in business.

11 MR. DELANEY: Your Honor, one
12 clarification. You had mentioned at the beginning of
13 the proceeding this morning that the first public
14 comment was going to be limited to those in favor of
15 the pipeline. Are we changing that process now?

16 MR. WAHL: We are changing that
17 process --

18 MR. DELANEY: Okay.

19 MR. WAHL: -- so that I can accommodate
20 Mr. Starke and Mr. Novak.

21 Is there -- is there anyone here who is
22 testifying in support of the application this
23 afternoon?

24 All right. Well, let me deal with
25 Mr. Starke and Mr. Novak, and then I will call for

1 testimony in support of the application and then
2 we'll proceed for testimony opposing the
3 applications. All right.

4 MR. STARKE: Your Honor, members of the
5 Public Service Commission --

6 MR. WAHL: Mr. Starke, let me begin by
7 asking you to state your name and your address for
8 the record, please.

9 MR. STARKE: My name is Richard Starke.
10 My address is 5 Elm Street; Burlington, North Dakota
11 58722.

12 MR. WAHL: And, Mr. Starke, did you
13 hear my advice this morning about -- well, and this
14 afternoon regarding perjury?

15 MR. STARKE: Yes, sir, I did.

16 MR. WAHL: Mr. Starke, being advised
17 regarding perjury, do you swear that the testimony
18 which you are about to give in this matter shall be
19 the truth, the whole truth and nothing but the truth?

20 MR. STARKE: Yes, sir, I do.

21 MR. WAHL: You may proceed.

22 MR. STARKE: Your Honor, members of the
23 Public Service Commission, the Keystone pipeline
24 delegation and most importantly of all landowners,
25 thank you for the -- for the opportunity to come here

1 and express my opinion concerning this matter. This
2 statement, I will read it if you don't mind.

3 This statement concerns meetings and
4 telephone calls that I have had with the employees of
5 Keystone Oil Company in 2006 and 2007.

6 On August 20, 2006, I purchased a
7 quarter of land described as the northeast quarter,
8 Section 30, Township 140, Range 57 in Barnes County,
9 North Dakota, with the intention of some day in the
10 future dividing it into 20-acre plots, Attachment 1.

11 MR. WAHL: Mr. Starke, that -- I
12 understand you have an exhibit, and -- and I marked
13 that for you.

14 MR. STARKE: Here's 1.

15 MR. WAHL: All right. Counsel, that's
16 marked as Exhibit RS1. Mr. Fahn, would you give that
17 to the lawyers, please?

18 Mr. Kelsch, I think that's a photocopy
19 of a plat maybe as I recall. If -- Mr. Delaney --
20 give it to Mr. Delaney next, please.

21 I'm sorry. Mr. Kelsch, did you --

22 MR. KELSCH: No objection.

23 MR. WAHL: No objection.

24 MR. DELANEY: I have -- I have no
25 objection.

1 MR. WAHL: All right. Mr. Binek?

2 MR. BINEK: No objection.

3 MR. WAHL: Exhibit RS1 is received.

4 Then you also have additional exhibits, Mr. Starke?

5 Oh, those -- oh, I see what you've got.

6 That's fine. All right. You may proceed,

7 Mr. Starke.

8 MR. STARKE: Thank you, Judge. Because

9 it was in a -- it's 3 miles east of Valley City at

10 the -- at the Peak interchange, was a full

11 interchange, and that's why -- for that reason I

12 thought it might be a good place to have a housing

13 development.

14 So I did -- I had an artist develop the

15 illustration you have seen, and so I'll just continue

16 on.

17 Neither the seller or his lawyer

18 informed me prior to the sale of the impending oil

19 line to be built through the land from north to

20 south. The two men from Keystone, Mr. Gray and

21 Mr. Reagan, were my sole contacts.

22 When Mr. Reagan called me, the first

23 contact I had with Keystone, he was very brusque,

24 hurried, impatient and hung up the phone while I was

25 still talking. So my introduction to Keystone was

1 not very kind. I had no problem with Mr. Gray. He's
2 a -- a little different. He's slow talking, he's a
3 gentleman and we got along very well together.
4 However, I -- Mr. Gray gave me a little bit of
5 information that was not quite accurate because he
6 said there would be no deviation necessary in -- in
7 going past my land. So that brings us to Attachment
8 No. 2.

9 MR. WAHL: All right. That's an
10 exhibit that I marked as RS2 for this hearing.
11 Mr. Kelsch?

12 MR. KELSCH: No objection.

13 MR. WAHL: Mr. Delaney?

14 MR. DELANEY: No objection.

15 MR. WAHL: Mr. Binek?

16 MR. BINEK: No objection.

17 MR. WAHL: Exhibit RS2 is received.
18 Mr. Fahn, give that to the commissioners.

19 MR. KELSCH: There's some writing on
20 the back that really isn't relevant and I think --
21 so --

22 MR. WAHL: Oh, I wasn't aware of that.
23 May I....

24 MR. KELSCH: I think it's just they
25 used a different piece of paper as a -- as a

1 photocopy. As long as it's just the front part of it
2 is -- and the front part of it is part of the
3 exhibit.

4 MR. WAHL: Let me see that again.

5 Oh. The information on the back,
6 Counsel, is obviously irrelevant. Mr. Starke, I'm
7 just going to kind of draw a line through that
8 printed information on the back and that will just
9 be --

10 MR. STARKE: I didn't know there was
11 anything on the back.

12 MR. WAHL: You didn't even know it was
13 there. That's right. All right. Exhibit RS2 is
14 received. Go ahead, Mr. Starke.

15 MR. STARKE: In my conversations with
16 other landowners I've been told of threats of
17 condemnation if they refused to sign the easement
18 contract and -- and they were treated not very well.
19 And, "We are the oil company, and we get -- that's
20 what we want." That's what they said, "We are the
21 oil company. We get what we want."

22 This land is where I grew up. I have
23 traveled each foot of it in 21 years since I was born
24 until I graduated from Valley City State in 1952. I
25 cherish the land, for my days growing up in a family

1 where honesty, responsibility, respect and love were
2 normal parts of such a wonderful place to grow up. I
3 learned to love and respect each one of my family
4 since there was no smoking, drinking, loud talking or
5 any other event other than perfect harmony.

6 We never had a babysitter until we all
7 went to -- went to all events together. When my
8 father and mother worked in the fields, there was no
9 reason -- we didn't fight and we behaved ourselves.

10 For those reasons underlined an
11 attachment for the land I have -- sorry.

12 For those reasons I developed an
13 attachment for the land, and it is difficult to
14 explain to a nonfarming person. I still go back here
15 to Valley City to hunt and fish -- to hunt rather and
16 just to get away from city people who are so
17 sheltered and poorly educated and ignorant of the
18 values of duty, honor and country.

19 My older brother and I were highly
20 decorated Air Force officers. My younger brother and
21 sister are successful in business.

22 Since in about ten years the United
23 States will be self-sufficient in petroleum and be an
24 exporter of gasoline, the pipeline will lose its
25 customers and be empty and abandoned. There is no

1 valid reason for this construction.

2 Richard A. Starke, Senior, BSEd, BSIE,
3 major U.S. Air Force, retired. Thank you very much.

4 MR. WAHL: Mr. Starke, did you have one
5 more exhibit do I understand?

6 MR. STARKE: Pardon me?

7 MR. WAHL: Did you have one more
8 exhibit?

9 MR. STARKE: No.

10 MR. WAHL: Just the two is all the
11 exhibits that you have?

12 MR. STARKE: Oh, here's 3, sir.

13 MR. WAHL: Oh, all right. Mr. Kelsch?

14 MR. KELSCH: Where -- where is this --
15 if I may ask where the picture is taken. I didn't
16 hear him describe it. Mr. Starke, where --

17 MR. WAHL: Mr. Starke --

18 MR. STARKE: Yes, sir.

19 MR. WAHL: -- can you describe the
20 photograph that's Exhibit 3?

21 MR. STARKE: The -- this photo I have
22 taken personally is of the interchange that is
23 3 miles east of Valley City on Interstate 94. Is
24 that understandable?

25 MR. KELSCH: So it's your land?

1 MR. STARKE: Yeah.

2 MR. KELSCH: Yeah, I have no objection.

3 MR. WAHL: Mr. Delaney?

4 MR. DELANEY: I have no objection.

5 MR. WAHL: Mr. Binek?

6 MR. BINEK: No objection.

7 MR. WAHL: Exhibit RS3 is received.

8 Thank you very much, Mr. Starke.

9 MR. STARKE: Thank you.

10 MR. WAHL: That completes your

11 presentation?

12 MR. STARKE: Thank you. Yes, sir.

13 Thank you very much.

14 MR. WAHL: All right. We'll change the

15 tape.

16 All right. Next, please. Mr. Novak,

17 would you go to the lectern, please?

18 MS. WEFELD: What about questions?

19 MR. WAHL: Oh, I'm sorry. I'm sorry.

20 Just a minute. Mr. Novak, I'm getting ahead of

21 myself. We have some questions for Mr. Starke.

22 Mr. Kelsch, questions for Mr. Starke?

23 MR. KELSCH: No, no questions, your

24 Honor.

25 MR. WAHL: Mr. Delaney?

1 MR. DELANEY: I have none.

2 MR. WAHL: Mr. Binek?

3 MR. BINEK: I have none.

4 MR. WAHL: Commissioners?

5 EXAMINATION

6 BY MR. CRAMER:

7 Q. Well, I have one, Mr. Starke. I
8 appreciate your taking the time to be here, and I
9 know that it is -- I know that you live up in
10 Burlington near Minot and this is -- land is quite a
11 ways from there so I know that you went to
12 extraordinary means probably to be here and we
13 appreciate it. And I'm glad you're able to stick
14 around this afternoon.

15 But one of the statements you made I
16 just want a little clarification on was something
17 about energy independent in ten years. Just could
18 you elaborate a little bit on that and where you --

19 A. Yes, I could.

20 Q. -- and how you conclude that?

21 A. I have the clippings here. They're
22 from the Minot Daily News, and I have them -- I
23 didn't have time to reproduce them but they're here.
24 If -- if you want them for -- for looking at or if
25 you want to file them, that's fine with me because I

1 have no more use for them but they're here.

2 MR. WAHL: All right.

3 A. All -- yes, I'm an -- I'm an industrial
4 engineer and efficiency in economy are words that I
5 use most often. As an Air Force officer I have
6 served my country for 20 years. I still serve it in
7 whatever way I can. So that's -- again I want to
8 thank you for -- it's nice to live in a country like
9 this where this is possible. Because what I have
10 seen -- I have traveled all around the world. This
11 is wonderful. Thank you again.

12 MR. WAHL: I'm -- I'm sorry,
13 Mr. Starke. You say that the information you had
14 on the United States being energy independent was in
15 some clippings that you have?

16 MR. STARKE: The Minot Daily News.

17 MR. WAHL: And you have those with you?

18 MR. STARKE: Yes, sir, I have them
19 right here.

20 MR. WAHL: And these are all of -- this
21 together are all of the exhibits -- the clippings you
22 were referring to?

23 MR. STARKE: Yes, sir, that's it.

24 MR. WAHL: Would you -- would you like
25 to offer them as -- as exhibits for the -- for the

1 commission?

2 MR. STARKE: Yes, sir, I would.

3 MR. WAHL: I'm -- we're going to mark
4 these for the record as RS3 -- 4. 4.

5 (Whereupon, Exhibit No. RS4
6 was marked for identification
by the court reporter.)

7 MR. KELSCH: No objection.

8 MR. DELANEY: I have no objection.

9 MR. BINEK: No objection.

10 MR. WAHL: Exhibit RS4 is received.

11 MR. CRAMER: Thank you. Then my only
12 other -- I would just make one statement again and
13 say thank you for taking the time to not only care so
14 much but to be here and also for acknowledgement that
15 we live a country where we're free to do this. Thank
16 you for your service ensuring that we have that
17 freedom.

18 MR. WAHL: Commissioner Wefald?

19 EXAMINATION

20 BY MS. WEFALD:

21 Q. I want to make sure I understand
22 exactly where your land is. It is just north of
23 Highway 94 on -- and 3 miles east of Valley City?

24 A. Ma'am, it starts at the Soo Line
25 interchange. My land starts at the Soo Line inter --

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1 overpass which is on Interstate 94. It starts there
2 and it goes for 2 miles along Interstate 94 to the
3 Peak interchange.

4 Q. Okay. And it's just to the north of
5 that?

6 A. To the north of Interstate 94.

7 Q. And you're to the south of that?

8 A. Yes. It's along the southern edge --
9 southern -- along the southern edge of 94.

10 Q. And you -- and you indicate a cemetery
11 along the road, and is that the Memory Gardens
12 Cemetery?

13 A. That's the cemetery -- no, it's just a
14 public cemetery, but my father, my mother, my brother
15 and my son are buried there.

16 Q. Okay. And it's my understanding from
17 what your testimony was that you had intended to make
18 this into a subdivision, your property; is that
19 correct?

20 A. Well, it might be up to my -- to my
21 son, but that's why I bought it, because of the
22 location.

23 Q. Okay. And your concern is that once a
24 pipeline goes through your land that you will no
25 longer be able to make this into a subdivision?

1 A. Well, it will take up -- there are 73
2 2-acre plots I've -- on your drawing there.

3 Q. Yes.

4 A. And the pipeline running through the
5 center of it from north to south takes up 30 2-acre
6 plots. At 20,000 apiece that is \$600,000.

7 Q. So \$600,000 you would not be able to
8 sell of that property; that's your understanding?

9 A. Well, if I -- if it's developed, ma'am,
10 I won't be able to.

11 Q. Right. And you -- how did you come up
12 with the property value --

13 A. I called a realtor --

14 Q. -- the \$600,000?

15 A. I called a realtor in Valley City, and
16 he said that he -- that it might be a county law, but
17 in developing like that the plots had to be 2 acres
18 in size.

19 Q. I see.

20 A. And he told me that they're going for
21 \$10,000 an acre.

22 Q. And -- and did you request the pipeline
23 to go around your property?

24 A. I asked them to, but they wouldn't.

25 Q. Okay. And when did you receive that

1 information, approximately when?

2 A. I'm sorry. What was that?

3 Q. When approximately did they tell you
4 that they couldn't make an adjustment to go around
5 your property?

6 A. Oh, it was about six months ago.

7 Q. About six months ago?

8 A. Yeah. I asked them to go around to
9 the -- to the east to avoid the cemetery and
10 everything, but they wouldn't do it.

11 MS. WEFELD: Okay. All right. Thank
12 you very much.

13 MR. STARKE: Thank you, ma'am.

14 MR. WAHL: Commissioner Clark?

15 MR. CLARK: Just a couple of -- of
16 quick questions.

17 EXAMINATION

18 BY MR. CLARK:

19 Q. And first, Major Starke, let me be
20 amongst those who thank you for your service to our
21 country. I know I speak for all of us when -- when I
22 say that. Could you tell me again the -- the
23 purchase date of the property? I think you had
24 mentioned it, but I failed to get that down.

25 A. It was the 20th of -- of August, 2006.

1 Q. So fairly recently, within the year?

2 A. Pardon me?

3 Q. Within the year it was?

4 A. Yes. I'm sorry. I left my hearing
5 aids at home.

6 Q. No, that's fine. And you said that
7 this was -- nothing about this was disclosed to you
8 during the process of that -- of that negotiation?

9 A. That's correct. It was -- the first
10 indication I had was when I got a packet of -- of
11 data from Mr. Reagan, and I didn't know what it was.
12 I called my cousin who has the land across the
13 interstate on the north side. She's here. But
14 that's the way I found out about it.

15 Q. So it was after you purchased it that
16 you started receiving information from the Keystone
17 pipeline folks?

18 A. Yes. That's when I found out. I
19 understand that the company's been working on it
20 since 2005.

21 Q. Right.

22 A. But the attorney nor his client told me
23 about it.

24 Q. When you say the attorney -- the
25 attorney or the client, who are you referring to?

1 A. Well, the -- the client's name is Roman
2 Ertelt, E-r-t-e-l-t, and he has a firm of attorneys
3 here in Minot that represent him. I'm sorry. I
4 can't remember the name.

5 Q. No, that's fine. I was just curious
6 if -- who did you purchase the property from? Was it
7 another family member or --

8 A. I purchased it from Mr. Ertelt.

9 Q. Okay. Thank you. That's --

10 A. His great-grandfather homesteaded it so
11 I'm the second owner of it.

12 Q. Okay. Okay. So Mr. Ertelt and -- the
13 attorneys and clients that you're referring to were
14 the previous owners of that property?

15 A. Yes. Yes.

16 Q. Okay.

17 A. They have quite a bit of property here.

18 MR. CLARK: Okay. Thank you.

19 MR. WAHL: Follow-up, Mr. Kelsch?

20 MR. KELSCH: Nothing.

21 MR. WAHL: Mr. Delaney?

22 MR. DELANEY: I have nothing.

23 MR. WAHL: Mr. Binek?

24 MR. BINEK: Nothing.

25 MR. WAHL: All right. Nothing further

1 from the commission?

2 MR. CRAMER: Nothing. Thank you again.

3 MR. WAHL: All right. Now, thank you
4 very much, Mr. Starke.

5 Next, Mr. Novak, please. If you would
6 use the lectern, please.

7 MR. NOVAK: Hi. My name is Mark Novak,
8 and my address is 12557 County Road 15; Lankin, North
9 Dakota.

10 MR. WAHL: Mr. Novak, would you take a
11 moment to write your name and address on the sheet
12 there, please?

13 Mr. Novak, did you hear my advice this
14 afternoon or this morning regarding perjury?

15 MR. NOVAK: Yes.

16 MR. WAHL: Will you raise your right
17 hand, please? Being advised regarding perjury,
18 Mr. Novak, do you swear that the testimony which
19 you're about to give in this matter shall be the
20 truth, the whole truth and nothing but the truth?

21 MR. NOVAK: Yes, your Honor.

22 MR. WAHL: You may proceed.

23 MR. NOVAK: First of all, I would like
24 to thank everybody for the opportunity I have, and I
25 would also like to thank them for future generations

1 which I think this is so important. And I'm going to
2 speak on a little different thoughts that I have and
3 along with the group thoughts also.

4 First of all, my initial contact with a
5 Keystone representative was I got a card sent to me
6 in the mail to attend a meeting in Michigan, North
7 Dakota, a while back, and that was the first meeting
8 I attended too. And I believe it was one of
9 their first meetings in the area.

10 There was an older gentleman there
11 representing the Keystone pipeline company, and his
12 capacity was in PR work. And I asked him -- I go,
13 "What are you going to do if somebody opposes this
14 pipeline?" And he looked at me and he says, "Hey,
15 we're the pipeline. We do what we want and we go
16 where we -- where we want to." So that was my first
17 consultation or my first visit with the pipeline.

18 First of all, I was going to say is
19 some of the issues are hard for me deviate what
20 categories they fall in, should it have been
21 presented in the morning meeting or the afternoon
22 meeting. So if they're a little blurred together,
23 forgive me. I'm just a -- a farmer.

24 First of all, we came here last night
25 because our concern was -- there was heavy fog in the

1 Valley area, and we drove up last night. We're from
2 a distance away. We wanted to be here on time. When
3 we have all these different environmental issues, our
4 weather is changing greatly, we don't have no decent
5 road systems in the rural area in North Dakota up
6 there to try and shuttle of heavy equipment and all
7 the different things that could arise in case there
8 is a leak.

9 I'd -- I'd like to know when they have
10 this in the center of fields and if you have 5 inches
11 of rains, if you have foggy conditions, so on and so
12 on, too much snow, how they're going to move this
13 equipment out there when they're just not facilitated
14 for any of this.

15 I'll just move -- try and move on along
16 as quickly as I can. We believe that the water is
17 the staff of life, meaning clean water that is free
18 from oil. I believe as well as the group that water
19 is some of our greatest resources. Not petroleum.
20 Water is our greatest resources. Ensuring the future
21 of our next generations and their generations to
22 come. If we lose the source of clean drinking water,
23 we will lose way more than if we will lose any -- I
24 can't think of a benefit to be honest from this
25 pipeline, but we will lose way more than any

1 commercialized benefit that the pipeline is trying to
2 solicit here.

3 So I have quite a few things to touch
4 on, but some of them is that a topographic map I
5 bought -- brought along with me, it shows the
6 elevation drop. They are proposing this pipeline
7 within a half mile or less of the city of Lankin.
8 That's where I'm from. In 2 to 3 miles to the east
9 there is over a 200- to 300-foot drop. So either if
10 there is an oil leak, which we all know there will
11 be, either it will get there underground or
12 overground, and it will get to our aquifers.

13 And if that isn't scary enough, the
14 city of Lankin has a lagoon system so this potential
15 oil leak, which we know is going to happen somewhere
16 along the line, will get picked up by the lagoon
17 system, accelerate the speed and pumped into the
18 river system.

19 This isn't the only corridor that
20 Keystone has to choose from. I mean, North Dakota is
21 a wide state; isn't it? There is a lot of miles that
22 they can choose from. There is no retention dams,
23 meaning if there is a leak, there is no pool that
24 this oil can go to. There isn't. It goes into the
25 Red River, and it goes above our aquifers. We have

1 some of the largest aquifers in the state of North
2 Dakota. The pipeline runs parallel to these aquifers
3 upstream by the way of these aquifers. Not
4 downstream. Upstream of these aquifers.

5 We know that the water companies have
6 met with Keystone, and they told them that they don't
7 want the pipeline over their aquifers. 'Cause
8 through a little bit of jogging around and very small
9 minute movings Keystone moved the pipeline a small --
10 very, very small amount. It is not enough away from
11 these aquifers. They simply do not have enough
12 distance away from their aquifers. There's no way
13 that they have. They're running parallel 2 to
14 3 miles away on a -- over a 200- to 300-foot drop.
15 There is no one that is going to contain this type of
16 oil spill. There isn't. There isn't.

17 I mean, and not only that, they don't
18 have no -- no spill plans in place as we speak, but
19 they said somewhere along the line that they have
20 been operating for decades. The NRCS, meaning the
21 old soil conservation -- they have a new name now.
22 The NRCS watches and regulates over these aquifers
23 and close by these aquifers in soils that have high
24 potential capabilities of leeching chemicals,
25 fertilizers into the ground water.

1 Some of these soils are very close by
2 where the Keystone pipeline is proposing their
3 pipeline. Soil conservation deems this land fragile,
4 and they are trying to make the necessary corrections
5 and end uses for the land that are best for the
6 United States citizens or should we say North Dakota
7 citizens. This is what soil conservation is doing.

8 They also have a category of soils that
9 are very good classified for perfect irrigating
10 soils, meaning that the permeability of the soils
11 can -- the water is very acceptable and readily
12 leeches down into the -- into the soil. These are
13 parallel to where this oil pipeline is proposing to
14 put the pipeline.

15 Okay. Then we go to some of the facts
16 that Keystone released on the volume that cannot be
17 detected quickly. And I'm not sure on their
18 terminology. I seen documents that show 1 and a half
19 percent volume. Earlier the gentleman, that guy in
20 the white shirt over there, said 2 percent volume in
21 90 days and so on and so on.

22 They're pumping 435,000 barrels of oil.
23 If they have an oil leak and who knows how long, that
24 will accelerate and get into our ground water so
25 quickly. Isn't it a good assumption to say that

1 everyone is excited about the Exxon Valdez in Alaska,
2 the oil tanker that ran aground for whatever reason
3 and spilled some oil in Alaska?

4 In my math and in the math of the
5 representatives from this group, it would seem very
6 likely that the oil leak from Keystone would be
7 greater than the Exxon Valdez in our oil -- in our
8 water aquifers. So if we have a couple of these
9 leaks up and down eastern North Dakota, wouldn't that
10 put a majority of the drinking water in jeopardy for
11 the state of North Dakota?

12 And then I touched earlier -- and on
13 top of this -- I'm reading from my notes. On top of
14 this, Keystone is putting the line -- I want to
15 emphasize this -- in the middle of a section of
16 fields. And for people that don't understand what a
17 section is, it's a square block of land. So Keystone
18 is running right down the middle basically.

19 The gentleman said earlier they want to
20 choose where the digging is easiest or best. The
21 topography of the map -- of the land and so on and so
22 on accommodates the pipeline company. So they have
23 ease of digging, less costs, et cetera, et cetera.

24 But shouldn't this be addressed that
25 there's environmental issues and concerns? I mean,

1 just because it's easy digging, does that want to put
2 the jeopardy of drinking water in the state of North
3 Dakota and to the taxpayers and the residents in
4 jeopardy?

5 It's clear in -- in the comments that I
6 heard so far that Keystone is clearly a money
7 company. The facts show it, how well they've been
8 doing, so on and so on. That's great for that.

9 Then anyway addressing some of the
10 foreign -- this is still a foreign oil by the way.
11 It isn't that the United States is, you know, coming
12 up with -- I don't know what to say. This is foreign
13 oil that's coming into the United States so we're
14 still supposedly reliant on foreign oil.

15 Isn't the president pushing for
16 domestic self-sufficiency? Isn't that what he
17 mandated by law in the ethanol industries? Nothing
18 was ever mentioned about ethanol in here. I -- I
19 can't understand that. I don't think the group can
20 understand that neither. I mean, here we have a
21 renewable resource that's helping the rural economy,
22 the state of North Dakota's economy, the U.S.
23 agricultural economy by an ethanol industry. The
24 president mandated by law that ethanol is supposed to
25 expand in its production and consumption.

1 Okay. The next question is is that --
2 I would like to state is, is the PSC going handcuff
3 us all and future generations to the liability that
4 is attached to this pipeline? Keystone speculators
5 are for only 18-month benefit. We are residents of
6 North Dakota and taxpayers of North Dakota. We have
7 been all our life, most of the people I know.

8 We have quite a few questions about the
9 permit process. I touched on this earlier. Keystone
10 is trying to narrow this down under my assumption of
11 to a 1-mile corridor, you know, across the state of
12 North Dakota. Shouldn't this be viewed different?
13 Shouldn't the state meet and say: Well, you know,
14 what good will it do for the state and these are the
15 places you can cross and should cross. I guess that
16 would be some of the thoughts that we have.

17 And when you're referring to this
18 necessity of a permit and that they have to come
19 under this broad topic of -- is a common carrier,
20 well, doesn't a common carrier across the state of
21 North Dakota have to readily and immediately include
22 North Dakota oil to address this? I mean, not
23 this -- we have one unknown name that nobody knew of.
24 I mean, even the -- what was it? The newly elected
25 oil commissioner couldn't recall the name of the

1 company or the identity of the people who might be
2 talking putting in North Dakota oil. I mean, this is
3 bizarre in -- in our mind.

4 I mean, to be a common carrier you
5 should have to -- in the state you're applying for
6 the permit, shouldn't you have to take and show some
7 significant benefit of moving North Dakota oil along?
8 There doesn't seem to be much benefit to North Dakota
9 at all in this. I touched on some of the topics that
10 I was saying earlier. If there is a promise from
11 Keystone for North Dakota entering this specific
12 pipeline, that is a clear guess and a good judgment
13 to put it in western North Dakota if that's their --
14 if that's what they're thinking about.

15 There is a one-hour movie that was out.
16 It was called Refugees from the Blue Planet. I
17 caught it late. It was on satellite. It's made by a
18 Canadian film production company. It's very, very
19 interesting. In this movie it states: The voice of
20 one can make a big difference; the voice of many can
21 make a bigger difference.

22 But the voice of a government agency
23 telling a pipeline no would send a clear message.
24 Aren't residents the most important, not endangered
25 species, nesting grounds, et cetera? The pipeline

1 moved around this in the movie. They state
2 endangered species and so on and so on. The movie
3 that I'm referring to is made solely in Alberta,
4 Canada. It's very, very interesting. I brought one
5 copy with me. That's all I had. I had a few other
6 copies, and they've passed them out.

7 They state: A crime occurs when one
8 party takes something from another. What is the
9 difference here? The movie clearly states that
10 Alberta has the highest disease rates linked to gas
11 and oil, and they specifically outline the health
12 risks associated with this. They have doctors on
13 there talking. It's a very well-done movie. Most,
14 if not all, oil, gas and petroleum is owned by the
15 Crown in Alberta. This is their biggest source of
16 income.

17 You know, it sounds like Alberta has
18 very big supporters of exporting its petroleum
19 products clearly for economic gains. I guess the
20 gentleman earlier was saying that -- how Alberta is
21 going to accommodate the U.S. and how they're readily
22 willing and able to stand by and pipe these enormous
23 sums of oil in there. And they never said, well, gee
24 on September, for example, of '08, we are going to --
25 and I'm just throwing out a date for example -- we

1 are going to incorporate 20 percent of the oil coming
2 from western North Dakota. They never did that.

3 They made a strong sales pitch to say
4 Alberta has all these billions and billions barrels
5 of oil reserves. What are they, the second largest
6 to Saudi Arabia supposedly in their own words? I
7 find it hard to believe as the group does that
8 they're going to allow North Dakota oil to be somehow
9 put in this. I guess a name that's unknown is no
10 comfort to any of us in this group.

11 In this movie that I'm referring to
12 they state that there's more environmental refugees
13 than war refugees in the history of the world. They
14 talk about global warming. They say how hard
15 petroleum products is on the environment and how much
16 pollution they spew into the atmosphere.

17 Some of the direct costs that we suffer
18 as farmers, the new John Deere tractors have all
19 these pollution and emission control standards put on
20 them as a result of burning fossil fuels so isn't
21 that a direct cost to the farmer? If you would go
22 out to buy a semi, you would incur the same -- the
23 same costs.

24 I guess I would like to ask the comment
25 to PSC, you know, this meeting was somewhere along

1 the words of necessity and needs. Well, for -- for
2 what? That's -- that's what I would like to ask, for
3 what? Isn't the first thing or thought should be the
4 environment of North Dakota and the residents of
5 North Dakota? Shouldn't it focus on that, and
6 shouldn't we be the one saying that, hey, back off,
7 you're too close to an aquifer, you're too close to
8 small cities, et cetera, et cetera? They're
9 diminishing our land value.

10 I touched on our ethanol industries
11 that seem to be just willing to start thriving. We
12 have a renewable, every-year resource readily
13 available to us. The country of Brazil, is the way
14 it sounds, solely ethanol efficient and cuts down a
15 lot on global greenhouse.

16 The other thing is when TransCanada
17 states or Keystone, when they state that they're
18 going to have 5 to 600 workers in a two-operation
19 show in North Dakota and that 10 to 15 percent of
20 this volume are going to come from North Dakota
21 labor, well, let's be honest here. North Dakota has
22 the lowest rate of unemployment here across the
23 United States I believe. Most of us guys are
24 farmers. We have a hard time finding one good
25 tractor/combine/truck operator. I mean, we just have

1 that problem. And we come from an agricultural state
2 meaning that the people should be familiar with us.
3 It's not an oil pipeline state. So how are they
4 going to get, I don't know, 50 to a hundred plus
5 workers that will be ready to roll up their hands
6 going to work on this pipeline that's moving at such
7 a fast pace?

8 And then earlier the gentleman says
9 gravel companies, that, you know, they might solicit
10 some gravel business. Try buying a load of gravel
11 now. I'm building a building and try buying -- try
12 getting some gravel. They're all backed up because
13 it's a seasonal occupation for these people. And
14 they have so much business on now, where are they
15 going to facilitate these extra trucks, extra gravel,
16 so on and so on? I don't see it happening.

17 They made a statement that said 40,000
18 landowners -- they currently have easements on 40,000
19 landowners. I believe that was the figure or
20 approximately. We would like to know how many
21 landowners gave their land up willingly or had it
22 condemned, taken away from them just like now.

23 Keystone states they have a detailed
24 plan for leaks coming down sometime -- coming down in
25 the future. I guess I would really like to see that

1 one as long as -- as well as the group would. The
2 other thing is when they're doing all this planning,
3 how can they plan to get out to rural areas? The
4 gentleman stated that most of the digging and
5 everything, construction is going to be happening in
6 rural areas. How can they simply get out to rural
7 areas when we don't have the road facilities to
8 handle heavy equipment, all this stuff and we're just
9 not set up for it?

10 They're stating how much money that
11 they have, that they have enormous amounts of money.
12 Their cash flow is just second to none. That they're
13 the only ones who have the wherewithal to put in
14 these big pipelines, that they're the best choice.
15 But they're offering the landowner only a one-time
16 payment for -- for his land, for crossing his land.
17 They're only offering him a one-time payment, but
18 they're stating that they can trade stock on the New
19 York Stock Exchange, Toronto Stock Exchange and that
20 they -- they actively do business there and their
21 company is so well thought of.

22 Well, and then on top of it, the
23 easement language in the easement, it's not only for
24 one pipeline. It's my understanding that it's -- and
25 the group's understanding that it's for multiple

1 pipelines, that this could cover multiple pipelines
2 and even go to gas pipeline as well as an oil. Also
3 it states in there that they can resell the easement.
4 That they can resell this easement. I don't know how
5 this could put them as a common carrier in North
6 Dakota.

7 If they truly want to take and do
8 something for the state of North Dakota, what about
9 going along the interstate system? And I'm not
10 trying to push this on nobody. But, I mean, there
11 they state that they have response teams that be
12 operating 365 days out of the year ready to go just
13 like firemen out the door and that's it. Our point
14 is these are rural communities. How are they going
15 to get them there? Let's say they have 5 inches of
16 rain. Let's say there's fog. Let's say there's
17 snowstorms, so on and so on. Wouldn't the
18 interstates be a clear route for them, easy sailing
19 and just buzz right down there and go on to do their
20 business?

21 It seems like North Dakota has a law
22 for condemnation. It protects landowners and U.S.
23 citizens. It would be really nice to see that law
24 enacted and not some short-circuit process happening
25 here. This is devaluing our land, but yet our taxes

1 are not going down. North Dakota has a push on for
2 small towns' revitalization. This is not sending out
3 any positive messages. Who would want to move to a
4 town with an oil pipeline within a half mile or less
5 uphill of that town?

6 Water is the staff of life. What is
7 the cost to North Dakota residents when they lose
8 their clean water? So far the only thoughts that I
9 had or the only knowledge that I gained from Keystone
10 was is they employed a couple North Dakota lawyers.
11 That was their testimony that that's the revenue that
12 they gave to North Dakota. That's what he stated.

13 The other thing I would like to ask is
14 is that the state and counties are supposed to
15 receive some money, revenue from Keystone, reduction
16 in property taxes, some type of tax revenue. I don't
17 understand this. And what I'm asking is is what
18 liabilities are subject to the counties or the state
19 for getting this money? It would seem that they
20 would have some liabilities because who gets money
21 for nothing now days? I mean, Santa Claus, I
22 couldn't find him lately.

23 I don't know how this is going to work
24 exactly. These are some of my thoughts as well as
25 the group's thoughts. When they talk about

1 mechanical safeguards in place, it all sounds good.
2 We've been around mechanical things all of our life
3 as far as on the farm. Whenever you rely on
4 mechanical measures, you will have failures. That's
5 just the way things work. When they're putting it
6 close to a water aquifer, it's just too much to ask.
7 There is way more better avenues and approaches to
8 doing this.

9 I hope that the Public Service
10 Commission will -- not only for the people who are
11 present here today but for the future generations
12 will take a good look at this and will realize what
13 is valuable to the citizens of North Dakota. When I
14 came up last night, I stayed at the AmericInn Motel.
15 They had a thing that -- however you want to call it
16 that was attached to the doorknob on the motel room
17 that we stayed in. It says: Save and conserve
18 water. It says: Take -- and if you're going to stay
19 here more than one night, we won't clean your sheets,
20 we won't wash your towels. If you want your towels
21 washed, throw them on the floor, otherwise we are
22 going to conserve water. It's that important.

23 Angie Dickinson, an old movie star from
24 North Dakota, we realize her involvement in clean
25 water. I think clean water is a way more bigger

1 asset to the state of North Dakota than oil. And
2 above all, we are not getting no North Dakota oil put
3 in this pipeline. They are simply entertaining the
4 thoughts.

5 Thank you, everyone, for your time, and
6 I hope our voices get heard.

7 Do you want this movie left and this
8 topographic map?

9 MR. WAHL: Do you want the
10 commissioners to see that, Mr. Novak?

11 MR. NOVAK: It's an hour-long video.
12 It doesn't matter to me. It would be great if they
13 would.

14 MR. WAHL: Are you asking to have those
15 marked as exhibits, Mr. Novak?

16 MR. NOVAK: Yes.

17 (Whereupon, Exhibit Nos. MN1 &
18 MN2 were marked for identifi-
cation by the court reporter.)

19 MR. WAHL: Mr. Novak, marked for
20 identification is a VHS recording MN1. This is the
21 video that you described earlier in your testimony?

22 MR. NOVAK: Correct.

23 MR. WAHL: And marked as Exhibit MN2 is
24 a typographical map of what generally, please?

25 MR. NOVAK: It's from the area of

1 Lankin going west approximately a mile and a half to
2 2 miles. I couldn't get the next map because I ran
3 out of time that goes another mile to show a very
4 significant drop. I mean, we have -- it shows on
5 this map over a hundred- to 200-foot drop in just
6 2 miles. The next map should show even greater drop.

7 MR. WAHL: Let's do Exhibit MN1,
8 Mr. Kelsch.

9 MR. KELSCH: What's the name of the
10 title of the movie again and --

11 MR. NOVAK: Refugees of the Blue
12 Planet.

13 MR. KELSCH: And that's a movie that
14 you videotaped off of the television; is that it?

15 MR. NOVAK: Yes, correct. It was on
16 satellite.

17 MR. KELSCH: Well, I would object to
18 the -- formal objection to the video, particularly
19 not having seen it and not knowing anything about it
20 and what relevance it would have here but....

21 MR. NOVAK: It highlights Alberta,
22 Canada.

23 MR. WAHL: Can you -- can you be more
24 specific, Mr. Novak? It highlights what? What
25 does -- what does this movie have to do with the

1 pipeline?

2 MR. NOVAK: The dangers associated with
3 oil and gas lines and what is happening to the people
4 in Alberta, how they're getting sick, how they're
5 getting chased off their land, et cetera, et cetera.

6 MR. WAHL: All right. Exhibit -- let's
7 do one at a time. Mr. Delaney?

8 MR. DELANEY: I have no objection to
9 the video.

10 MR. WAHL: Mr. Binek, Exhibit MN1?

11 MR. BINEK: I have no objection.

12 MR. WAHL: Exhibit MN1 is received.

13 MR. KELSCH: No objection to 2.

14 MR. DELANEY: I have no objection to
15 the map.

16 MR. BINEK: No objection.

17 MR. WAHL: Exhibit MN2 is received.

18 Anything further at this time,

19 Mr. Novak, that you wish to say?

20 MR. NOVAK: One more thought I had
21 is -- and I think it's the group's thought too, is is
22 these are happening -- supposedly the construction is
23 happening to the rural areas, the rural areas meaning
24 towns 50 a hundred, 150 populations. Basically they
25 don't have no motels. They don't have no cafes.

1 They have a gas station with a fuel tank of maybe a
2 thousand-gallon fuel tank. They maybe pump a hundred
3 gallons of fuel a week. Nobody's facilitated to
4 handle this big influx of so-called gobs of money
5 coming into North Dakota economy. If they want to do
6 it somewhere, do it along big cities that are
7 facilitated for them, I mean, instead of shuttling
8 them around all the time and so on and so on. I
9 mean, what are these -- I mean, it just didn't make
10 sense. It's a good commercial, but in reality
11 doesn't make sense. It doesn't.

12 MR. WAHL: Mr. Kelsch, questions of
13 Mr. Novak?

14 MR. KELSCH: No questions, your Honor.

15 MR. WAHL: Mr. Delaney?

16 MR. DELANEY: I have no questions.

17 MR. WAHL: Mr. Binek?

18 MR. BINEK: No questions.

19 MR. WAHL: Questions by the commission?
20 Commissioner Cramer?

21 MR. CRAMER: Well, I have -- I have at
22 least one. I just want some clarification on
23 Mr. Novak.

24

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EXAMINATION

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BY MR. CRAMER:

Q. Early in your testimony a couple of times you stated emphatically that you know there will be leaks. Do you have a -- what do you base that knowledge on?

A. Their past record. Every pipeline leaks; doesn't it?

Q. Well, I'm asking the question but.... But that's what it's based on, is just that every pipeline leaks? You know that for a fact?

A. Keystone themself in the documents that they gave to us or the paperwork that they gave to us admitted there will be leaks. I'm not the one who dreamt this up.

Q. Well, I just to want make sure that the record is clear but....

A. And so do I. And so do I. The information that I'm going by is what Keystone submitted to the group.

Q. All right. When you referred to an 18-month benefit, were you talking about the construction? That was the construction time; is that what you were referring to?

A. I'm talking about the benefits that

1 this gentleman over here in the white shirt stated.
2 He says there will be an 18-month benefit meaning
3 housing, lodging, food --

4 Q. Okay.

5 A. -- things like that constructionwise.

6 Q. All right. I just wanted to make sure
7 that that was what you were talking about.

8 MR. CRAMER: That's all I have. Thank
9 you.

10 MR. WAHL: Commissioner Clark?

11 EXAMINATION

12 BY MR. CLARK:

13 Q. I just wanted to clarify. You said
14 you're from Lankin.

15 A. Correct.

16 Q. Do you own land that is -- is going to
17 be crossed?

18 A. It's very close to my land. I don't
19 know if it actually will go across it, but it's
20 close.

21 Q. Okay. But you haven't signed a --
22 haven't been required to sign an easement or anything
23 like that up to this point?

24 A. I have been asked to sign an easement.

25 Q. Okay.

1 A. I have been threatened that if I don't
2 sign an easement condemnation will take place so....

3 Q. So it's -- it's your understanding it's
4 close enough to require an easement from you, but
5 you're not sure that -- that the actual site itself
6 will cross your land; is that accurate?

7 A. I guess I'll put it this way. I'm very
8 concerned about the actions that are developing. I
9 think everything's on a fast course, and I would urge
10 the PSC to slow the process down. I mean, there are
11 easements gotten out there. There is no EIS report
12 out. There is no permit from the -- from these
13 people, the PSC, and yet they're gathering easements
14 like if they're going out of style. And you heard it
15 yourself. They are contracting oil down the line for
16 moving this oil that they have contracted, and yet
17 the paperwork isn't nowhere to be found.

18 Q. I'm just trying to establish where your
19 land is relative to the line, that's all, so I have a
20 better idea of that.

21 MR. CLARK: I -- I guess I -- I don't
22 have any more questions for Mr. Novak. I did have a
23 question for the -- for Judge Wahl. The -- the
24 videotape was -- I'm not sure that I heard the answer
25 to Mr. Kelsch's motion. I just want to clarify for

1 myself what -- if the commission is allowed to --

2 MR. WAHL: Yes.

3 MR. CLARK: -- take that into account?

4 MR. WAHL: The answer, Commissioner, is
5 yes. I received the tape, and I've got a little bit
6 more to say about that in a moment.

7 MR. CLARK: Okay. Thank you.

8 MR. WAHL: Commissioner Wefald?

9 EXAMINATION

10 BY MS. WEFALD:

11 Q. I need to know specifically where the
12 land is that you're concerned about. Your -- your
13 own piece of property, where is your own piece of
14 property located?

15 A. I guess my biggest concern is for the
16 next generation and the welfare of North Dakota
17 residents for clean water. I guess the fact that my
18 land is close to this is a secondary issue.

19 Q. All right. I understand that. But can
20 you just still tell me where your land is located?

21 A. My land is located west of Lankin right
22 adjacent to Lankin, the city of Lankin itself. So
23 that's why I made the comment when I says North
24 Dakota has a push on for small-town development.

25 Q. All right. And that's west of Langdon,

1 L-a-n-g-d-o-n?

2 A. No. It's L-a-n-k-i-n.

3 Q. Lankin. Okay.

4 MR. CRAMER: I might just follow-up
5 with Commissioner Wefald.

6 EXAMINATION

7 BY MR. CRAMER:

8 Q. Is that -- so is your land between the
9 city of Lankin and the pipeline? The pipeline is
10 about you said half a mile west of Lankin; right?

11 A. Approximately. But they moved it a
12 small footage so I don't know the exact square foot.
13 Another fellow just handed me the map here that --
14 I'm assuming it to be on the western portion of my
15 land. May be. May be.

16 MS. WEFELD: All right. Now I --

17 A. It may be west of there. They're
18 applying for this mile corridor so....

19 EXAMINATION

20 BY MS. WEFELD:

21 Q. I need -- I need still some more help.
22 I'm so sorry. I'm not quite sure where Lankin is
23 located.

24 A. It's in --

25 Q. It's on map 3. Map 3 of 10. Okay.

1 Thank you. Then.... All right. Okay. Thank you
2 very much. I've got it now. Uh-huh. I've got it.
3 Now, on -- we have a -- are you -- I have also a map
4 that shows an aquifer just to the east of Lankin. Is
5 that the particular aquifer that you're concerned
6 about, and what is the name of that aquifer?

7 A. There's -- there are several smaller
8 aquifers, and the larger aquifer is called the
9 Fordville aquifer.

10 Q. The Fordville aquifer. Okay. Thank
11 you.

12 A. I believe that is the correct name,
13 Fordville.

14 Q. All right. Thank you. That helps me
15 to understand which aquifer. I mean, I know you're
16 concerned about all aquifers --

17 A. Uh-huh.

18 Q. -- along the pipeline, but the one that
19 is closest to your property is the Fordville. Okay.
20 And on our maps that is identified as a shallow --
21 shallow aquifer and a surficial aquifer just for your
22 information. Okay.

23 A. And wouldn't that be one that would be
24 easily contaminated?

25 Q. I'm going to need to get more

1 information about that. I'm sorry. I can't answer
2 that question.

3 A. Okay.

4 Q. Okay. Then on -- you said that there
5 is no spill plan in place. Is it just that you're
6 not aware of a spill plan or it's your understanding
7 from attending --

8 A. I believe on the presentation today the
9 gentleman over there stated that they were going to
10 have this plan in place in 2009. And to get back to
11 the other gentleman's question, after you're done
12 I -- I have some data that I think he would find
13 quite interesting.

14 MS. WEFELD: Thank you. All right.
15 And then -- I think that's everything right now that
16 I need to clarify. Thank you so much.

17 MR. WAHL: Commissioner Clark?

18 EXAMINATION

19 BY MR. CLARK:

20 Q. Just briefly to orient myself. The --
21 the ravine or the dropoff that you had mentioned
22 relative to Lankin, is that directly north? Is that
23 maybe 2 miles, something like that? Is that the
24 dropoff?

25 A. The land around the Lankin area slopes

1 generally to the east, in an easterly direction going
2 to the Red River Valley.

3 Q. Okay.

4 A. We are on top of a -- I don't know what
5 you want to call it -- plateau or whatever it is.
6 But it slopes from you could say the Lankin area to
7 3 miles east of the Lankin area.

8 Q. Okay.

9 A. Over 300-foot drop, 2- to 300-foot
10 drop. And that's what I keep on referring to, that
11 either the oil will get there above ground or below
12 ground. It's going to get there.

13 Q. Okay. It looks like there's -- I can't
14 tell from this map. There's a river. I don't know
15 if it's the Pembina River or -- there's a river
16 that's just north of Lankin. Is that --

17 A. Yeah, and there's one that's right east
18 of Lankin too. I don't --

19 Q. Which river is that that's just north?

20 A. I don't know.

21 MR. NOVAK: Maybe Merle, do you know?

22 MR. WAHL: I'm sorry, Mr. Novak. If
23 you don't know, you don't know.

24 MR. NOVAK: Okay. Okay. Sorry. I
25 don't know.

1 MR. WAHL: Okay. That's all right.

2 Q. (Mr. Clark continuing) Okay. So just
3 so I understand. And we do have the topographical
4 map here, but generally you're saying that the land
5 tends to slope towards the east --

6 A. Correct.

7 Q. -- toward the aquifer that you're
8 concerned about?

9 MR. CLARK: Okay. Thank you.

10 MR. NOVAK: And could I add in this at
11 some point in time, this just highlights -- I found
12 in my notes from TransCanada Keystone crude oil
13 pipeline prepared by Water Development Association,
14 WEBA (sic), and they state that oil spills that --
15 they have up to 576 in the past six years and have an
16 average of 96 spills per year. And I can enter this
17 into some type of exhibit if you want this or
18 however.

19 MR. WAHL: That's really your request.

20 MR. NOVAK: Yes, I guess that would be
21 great.

22 MR. WAHL: Mr. Novak, will you tell the
23 commission, please, what this -- what this booklet
24 is?

25 MR. NOVAK: It's from the WEB Water

1 Development Association in Aberdeen, South Dakota.

2 MR. WAHL: Can you tell me -- can you
3 tell the commission anything about this publication?
4 What is the WEB Water Development Association; do you
5 know?

6 MR. NOVAK: I'm sorry, your Honor. I'm
7 not clear on that.

8 (Whereupon, Exhibit No. MN3
9 was marked for identification
by the court reporter.)

10 MR. WAHL: I have marked for
11 identification Exhibit MN3 which is the booklet and
12 the page 9 containing the information on oil spill
13 impact on farmland and soils containing information
14 with regard to a TransCanada pipeline spill.

15 MR. KELSCH: Your Honor, I'm going to
16 object to -- to this document. This -- the
17 witness -- it's not the witness's document. He
18 didn't -- didn't know who the WEB Water Development
19 Association was. He doesn't have any knowledge
20 concerning the information in it, and -- and it's
21 just -- clearly it's an inflammatory document from --
22 it looks like prepared in South Dakota that really
23 has no relevance or material basis here in North
24 Dakota and no foundation for it at all. And we have
25 no way of cross-examining the people who prepared it

1 or questioning where the information came from or in
2 any way to determine the veracity of the document.
3 It -- it really puts us at a disadvantage if it's --
4 if it's admitted.

5 MR. STARKE: I think you'll find that
6 the reference there --

7 MR. WAHL: Just -- I'm sorry. I'm
8 sorry, Mr. Starke.

9 Mr. Delaney?

10 MR. DELANEY: I have no objection to
11 the document, and I would just offer -- I -- I am
12 generally familiar with the WEB Water Development
13 group down in South Dakota. They're responsible
14 generally for rural water -- rural water supply down
15 in North (sic) Dakota, responsible for routing water
16 through PVC pipes to rural water -- rural areas. And
17 I believe that document was prepared by Curtis Hohn
18 who is with that organization. And that is really
19 all I have to offer.

20 MR. KELSCH: And I would object to
21 testimony by the counsel for the intervenor. That
22 should not be used to justify the -- or -- or give
23 any credence to the document or provide a foundation
24 for the document.

25 MR. NOVAK: This was information that

1 was given to the group, and I just didn't have time
2 to read all of the information. I mean, it's simply
3 that. We're farmers. It's our busy time. Just
4 'cause one person or many people read it in the group
5 and I didn't shouldn't exclude it in my mind. Isn't
6 this a public meeting?

7 MR. WAHL: Mr. Delaney, is this WEB
8 Water Development Association, Inc., a -- what, a
9 private corporation? Do you know what it is?

10 MR. DELANEY: I don't know if they're a
11 private or a for-profit corporation.

12 MR. WAHL: And what are their purposes,
13 if you know?

14 MR. DELANEY: Rural water supply in
15 South Dakota.

16 MR. WAHL: Well, let me -- let me say
17 this. As I discussed with counsel prior to the --
18 prior to the hearing, I think that the purpose of an
19 administrative hearing, especially the purpose of an
20 administrative hearing that includes public
21 testimony, is to gather up as much relevant evidence
22 as is available for the consideration of the
23 commission.

24 And as I pointed out, the commissioners
25 are each expert in your own right not only by

1 experience but by training and education. Plus the
2 commission is assisted by a professional expert
3 staff. So many of the concerns that you have
4 ordinarily for the rules of evidence are not really
5 applicable to an administrative hearing, and I say
6 again especially an administrative hearing which
7 provides for public testimony.

8 The legislature has recognized this,
9 and accordingly in accordance with the provisions of
10 Section 28-32-24 sub 1, I will waive the rules of
11 evidence for these proceedings upon a finding that
12 the waiver is necessary to ascertain the substantial
13 rights of a party to the proceeding. And I think the
14 evidence is relevant. Specifically, Mr. Kelsch, I --
15 I frankly think that if there's a fact stated, a
16 discrete fact, in fact, and it's -- if it's -- if the
17 fact is false, TransCanada is well in a -- in a
18 position to demonstrate that it's false. And I -- at
19 that point the evidence has very little credibility
20 left. So Exhibit MN3 is received. Mr. Kelsch, you
21 may make your record.

22 MR. KELSCH: Thank you, your Honor. I
23 would just like to point out that 28-32-24 subsection
24 5 where it indicates that all testimony must be made
25 under oath or affirmation. "Relevant statements

1 presented by nonparties --" which this apparently is
2 although it's not even a statement by Mr. Novak
3 "-- may be received as evidence if all parties are
4 given an opportunity to cross-examine the nonparty
5 witness or to otherwise challenge or rebut the
6 statements."

7 And -- and we certainly -- because this
8 Mr. Hohn or whoever prepared this document is not
9 here, if this was important he -- I assume he could
10 have come here. He is not here. We're not able to
11 cross-examine him as to the statements or to
12 challenge where they're coming from. And so I --
13 again I would renew my objection to the document.

14 MR. WAHL: And I don't think the
15 subsection is applicable. Essentially this is a
16 document that's hearsay which Mr. Novak is offering.
17 And as I say, I -- I waive the rules of evidence for
18 these proceedings upon a finding that the waiver is
19 necessary to ascertain the substantial rights of a
20 party. Now, I am -- I should have -- I may be ahead
21 of myself just a bit, Mr. Novak, but I understood
22 that you were -- are one of the intervenors under the
23 order of the commission.

24 MR. NOVAK: Yes. And I'm also a member
25 of the DOC group.

1 MR. WAHL: All right. But specifically
2 I notice in the order -- in the commission's order
3 there's a Mark Novak named. Apparently that's a
4 typographical error.

5 MR. NOVAK: No. That's -- I think
6 there's only one Mark Novak.

7 MR. WAHL: Oh, I'm sorry. I -- I had
8 your name, Mr. Novak, as Martin. Am I wrong about
9 that?

10 MR. NOVAK: No, my name is Mark Novak.

11 MR. WAHL: Mart?

12 MR. NOVAK: Mark, M-a-r-k.

13 MR. WAHL: All right. I'm sorry.

14 Well, then you are -- you are a party under the
15 commission's order for intervention. Accordingly,
16 Mr. Kelsch, I -- I think it's appropriate.

17 MR. KELSCH: Your Honor, could I at
18 least have -- or make a request to get a copy of that
19 today so we at least have a little time to look it
20 over and have a chance to put some sort of rebuttal
21 response to it tomorrow given this late date of
22 receiving it?

23 MR. WAHL: Certainly. All right.
24 Mr. Kelsch, follow-up to the commissioners'
25 questions?

1 MR. KELSCH: No, your Honor.

2 MR. WAHL: Mr. Delaney?

3 MR. DELANEY: No, your Honor.

4 MR. WAHL: Mr. Binek?

5 MR. BINEK: No.

6 MR. WAHL: Anything further?

7 MR. CRAMER: I --

8 MR. WAHL: Commissioner Cramer.

9 MR. CRAMER: Thank you.

10 EXAMINATION

11 BY MR. CRAMER:

12 Q. I want -- I want to -- since I have a
13 local here -- and I just found another pipeline map.
14 I'm trying to familiarize myself with -- the Enbridge
15 pipeline, are you familiar at all with that, the one
16 that runs from western North Dakota into Minot and
17 then directly across to Clearbrook, Minnesota? Are
18 you familiar with that pipeline?

19 A. Not really.

20 Q. Okay. I was -- I wanted, if I could,
21 to get some geographical bearings on how close that
22 might run to Lankin as well. I suspect in the
23 vicinity but maybe not real close but....

24 A. I don't believe it's in the vicinity.

25 MR. CRAMER: All right. Thank you.

1 MR. WAHL: Thank you very much,
2 Mr. Novak.

3 MR. NOVAK: Thank you, everyone, and
4 thank you, your Honor.

5 MR. WAHL: I think it's a good time for
6 about a five-minute recess.

7 (A recess was taken from 3:40 p.m. to
8 3:47 p.m.)

9 MR. WAHL: All right. Let's be in
10 order, please. All right. Let's be in order. I'm
11 missing Mr. Kelsch. Mr. White, you know, I've got
12 just a little preliminary business. If you would
13 just sit in for TransCanada, please.

14 MR. WHITE: Okay.

15 MR. WAHL: Let's be on the record.
16 Mr. Starke.

17 MR. STARKE: Yes, sir.

18 MR. WAHL: I'm told that I overlooked
19 actually administering the oath to you, and I may
20 well have done that. If I did indeed overlook
21 administering the oath to you, we're going to fix
22 that up right now. As I recall, you've been here all
23 day. You heard my advice regarding perjury?

24 MR. STARKE: (Indicating yes.)

25 MR. WAHL: Your answer is yes?

1 MR. STARKE: Yes, sir, I have.

2 MR. WAHL: And would you raise your
3 right hand please, Mr. Starke? Mr. Starke, do you
4 swear that the testimony which you gave for this
5 hearing was the truth, the whole truth and nothing
6 but the truth?

7 MR. STARKE: Yes, sir, I do.

8 MR. WAHL: And do you, Mr. Starke,
9 ratify and confirm all of the testimony which you
10 previously gave?

11 MR. STARKE: Yes, sir, it is. And I
12 have proof of every statement I made.

13 MR. WAHL: Thank you very much,
14 Mr. Starke.

15 MR. STARKE: Yes, sir.

16 MR. WAHL: All right. Next -- next,
17 please. As I recall, there is a person here who
18 wishes to give testimony in support of the --
19 TransCanada's applications. Will you come forward,
20 please?

21 What is your name, sir?

22 MR. PTACEK: My name is Paul Ptacek,
23 spelled P-t-a-c-e-k.

24 MR. WAHL: Mr. Ptacek, would you print
25 your name and your address on the sheet on the

1 lectern, please?

2 MR. PTACEK: Yes, your Honor.

3 MR. WAHL: Mr. Ptacek, did you hear my
4 advice regarding perjury?

5 MR. PTACEK: Yes, your Honor.

6 MR. WAHL: Would you raise your right
7 hand, please? Being advised regarding perjury,
8 Mr. Ptacek, do you swear that the testimony which you
9 are about to give in this matter shall be the truth,
10 the whole truth and nothing but the truth?

11 MR. PTACEK: Yes.

12 MR. WAHL: Will you please state your
13 name and address for the record?

14 MR. PTACEK: My name is Paul Ptacek.
15 My address is 7540, Highway 18; Wyndmere, North
16 Dakota 58081.

17 MR. WAHL: You may proceed, Mr. Ptacek,
18 with your testimony.

19 MR. PTACEK: Thank you, your Honor. I
20 would rise in support of the application for the
21 Keystone pipeline, and I'll limit my -- my comments
22 to three specific concerns that were raised in the
23 earlier meeting conducted this morning.

24 Being a lifelong resident of North
25 Dakota, except for the period of time which I spent

1 in the Marine Corps, I spent my entire life in North
2 Dakota. One of the issues that was raised was
3 economics, and I can speak personally about my
4 personal situation as it relates to the pipeline
5 industry.

6 In 1999 when the Alliance pipeline came
7 through North Dakota, I was working as a diesel
8 mechanic in heavy trucks down in the southeast part
9 of the state, and I had an opportunity -- through
10 other incidents there I had an opportunity to be
11 employed on constructing that pipeline.

12 One of the issues that was raised was:
13 How are these contractors going to draw potential
14 employees to work on these projects? And I can say
15 specifically in my instance I had an opportunity to
16 almost double my annual income by leaving my
17 profession as a diesel mechanic and becoming an
18 equipment operator working construction on that
19 pipeline itself. I worked for -- consistently for --
20 for the two-year period which that construction took
21 place, and from there I -- I have continued in the
22 craft as a heavy equipment operator since that time
23 greatly improving my ability to provide for my family
24 far exceeding the income that I would have maintained
25 as a -- as a diesel mechanic.

1 Looking at the national pipeline
2 agreement that is drawn by International unions with
3 the pipeline contractors in the industry, looking at
4 entry level wages in the projected years to come,
5 recently more or less here in the next two years, you
6 could expect that an entry-level operator would start
7 out somewhere in the -- in the area of 20 to \$25 an
8 hour total package wages and benefits.

9 That's -- that's considerable incentive
10 to go to work there either as a college student -- I
11 remember -- I can cite a number of instances.
12 Workings on the Alliance line down in the southeast
13 part of the state where local farmers would be
14 employed as laborers working on the line, college
15 students, endless number of individuals from North
16 Dakota local to that construction being employed on
17 that line working in that craft.

18 The industry actually covers a number
19 of trades being it operator, welders, laborers, so on
20 and so forth. So some trades are specific in their
21 ability to perform certain construction aspects
22 whether it be the pipeline welders. There are
23 certain certifications and qualifications that are
24 basically going to eliminate your average Joe from
25 just walking on and -- and saying they can weld.

1 There's -- there's a great deal of training that goes
2 into the actual welding and construction of -- of the
3 pipe.

4 In the heavy equipment aspect where I'm
5 from, you -- you could employ someone with -- with
6 limited abilities and skills to do certain aspects
7 whether it be in the reclamation, driving a farm
8 tractor, a tow Cat, certain other pieces of
9 equipment, but then there's other pieces of equipment
10 such as your side boom tractors where the lowering of
11 the pipe is involved where you're going to need a
12 highly skilled individual so that people don't get
13 hurt. There's a great amount of knowledge and -- and
14 skill that goes with operating some of those pieces
15 of equipment.

16 And I can honestly say through great
17 efforts taken by the International union of operating
18 engineers that much training is done throughout the
19 year, year after year in training productive,
20 skilled, safe equipment operators in the pipeline
21 industry. So being a lack of -- of individuals that
22 are going to be able to perform, I would -- I would
23 doubt there's going to be a lack of individuals who
24 would be able to work on such a project.

25 Also I remember working on the Alliance

1 line that -- that a great amount of parts and
2 equipment were purchased from local dealers along the
3 right-of-way whether it be heavy construction
4 equipment parts or agricultural parts and equipment
5 for reclamation.

6 Housing, lodging, those issues, if
7 people from Valley City here can remember back into
8 1999, 2000, they can probably remember the great
9 influx of individuals who came to the community as
10 the pipeline passed by looking for housing, so on and
11 so forth. And -- and the lodging characteristics
12 stretched over a great distance whether it be from
13 Fargo to Jamestown or -- or you had people pulling up
14 campers in -- in -- in local farmers' yards paying
15 them a certain amount every month to hook up to their
16 electrical pole and -- and sewage facilities. But
17 housing wasn't necessarily a big issue there. I
18 believe every room was full that was available. But
19 on a project that size would be similar to this
20 project in size, lodging was accomplished. And a
21 great deal of money was spent in local communities in
22 providing for those services.

23 One of the other aspects that was
24 raised was safety. And as many individuals have
25 stated already, there's a -- there's a process in

1 place by which a pipeline is monitored for corrosion
2 or -- or leaks, those sort of safety issues. As a
3 matter of fact, when I -- when I finish with this
4 meeting here today, I'm going to a -- a site just
5 outside of town where there's actual construction
6 taking place on an existing line for safety
7 precautions. There's some what they call dig-ups
8 where they're -- they're -- they're fixing problems
9 before they become problems. And those are --
10 problems are identified through the measures that --
11 that pipelines put in place to measure corrosion or
12 defects or whatever.

13 So this idea of there being a
14 catastrophic event where -- where this thing is just
15 going to explode unknowingly, I have a hard time
16 believing that that's a possibility provided the
17 information that I have through personal experience
18 with pipelines and the way they conduct testing
19 and -- and safety monitoring of those pipelines.

20 Environmental issues is probably one of
21 the biggest issues in construction of a pipeline. It
22 wasn't hard to recall on many occasions there were --
23 there were many times somewhere up to a four-to-one
24 ratio of inspectors to workers working on a pipeline
25 to ensure that not only the environment --

1 environmental impact concerns were being met, that
2 the safety aspects were being met, so on and so
3 forth.

4 There were an incredible number of
5 individuals on the construction site making sure that
6 safety and the environment were -- were attended to
7 in the most tedious fashion. It actually maybe
8 impeded the speed of -- of which the construction
9 happened to the benefit of the pipeline.

10 Also more directly to the concerns of
11 the need and necessity issue with local and national
12 benefits. With the U.S. -- anyone can correct me if
13 I'm wrong. But I believe the figure is the U.S.
14 consumes about 25 percent of the world's reserves in
15 petroleum, and that is not likely to reduce itself
16 either through conservation or through alternative
17 methods. There is always going to be a need for oil.
18 Let's say tomorrow we replace oil with hydrogen, a
19 product that could probably compete directly with
20 petroleum as a fuel. But I don't think you can grow
21 enough product to replace petroleum in tires or
22 fertilizer or hydraulic hoses, hydraulic fluids,
23 aside from the fuel itself. I don't see that that's
24 possible. You're always going to have some need for
25 the petroleum product.

1 With the -- with the U.S. consuming
2 more than it can produce, I believe the U.S. holds
3 2 percent of the world's oil reserves. There's no
4 possible way that the U.S. could solely pump itself
5 into independence being that we consume 25 percent of
6 the world's resource. So conservation certainly
7 needs to be an issue raised. I don't hear that
8 shouted above the hordes today, but the fact I
9 believe of the matter is you're going to have to deal
10 with the consumption here today as -- as moving
11 forward with supplying the product.

12 And briefly in closing here, I'm going
13 to say that I hear -- having sat here today, I hear
14 that there's a lot of questions that many people
15 raise that I think there's -- there's answers for
16 those questions if -- if the opportunity for people
17 to sit down and -- and have a conversation to answer
18 those questions takes place. This certainly is a
19 forum which -- which promotes the raising of those
20 issues which is much needed. I totally agree with --
21 with the process, but in saying that, I would move to
22 promote the -- the further application of the
23 TransCanada line. Thank you.

24 MR. WAHL: Mr. Kelsch, questions for
25 the witness?

1 MR. KELSCH: No questions, your Honor.

2 MR. WAHL: Mr. Delaney?

3 MR. DELANEY: I have just a couple,

4 your Honor.

5 EXAMINATION

6 BY MR. DELANEY:

7 Q. Mr. Ptacek, thanks for coming today and
8 offering your comments. A few questions. Were you
9 approached by Keystone Pipeline Company or contacted
10 by them to testify today?

11 A. No.

12 Q. Okay. And you left your job to work
13 for the Alliance pipeline; is that correct?

14 A. Correct.

15 Q. Do you still work for the Alliance
16 pipeline?

17 A. No.

18 Q. Okay. So how long did you work there?

19 A. I worked for them for two years during
20 the construction of that project at which time I left
21 and went to work for water and sewer construction.
22 It's in the same industry but in a different part of
23 the industry.

24 Q. Did you leave on your own volition or
25 was it because they didn't have any more work for you

1 after the project was completed?

2 A. I had -- I had two opportunities
3 actually to travel with that company and continue
4 operating as a heavy equipment operator in other
5 areas within the U.S. Having a family I chose to
6 stay in North Dakota and work more locally. The life
7 of a pipeline construction worker is somewhat of a
8 gypsy's life, and I don't believe that was in the
9 best interest of my family.

10 Q. Fair enough. Have you been contacted
11 or retained about -- I mean, retained to do any work
12 for the Keystone project?

13 A. No, I have not.

14 Q. Okay. You spoke of this monitoring
15 process which would address some of the safety
16 concerns people have raised. When you were working
17 for Alliance, were you directly involved with that
18 monitoring process or was your work limited to the
19 heavy equipment operation?

20 A. I was directly involved in some parts
21 of that line in installing that process. And through
22 working with the individuals who were installing it,
23 I gained some limited knowledge of -- as to the
24 process with which that monitors the system.

25 Q. Are you aware of whether or not the

1 same monitoring processes are in place for this
2 pipeline as were in place for the Alliance pipeline?

3 A. I believe the cathodic processes was
4 one of the process -- processes that was listed in --
5 in the slide presentation which would be as I
6 understand similar to the cathodic process which we
7 installed on the Alliance line.

8 Q. Do you know that for certain or --

9 A. No, I can't speak to that as a fact.

10 Q. Okay.

11 A. I can only assume that cathodic
12 monitoring is similar in nature.

13 MR. DELANEY: Okay. That's all I have.

14 MR. WAHL: Mr. Binek?

15 MR. BINEK: I have no questions.

16 MR. WAHL: Questions from the
17 commission? Commissioner Cramer?

18 MR. CRAMER: I have none.

19 MR. WAHL: Commissioner Wefald?

20 MS. WEFELD: I have none, but I
21 appreciate since I was the one who raised some
22 questions about employment you sharing your
23 experiences. Thank you very much.

24 MR. PTACEK: Thank you.

25 MR. WAHL: Commissioner Clark?

1 MR. CLARK: No, thank you.

2 MR. WAHL: Thank you very much,
3 Mr. Ptacek.

4 MR. PTACEK: Thanks.

5 MR. WAHL: Is there any other public
6 testimony in support of TransCanada's applications?
7 If not, is there any -- I'm sorry. Do
8 you wish to speak in support of the application, sir?

9 MR. VCULEK: Yes.

10 MR. WAHL: What is your name?

11 MR. VCULEK: Bernard Vculek.

12 MR. WAHL: Spell your last name for me,
13 please.

14 MR. VCULEK: V-c-u-l-e-k.

15 MR. WAHL: Mr. Vculek, go ahead and
16 sign the -- or print your name and address for the
17 register, please.

18 MR. VCULEK: I wrote it. I hope you'll
19 be able to read it.

20 MR. WAHL: Oh, I'm sure we will.

21 MR. VCULEK: I just want to say --

22 MR. WAHL: Just a minute, please.

23 MR. VCULEK: Oh, I'm sorry.

24 MR. WAHL: I don't want to mispronounce
25 your name. Is it Vculek?

1 MR. VCULEK: Vculek.
2 MR. WAHL: Vculek. I'm sorry. I
3 picked up a V someplace.
4 MR. CRAMER: It's a V as in Vculek.
5 MR. VCULEK: Yeah.
6 MR. CRAMER: V as in Victor.
7 MR. VCULEK: V-c-u-l-e-k.
8 MR. WAHL: All right.
9 MR. VCULEK: The Ptaceks and the
10 Vculeks, they're all Bohemian.
11 MR. WAHL: All right. Mr. Vculek, did
12 you hear me -- hear my advice regarding perjury?
13 MR. VCULEK: Yes, I did.
14 MR. WAHL: And accordingly will you
15 raise your right hand, please? Being advised
16 regarding perjury, Mr. Vculek, do you swear that the
17 testimony which you are about to give in this matter
18 shall be the truth, the whole truth and nothing but
19 the truth?
20 MR. VCULEK: I do.
21 MR. WAHL: You may -- I'm sorry.
22 Please state your name and address for the record.
23 MR. VCULEK: Bernard Vculek. Oakes,
24 North Dakota, Box 34, 58474.
25 MR. WAHL: You may proceed with your

1 testimony, Mr. Vculek.

2 MR. VCULEK: I had this whole list out
3 of South Dakota, and I promised the people in the
4 back that I would read it all for you, but now I've
5 changed my mind. I'm just kidding.

6 I'm in support of this project very
7 much so, but I think we need to be very considerate
8 of some of the people who the pipeline goes by their
9 home closely. There may not be heavy enough line.
10 We need to be extra considerate of those folks.

11 We've got a fellow here today who's
12 156 feet away from the pipeline with a brand new
13 home, and I -- I think there can be some changes made
14 for things like that. I've heard some other very
15 good reasons, and there are some good comments in the
16 South Dakota WEB pipeline reading by Curt Hohn,
17 whatever you want to call it. I hope you people can
18 take time and look it over because there are some
19 very valuable comments in there.

20 We in North Dakota, we need to do all
21 we can to be very considerate of the -- of everybody
22 along the line. The water considerations, we're
23 irrigation farmers, and we're all considerate of
24 that. But that's my brief comment. I won't -- I
25 won't read that whole list for you. Thank you very

256

1 much for listening to me.

2 MR. WAHL: Just a minute, Mr. Vculek.

3 MR. VCULEK: Okay.

4 MR. WAHL: The lawyers and the
5 commissioners get to ask you questions yet.

6 Mr. Kelsch?

7 MR. KELSCH: No questions.

8 MR. WAHL: Mr. Delaney?

9 MR. DELANEY: No questions.

10 MR. WAHL: Mr. Binek?

11 MR. BINEK: No questions.

12 MR. WAHL: Questions from the
13 commission? Commissioner Cramer?

14 MR. CRAMER: No, I -- no questions.
15 Not relevant to this anyway. I'm more interested in
16 moving grain, but we'll talk about that later.

17 MR. WAHL: Commissioner Wefald?

18 EXAMINATION

19 BY MS. WEFALD:

20 Q. Is the person whose -- you said you
21 have a concern about a person whose home is 156 feet
22 away from the pipeline. Is that in North Dakota?

23 A. Yes, it is. It's about 1 mile from
24 where our land is south and -- south of Highway 11,
25 and hopefully he'll get up and say a few words about

1 that too.

2 MS. WEFELD: Thank you.

3 MR. VCULEK: So....

4 MR. WAHL: Commissioner Clark?

5 MR. CLARK: No, I have none. I just
6 want to thank Bernie for making the trip up.

7 MR. VCULEK: Okay.

8 MR. WAHL: Follow-up, Mr. Kelsch?

9 MR. KELSCH: No.

10 MR. WAHL: Mr. Delaney?

11 MR. DELANEY: No.

12 MR. WAHL: Mr. Binek?

13 MR. BINEK: No.

14 MR. WAHL: Thank you very much,
15 Mr. Vculek.

16 Is there any other public testimony
17 from persons who will not be able to give their
18 testimony at Park River tomorrow? Anybody else?

19 Please come forward.

20 What is your name, sir?

21 MR. ELLINGSON: My name is Terry
22 Ellingson.

23 MR. WAHL: All right. Would you sign
24 the register there, please, Mr. Ellingson?

25 Mr. Ellingson, you heard my advice

1 regarding perjury?

2 MR. ELLINGSON:

3 Yes, I did.

4 MR. WAHL: Will you raise your
5 right hand, please? Being advised regarding perjury,
6 Mr. Ellingson, do you swear that the testimony which
7 you are about to give in this matter shall be the
8 truth, the whole truth and nothing but the truth?

9 MR. ELLINGSON: Yes, I do.

10 MR. WAHL: Please state your name and
11 address for the record.

12 MR. ELLINGSON: My name is Terry
13 Ellingson. 5065 125th Avenue Northeast, Dahlen,
14 D-a-h-l-e-n, North Dakota 58224.

15 MR. WAHL: You may proceed with your
16 testimony, Mr. Ellingson.

17 MR. ELLINGSON: I guess as a landowner
18 where the pipeline is coming across, I have a couple
19 of concerns that I would like to address. I guess
20 when they came to get an easement from me, there was
21 nothing in the easement concerning what's going to
22 happen to our topsoil. Although we did see in the
23 slide presentation that they were going to try to put
24 it back on top, there was nothing in the easement
25 itself that I looked at that they would put the black

1 dirt on top and that the productivity of my soil was
2 going to be similar to what it was when they came
3 through. That was a concern of mine. I addressed it
4 to the land person that came to try to get an
5 easement, and he was going to go back to the people
6 and I haven't heard anything since.

7 And the other thing is the number of
8 pipelines that they can come through once they do
9 have the easement. Are they going to just have one?
10 Are they going to have 20 more? Are we going to have
11 a highway out there? What's going to happen? They
12 won't tell me. It says in the easement they can have
13 one or more pipelines. Well, the guy said, "Oh, we
14 can cross out 'or more.'" I don't think so.

15 You know, this is for real. They're
16 going to come in here -- once they get this easement
17 they can sell the -- the easement right to somebody
18 else, and I'm going to be stuck with 20 pipelines in
19 this quarter of land that I used to farm. And that
20 doesn't make me very happy.

21 Another thing is the liability issue I
22 guess that I'm concerned with. Is let's say that
23 there is an oil spill and it goes over to my
24 neighbor's land. Am I liable? Are they liable? I
25 don't see anything of that in the easement that I was

1 supposed to sign. Or let's say 20 years down the
2 road they abandon the pipeline, the pipeline rusts
3 and breaks, my combine tips over, the operator that I
4 have driving the combine is killed, who's going to
5 be --

6 MR. WAHL: I'm sorry, Mr. Ellingson.
7 We're going to change the tape.

8 THE WITNESS: I guess I spoke too long.

9 MR. WAHL: No. You're doing just fine
10 but....

11 All right. Go ahead, Mr. Ellingson.

12 MR. ELLINGSON: Okay. Getting back to
13 the liability issue. I guess if the pipeline was to
14 be abandoned, let's say, it rusts through this
15 30-inch pipeline, there's a big cave-in, someone
16 driving a combine hits the hole, tips the combine
17 over and is killed, who is going to be liable?
18 Probably not me. I don't see anything in the
19 easement that says the pipeline company is going to
20 take care of this liability. That's a big issue I
21 think as landowners that we have to be concerned
22 with.

23 And I guess another question that I had
24 now, if they're going to take all this water and
25 flush this water into the pipeline, where is this

1 water going to go that's contaminated with all this
2 welding products and -- and other things? We haven't
3 heard anything about that. So that's just something
4 else I would like addressed. If -- if they are going
5 to some day possibly get this across our land, I
6 guess I would like the PSC to make sure that we have
7 some kind of an acknowledgment that, you know, these
8 issues are addressed. And that's all I have.

9 MR. WAHL: Mr. Kelsch, questions for
10 the witness?

11 MR. KELSCH: No questions, your Honor.

12 MR. WAHL: Mr. Delaney?

13 MR. DELANEY: No questions.

14 MR. WAHL: Mr. Binek?

15 MR. BINEK: No questions.

16 MR. WAHL: Questions by any
17 commissioner? Commissioner Cramer?

18 MR. CRAMER: I don't -- I don't have
19 any questions, Mr. Ellingson. But I want to thank
20 you for your comments, the brevity of them and the
21 focus of them. And this is very helpful to me to be
22 honest, and I suspect several of the questions you've
23 asked would have been answered but they will
24 certainly be asked if not. Thank you.

25 MR. WAHL: Commissioner Wefald?

EXAMINATION

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BY MS. WEFALD:

Q. I want to understand more specifically your topsoil concern. Are you concerned about how much topsoil they actually segregate on your property --

A. Well, what happened --

Q. -- and how it's respread or just give me a little -- a few more details about your concerns about the topsoil issue. I know topsoil and subsoil is very important to farmers so just help me with that.

A. The -- the top layer -- let's say the top 12, 18 inches and your most productive layer of soil.

Q. Yes.

A. And we need that to go back on top in order for when we go try to raise crops down the road a year later, ten years later we have the same productivity. If they take the clay or the soil that's 6, 7 feet down, that isn't the same productivity as the topsoil that they're stripping off first.

We need to make sure that they're taking that topsoil, putting it in a separate place

1 and putting that -- the worst productivity soil in a
2 separate place and then --

3 Q. Uh-huh.

4 A. -- placing that back where it was so
5 that when we come to farm that land again that we
6 haven't all of a sudden lost all the potential that
7 we have had. Because although they are going to
8 compensate us for possibly two, three years of lost
9 crop revenue, I don't believe --

10 I mean, we just had a rural water line
11 come through our -- our land. They didn't put the
12 topsoil back. To this day you can still see the
13 strip where the land was, the pipeline went, and you
14 see the strip where the -- there's no -- hardly any
15 crop left there compared to the rest of it so it's
16 critical that when they put this topsoil in that we
17 have an inspector there that's making sure that these
18 people segregate this soil, make sure they put it
19 back the way it was and it gives us a chance to raise
20 another crop.

21 Q. Now, my understanding from reading
22 their application is that they plan to remove up to
23 12 inches of top soil. You've indicated that in some
24 places on your land you may have 18 inches of
25 topsoil.

1 A. Well, there's --

2 Q. Do you have any recommendations for the
3 commission about how to address -- if the company
4 plans to take just up to 12 inches, would that --
5 would that cause you concern or not?

6 A. Yes. Because there is a difference.
7 There is definitely a -- if you would consult with a
8 soil specialist, they can do better than myself. But
9 there is a difference in the productivity as you go
10 down each foot. So -- and -- and like in my -- my
11 particular instance, you know, we probably have
12 18 inches of really good soil whereas you get -- in
13 some other instances they may have 4 feet of very
14 good productive soil. But where it's less, you have
15 to make sure that you have everything you've got
16 otherwise you -- and the other thing is it also makes
17 a difference on the water bearing capacity for the
18 different layers so it's critical --

19 Q. Right.

20 A. -- it gets put back the way it was.

21 Q. I understand. We deal with coal mining
22 reclamation as well, and soil issues are very
23 important to those folks as well. All right. Thank
24 you for helping me with that. So -- but I just need
25 to clarify.

1 A. I would like a little more than
2 12 inches, yes.

3 Q. You would like more than 12 inches.

4 A. Yes.

5 Q. You would like the total layer of
6 topsoil --

7 A. Yes.

8 Q. -- that can be identified as topsoil
9 removed; is that correct?

10 A. I would -- I would love that.

11 Q. Okay. Thank you. Now, let me see if
12 there's anything else here.

13 MS. WEFELD: I think I've got the rest
14 pretty clear of what you said. Thank you so much.

15 MR. WAHL: Commissioner Clark?

16 EXAMINATION

17 BY MR. CLARK:

18 Q. Just briefly so I can pinpoint the
19 location of your property. I'm looking at Dahlen.
20 It would be relative to that which direction?

21 A. We're east -- north and east of Dahlen.
22 I guess I've got about 3 miles -- I own one quarter
23 and I rent two quarters right to the east of County
24 Road 14 on the east edge of Dahlen.

25 Q. It look like fairly broken country. I

1 mean, there's some --

2 A. There's some drainage, but actually
3 it's very good farmland.

4 Q. Is there? Okay.

5 A. Yep.

6 Q. Just circling back to something
7 Mr. Novak had mentioned. Is this fairly elevated
8 land at this point? I mean, I notice that just to
9 the west of you there is a string of radio towers
10 which would indicate to me that you're probably --

11 A. Yes. Channel 8 television is 3 miles
12 west of us so it's -- the elevation there is -- is
13 very high, and that's why when you get down -- about
14 12 miles to the east of us is the old beach of Lake
15 Agassiz. And then as you drop further down -- and
16 that's where our rural water comes from, is that
17 aquifer right there. So, I mean, the elevation drop
18 is definitely significant from where I live to -- to
19 the east.

20 Q. Sure. And -- and I certainly
21 appreciate those -- those comments, and I know that
22 the applicant will have an opportunity tomorrow to
23 put some things onto the record and answer some
24 questions. But I know that one of the questions that
25 I'll have is this issue of elevation and -- and the

1 drop.

2 I understand the water commission did
3 have concerns understandably with the pipeline going
4 directly over the aquifer so the question then
5 becomes, I mean, why the decision to move west as
6 opposed to east given drainage patterns and things
7 like that. And they'll have an opportunity to
8 respond to that, but I do appreciate the -- the
9 concerns so thank you.

10 A. Well, that -- that is my big concern
11 because I think as you look at the eastern part of
12 North Dakota, the great amount of water consumption
13 in the big cities comes from either the Sheyenne
14 River or the aquifers, and we need to protect that.

15 MR. WAHL: Commissioner Wefald?

16 MS. WEFELD: Since this has been
17 brought up twice at the meeting about multiple
18 pipelines in the easement, a possibility of that,
19 there is one pipeline -- I can't speak about this
20 one. But there is one in North Dakota, the Enbridge
21 pipeline, and I think we're siting -- is it the
22 fourth pipeline in that easement bill?

23 MR. CRAMER: At least.

24 MS. WEFELD: But anyway --

25 MR. BINEK: I'm -- I'm not sure.

1 There's several pipelines within the easement.

2 MS. WEFELD: Within one easement. So
3 that is a possibility at least in the Enbridge
4 pipeline. I don't know about -- what your easement
5 states.

6 EXAMINATION

7 BY MR. CLARK:

8 Q. Can I ask quickly? Is the -- is the
9 Enbridge pipeline near your property at all? Are you
10 familiar? I know it -- I think it's fairly close to
11 Highway 2 so I'm guessing you may be 8 to 10 miles
12 north of that but....

13 A. Yeah, I'm not -- I'm not sure where it
14 is.

15 MR. CLARK: Okay.

16 MR. CRAMER: I just want to make one
17 clarification or maybe ask Bill. We don't know -- do
18 we know for sure that it's in the same -- that these
19 multiple pipelines of Enbridge's are the same --
20 operated by the same easement or is -- we know it's
21 the same corridor, but we -- do we necessarily know
22 that it's all under the same easement?

23 MR. BINEK: I haven't -- I haven't
24 looked at the new application.

25 MR. CRAMER: Okay. I just want to make

1 sure, yeah.

2 MR. BINEK: Definitely is within the
3 same corridor.

4 MR. CRAMER: Right.

5 MR. BINEK: I'm -- I'm not sure about
6 the rest.

7 MR. CRAMER: We don't know that that's
8 right. Okay. Thanks. Just want to be clear about
9 that.

10 MR. WAHL: Anything further from the
11 commissioners?

12 Follow-up to commissioners' questions,
13 Mr. Kelsch?

14 MR. KELSCH: No, no further questions.

15 MR. WAHL: Mr. Delaney?

16 MR. DELANEY: No questions.

17 MR. WAHL: Mr. Binek?

18 MR. BINEK: I have no questions.

19 MR. WAHL: Thank you very much,
20 Mr. Ellingson.

21 MR. ELLINGSON: Thank you.

22 MR. WAHL: Is there anyone else here
23 this afternoon who will not be able to be in Park
24 River tomorrow?

25 MR. ZACHARIAS: Yes, sir, Mr. Chairman.

1 Vaughn Zacharias of Kathryn.

2 MR. DELANEY: I'm sorry, sir. Can you
3 repeat your name? I didn't get it.

4 MR. ZACHARIAS: I'm Norwegian so I've
5 got to do one thing at a time.

6 MR. DELANEY: That's my downfall as
7 well.

8 MR. WAHL: That's all right,
9 Mr. Zacharias. Mr. Delaney will pick it up. Were
10 you -- you've heard my advice regarding perjury, sir?

11 MR. ZACHARIAS: Yes, sir.

12 MR. WAHL: Will you raise your right
13 hand, please? Being advised regarding perjury,
14 Mr. Zacharias, do you swear that the testimony which
15 you are about to give in this matter shall be the
16 truth, the whole truth and nothing but the truth?

17 MR. ZACHARIAS: I do.

18 MR. WAHL: Will you please state your
19 name and address for the record?

20 MR. ZACHARIAS: Vaughn Zacharias.
21 12126 52nd Street Southeast, Kathryn.

22 MR. WAHL: Mr. Zacharias, you may
23 proceed with your testimony.

24 MR. ZACHARIAS: I am a landowner, also
25 operator of three quarters of land that this will be

1 going through. This is a little bit unique. And
2 starting from the beginning here, last year giving
3 the first easement to the Trans line going through,
4 that gentleman was replaced before last fall. They
5 came through our land last fall in the early part of
6 November -- of November without any calls or anything
7 else. And in our agreement it does state that they
8 will let us know when they come through with survey
9 crews. The crop was removed, they went through and
10 they put in stakes other than what we thought
11 originally they were going to be.

12 Twenty-five years ago we had commission
13 meetings here similar to this with a line going
14 overhead from Canada to Nebraska so I'm familiar with
15 that, and I was -- participated in that. That fell
16 through. So we had a couple meetings and nothing
17 become of it.

18 This one here is proceeding a little
19 bit faster and perhaps a little bit different, and
20 it's been a little bit difficult to communicate with
21 these folks. Because they came this spring, and we
22 saw these lats out in our fields. And we just saw it
23 last winter too. And I'm not real crazy having it 6
24 to 700 feet from my residence, with my wife and our
25 children, but they moved it off that section line

1 where the other one had gone.

2 And if you look on your diagrams, on
3 the bottom of Barnes County the Sheyenne Valley where
4 they go through the river or underneath it, where
5 they're going to go just to the northeast of that is
6 the land that we are encountering. And they made the
7 move -- I believe. I'm not sure. But talking with
8 different people, we had no communications until
9 someone did want to walk our land on May 29th. A
10 land agent asked us for permission, and I refused
11 that because I wanted to talk to who was in charge of
12 it and what the route might be because we had
13 questions of what had happened last winter and no
14 someone had answered those.

15 We had made several phone calls to the
16 engineering which we went out and confronted them in
17 our field and asked who it was. There's hunting
18 around there so sometimes people put up blinds for
19 either geese or hunting deer or whatever it might be.
20 We sent one of our people up there. They visited
21 with them. They said they're with the Transatlantic
22 line. Three days later after they had been through
23 there, we then were contacted and said, "We're sorry
24 but we are -- you know, we had gone through and
25 surveyed." We had asked at that time -- again

1 several different times we had phone numbers. We had
2 no response of anyone to ask about what's going to
3 happen.

4 My concern is we're along the Sheyenne
5 Valley, and our land has got burial sites of Indians
6 there. And we have a railroad going through our land
7 that has been abandoned. It was there for a hundred
8 years. BNSF went through the Alice, Kathryn, Marion
9 line, and that has been abandoned now. We have
10 reclaimed -- we have bought that land back. That
11 land was given I believe by the government back in
12 the late 1800s.

13 I'm a fourth generation so I've been
14 on -- our family has been on that operation, on that
15 land since 1883. When they abandoned that railroad,
16 we -- this year now after we have gotten title for
17 it, it has cost us about 3,500 to \$4,000 to reclaim
18 it. In our area that this pipeline is going to go
19 through, it's got deep ravines of 50, 60 feet, and
20 then there's also other places that are above ground.

21 What's going to happen to that? My
22 concern is what's going to happen to all the
23 potential burial sites of Indians and all of the
24 different things that are there in our. I would like
25 to see it rerouted. I am not against this project,

1 but the communication would get an F if you were in
2 school. And we need to communicate and say, okay,
3 what's going to happen here?

4 The other folks have talked about
5 liability. I'm very concerned about liability.
6 If -- if some activist or something gets ahold of
7 this and is watching their every move out there, we
8 don't need people running all over for several miles
9 from the Kathryn Road which would extend through the
10 valley, perhaps would be about 6 miles. The Woodland
11 Indians there 2,000 years ago roamed very freely, and
12 we know we have some of those sites on our land.

13 And it's just -- it's a concern that we
14 need to talk about and get it fixed and probably move
15 that line. And that's -- that's basically my concern
16 of the safety and different things for my family and
17 for the land and as a liability as a producer,
18 owner-operator type thing.

19 MR. WAHL: Mr. Kelsch, do you have any
20 questions for the witness?

21 MR. KELSCH: No questions.

22 MR. WAHL: Mr. Delaney?

23 MR. DELANEY: No questions.

24 MR. WAHL: Mr. Binek?

25 MR. BINEK: No.

1 MR. WAHL: Questions from the
2 commission? Mr. -- Commissioner Cramer?

3 MR. CRAMER: I have none, but you live
4 in a beautiful place. I'm very familiar with it.
5 It's great.

6 MR. ZACHARIAS: Thank you.

7 MR. WAHL: Commissioner Wefald?

8 EXAMINATION

9 BY MS. WEFALD:

10 Q. I want to clarify where your property
11 is located. I know where Kathryn is. I visited
12 Kathryn, and I like the community. My great-aunt
13 grew up in Nome. Anyway your property is to the
14 south of Kathryn or to the north of Kathryn?

15 A. Southeast of Kathryn.

16 Q. Southeast of Kathryn.

17 A. Section 20 and 29. Of 20 it involves
18 southwest quarter, northwest quarter. And on
19 Section 29 it involves the northwest one-fourth and
20 the railroad rights.

21 Q. Okay. And so the pipeline crosses your
22 property. Does it cross it approximately 3 miles
23 south of -- 3 miles north of the Barnes and Ransom
24 county line?

25 A. That's correct.

1 Q. Okay.

2 A. Straight east of Kathryn 2 to 3 miles,
3 in that area. And if you look at that map, that's
4 where there's a little -- they went a little bit
5 further east than normal. You'll see a little --

6 Q. Have -- have you had a chance to look
7 at the -- the surveys that were done for the North
8 Dakota State Historical Society?

9 A. No, ma'am.

10 Q. Uh-huh. There -- there is considerable
11 information that has been filed with the commission
12 about cultural resource sites along the whole route
13 and conclusions that have been reached about that so
14 I just wanted to find out whether you had had an
15 opportunity to look at that. That is all part of the
16 public record if you wish to look at that.

17 A. Okay.

18 MR. WAHL: Any further questions from
19 the commissioners? Commissioner Clark?

20 MR. CLARK: I would just thank you
21 for -- for testifying here today and would echo
22 Commissioner Cramer's comments. You do live in a
23 beautiful part of the world.

24 MR. WAHL: Follow-up to Commissioner
25 Wefald's questions, Mr. Kelsch?

1 MR. KELSCH: No further questions -- or
2 no question.

3 MR. WAHL: Mr. Delaney?

4 MR. DELANEY: No.

5 MR. WAHL: And Mr. Binek?

6 MR. BINEK: No.

7 MR. WAHL: Thank you very much,
8 Mr. Zacharias.

9 What is your name, please?

10 MR. MATHEWS: Paul Mathews,
11 M-a-t-h-e-w-s.

12 MR. WAHL: Would you print your name
13 and address for the register, please?

14 Mr. Mathews, did you hear me -- hear my
15 advice regarding perjury?

16 MR. MATHEWS: Yes, I did.

17 MR. WAHL: Will you raise your right
18 hand? Being advised regarding perjury, Mr. Mathews,
19 do you swear that the testimony which you are about
20 to give for this matter shall be the truth, the whole
21 truth and nothing but the truth?

22 MR. MATHEWS: Yes, I do, your Honor.

23 MR. WAHL: State your name and address
24 for the record, please.

25 MR. MATHEWS: Paul, P-a-u-l. Mathews,

1 M-a-t-h-e-w-s. 9066 119th Avenue Southeast,
2 Cogswell, C-o-g-s-w-e-l-l.

3 MR. WAHL: You may proceed with your
4 testimony, Mr. Mathews.

5 MR. MATHEWS: Really wasn't -- last
6 night was the first time I realized this would be a
7 formal proceeding. I had the chance to go to the
8 South Dakota PUC meeting to observe their -- their
9 procedures, and that's -- and that's fine. In fact I
10 will enjoy the questions from the commissioners or
11 from any of the parties here today.

12 I happen to be the 156th person away
13 from this pipeline location in my -- for my
14 residence. And all -- as a matter of fact, I don't
15 shoot blame here anyway, but I'm the accident. I'm
16 truly the accident. I believe that my first notice
17 of threat of this pipeline to my residence was
18 February, right about the 10th, and that was through
19 a land survey opportunity that they would like to
20 have rights to inspect the property.

21 And when he showed me the map, he kind
22 of smiled and he said, "Whoa. It goes right through
23 your house." And that -- and that's -- you know, we
24 can understand that in a -- in a fashion. I'm sure
25 they were using old aerial maps. I built in

1 November 2004. My house wasn't there the year that
2 they -- of the aerial maps. The agent was very
3 reassuring and he said, "This will be moved. Relax,
4 Mr. Mathews."

5 Okay. The next correspondence was
6 probably -- I -- I have the dates here should
7 personnel want to know more information. But it was
8 late April, and I was out in the field farming and
9 my -- two agents came to -- up to the driveway and
10 met my wife and said, "We have a form for you."
11 Interesting. And it was the waiver of 500-foot
12 avoidance zone. And she -- she said, "Well, how
13 close are you? 500 feet's -- alone is pretty close."
14 I think it was 156. Yeah, that's pretty extremely
15 close in my mind.

16 I -- I mention all these things to the
17 certain extent that it kind of tags on to other
18 people's concerns that were preceding me here. Are
19 we -- are we being treated as a good neighbor? I --
20 I do more or less believe the agents had that in
21 their heart, but something's being triggered here is
22 I'm having a very lack of opportunity to be prepared
23 to give you information.

24 Quickly over the weekend I did some
25 Internet work. The -- the Department of State, for

1 instance, did scoping meetings. Part of that they
2 were going to inform every landowner in -- by written
3 form. Oops, I'm out of the loop. I wasn't there. I
4 wasn't on their route. I think if you research your
5 information for -- at least it tags along with mine.
6 I'm part of that Hecla land reroute. So I wasn't
7 part of the route process until I believe January of
8 2007.

9 You know, it's just kind of one of
10 those -- as I said in the beginning, it's, oops.
11 This is -- this is one of those situations that kind
12 of probably caught the company off guard and I -- I
13 understand that.

14 Now I'll just -- trying to keep this
15 moving forward. At that time I asked these -- I got
16 a call from the agent the next morning.

17 "Mr. Mathews, is this your final answer? You do not
18 want an avoidance? You will not sign a waiver?"

19 "No." Quickly I then engaged in an e-mail
20 correspondence with Mr. Fahn, from the PUC. He gave
21 me some general ideas that -- from the commissioners'
22 office of what might be happening here, but he
23 encouraged us, "Get ahold of the company." He said,
24 "I think before they file, they would want to know
25 what's -- what's going on down there, that they may

1 want to put a reroute before it ever becomes part of
2 the route."

3 The following day I got another phone
4 call from apparently the -- their supervisor and he
5 said, "Mr. Mathews, are you sure you don't want to
6 sign your waiver? By the way, it's a better deal
7 this week than it was last week. Last week was \$500.
8 You sign it today, it's a thousand." I said, "No,
9 I'll pay you a thousand dollars to go away." He
10 chuckled. "That's not going to happen, Mr. Mathews."
11 But as we ended that conversation, I think we would
12 say we agreed to disagree about pipelines in general.

13 I -- and I -- my wife and I would stand
14 here and say we probably support pipelines, but the
15 end of the game is make it safe. Make it safe. And
16 there was concern, location. Where is location going
17 to be? And I wanted to -- I felt as if my land and
18 my residence was going to be burdened by this. I
19 would -- I asked this gentleman from Troy -- Trow
20 Engineering, I believe it was, to send me an engineer
21 to explain me the route process. Why is this
22 selected as the best route? And again some -- I
23 believe you -- the commissioners were even part of
24 that e-mail process knowing that Mr. Mathews wanted
25 to talk with somebody with the company. It -- this

1 repeated itself for the next months or January -- or
2 June.

3 And finally just in an off conversation
4 with a friend of mine in Senator Conrad's office, I
5 said, "Anybody talking about Keystone pipeline?"
6 "What is it?" A quick little talk about it, and he
7 said, "Let me have somebody make some inquiries." I
8 heard from Keystone the next morning. Thank you.
9 But, you know, that was the hard process. That was
10 July 10th. Today's July 23rd. That's not much time
11 to prepare. I don't -- actually the only piece of
12 mailing I've gotten from Keystone is Stakeholder.
13 9066 119th Avenue. It was a -- a PR kind of type for
14 sure, Q and A, questions and answers about a project
15 I believe. That's all I've gotten by that method.

16 I've -- requesting from the agents I
17 was able to go over to my copier and make copies of
18 the map, but that's all I've gotten. The process
19 here seems to be I'm left -- something's wrong with
20 the process. It's going too fast. I haven't had to
21 -- I don't know what questions to ask. I really
22 don't. But truly it comes down to safety. I know
23 there's --

24 I was in attendance here when you
25 discussed the WEB document that's been submitted into

1 evidence. I was fortunate to be able to read
2 something. You go out on the Internet and you -- it
3 was one of those hits. Finally, finally, we heard
4 something from what I was -- believed to be an
5 independent resource. I would encourage anybody and
6 everybody to read it. Weigh -- weigh it to yourself
7 whether it's factual or not. It -- I'll just leave
8 it at that. Use your own judgment of its
9 credibility. It's just interesting that this
10 document was submitted to the PUC a month ago. But
11 I'll just say that much about that subject.

12 Water safety, again water's invaluable.
13 We've got to protect it. Again my property will have
14 sand veins running underneath it to the tune of 4 to
15 6 feet. I don't know. Where's the spill go?
16 Accidents will happen. In the South Dakota public
17 meetings -- and TransCanada can clarify that, but I
18 think they made the representation that these leaks
19 lower than what the pressures can indicate, their
20 best source of information is your nose or your eyes.
21 You can smell it or you can see it.

22 We're a rural area. Where are you
23 going to -- where are the people to smell or see it
24 and then it's down 4 feet? How long will it be
25 leaking into our aquifers before nobody notices it?

1 I don't -- I don't have the answer to that. I hope
2 the North Dakota Public Health will assist you in
3 that -- in that matter. Again I'm not going to try
4 to pick on them, but I'm a little concerned about a
5 lake that we're developing as a community in
6 conjunction with the North Dakota State Game & Fish.
7 It's Kraft. It's probably marked Kraft Slough on
8 your documents. But we've managed to put perch in
9 there in 2004 and now we have walleyes. In my
10 opinion it's running very close. Should we have an
11 accident we'll lose that lake.

12 Quickly, land impairment. I -- I
13 appreciate the -- the idea that you will help us
14 reclaim and -- and offset income potential loss over
15 the -- the pipeline, but I have my own little
16 demonstration going on. It's out in front of my
17 home. I -- I have geothermal trenches extending away
18 from my home so I have trenches going into a field.
19 This is the third year of cropping, and I'm quite a
20 ways away from getting 50 percent production yet, yet
21 my expenses remain the same. Again it's a -- I
22 appreciate the effort, but it probably -- after three
23 years we still have issues there as far as bringing
24 it back into production. Believe me, I'm babysitting
25 that because I look at it every day. It's right

1 outside my front window.

2 I'm going to conclude this just by
3 saying again, I believe the commissioners are our
4 last line of defense here. You -- you are so
5 important to the process of protecting our personal
6 private rights. You give them a route permission,
7 and we're -- we're facing -- we're going to be the
8 underdog. You know, use it wisely. I -- I hope
9 that -- I hope that we never have to think about
10 years later reading about a catastrophic event and
11 some people's residents were way too close. Thank
12 you.

13 MR. WAHL: Mr. Kelsch, any questions
14 for the witness?

15 MR. KELSCH: Yes, your Honor.

16 EXAMINATION

17 BY MR. KELSCH:

18 Q. Mr. Mathews, the -- have you been made
19 aware that the -- TransCanada Keystone has moved the
20 line a minimum of 500 feet east of your residence?

21 A. The agent just said we are outside of
22 the avoidance zone. That's all the information I
23 have. And to be fair to the company, he said, "Can I
24 come out and meet with you?" And I said, "This
25 commission meeting's coming up on Monday. Maybe I'll

1 gain some of my information in that route, and then
2 we'll talk about it."

3 Q. Okay.

4 A. But other than seeing stakes, I haven't
5 gone out and measured stakes. And if I can offer
6 this -- this thing about surveys to the gentlemen
7 before me. Again on my survey application, when the
8 agent was there, I said, "I will sign, but can I put
9 on there that you call me at least a couple hours
10 ahead of time?" You know, 156 feet and -- we're --
11 we're working on getting shades on all our windows,
12 but I would just appreciate that, you know, my whole
13 family knows what you're doing out there. It did not
14 happen.

15 Q. Were there -- were there times that --
16 that TransCanada Keystone people contacted you and
17 you didn't call them back or didn't accept the call?

18 A. No. I returned the call. I mean, we
19 were playing telephone tag with the agent for half a
20 week through two or three days. He was -- you know,
21 I was out spraying early and he was gone by 5:00.

22 MR. KELSCH: Okay. No further
23 questions.

24 MR. WAHL: Mr. Delaney?

25 MR. DELANEY: I have no questions, your

1 Honor.

2 MR. WAHL: Mr. Binek?

3 MR. BINEK: I have no questions.

4 MR. WAHL: Questions from the
5 commission? Commissioner Cramer?

6 MR. CRAMER: I just have one.

7 EXAMINATION

8 BY MR. CRAMER:

9 Q. With -- with your geothermal trench
10 project that you have done and the reclamation, did
11 you -- did you separate the topsoil prior to
12 resspreading it or --

13 A. Locally we have a backhoe operator
14 that's a legend. Incredible -- he's incredible in
15 that fashion. Yes, he -- he peeled off exactly to
16 the inch of the topsoil.

17 Q. So it's real -- real visibly obvious.

18 A. Yes.

19 Q. Just out of curiosity --

20 A. Yes.

21 Q. -- how deep is your topsoil or how
22 thick is the seam?

23 A. Oh, it would vary. It just varies.

24 I --

25 Q. Sure.

1 A. It would vary within a hundred feet.

2 MR. CRAMER: Sure. All right. I have
3 nothing further. Thank you. Thanks for your
4 testimony --

5 MR. MATHEWS: You're welcome.

6 MR. CRAMER: -- and your demeanor.

7 MR. WAHL: Commissioner Wefald?

8 MS. WEFELD: Yes.

9 EXAMINATION

10 BY MS. WEFALD:

11 Q. I have a map of 2006 aerials provided
12 by the company where then they indicated homes that
13 are located near the route.

14 A. Uh-huh.

15 MS. WEFELD: Would I be able to just
16 bring up the map and ask him to identify for me which
17 home?

18 MR. WAHL: Sure. Do you want me to do
19 that?

20 MR. MATHEWS: The southwest of
21 Section 1. Is Section 1 on the map?

22 MR. WAHL: For the -- for the record, I
23 am showing Mr. Mathews Exhibit 36. Well, it really
24 isn't Exhibit 36, but it's -- it's document 36 for
25 the filings, and PU-06-421 and page -- well, maybe

1 page 11. In any event, Mr. Mathews, can you identify
2 your -- your residence on this map? Is this -- is
3 this your residence here?

4 MR. MATHEWS: Yes, it is.

5 MR. WAHL: This is identified as
6 building 28; is that correct?

7 MR. MATHEWS: That's correct.

8 Q. (Ms. Wefeld continuing) Mr. Mathews,
9 did you come today because even if the pipeline is
10 500 feet or more than 500 feet away from your home
11 you still have concerns?

12 A. It would be -- it's based on what we
13 can gain about whether it's safe or not.

14 Q. All right.

15 A. Again as you research -- and one of the
16 pieces of research out there again is evidence by the
17 WEB Water of Aberdeen. Particularly if there's more
18 than one pipeline, it's -- I don't want to put my
19 family at risk every night that I go to bed.

20 MS. WEFELD: Thank you.

21 MR. MATHEWS: I don't know.

22 MS. WEFELD: Thank you.

23 MR. WAHL: Anything further?

24 Commissioner Clark?

25 MR. CLARK: No. Just thank you for

1 participating in this. And -- and I know you had
2 expressed concern about the -- the speed of this, and
3 just let me assure you that -- I mean, this is the
4 reason the that PSC exists. And I think I speak on
5 behalf of -- of all the commissioners in just saying
6 that we take our responsibility in this regard very
7 seriously.

8 Because you're right, I mean, we are
9 the last stop on a project like this. We're the ones
10 who have to ensure that all of the permits, all of
11 the requirements that -- that the pipeline has, that
12 they've done everything that they can be expected to
13 do and that this state's environment, our natural
14 resources, our culture are protected so I -- I just
15 appreciate your testimony. And let me assure you
16 that we -- we have that in mind and that we come into
17 these with a -- with a blank slate. We have no
18 preconceived notion of -- of what the record's going
19 to look like. It really is the testimony of you
20 and -- and other North Dakotans and the information
21 that the applicant can provide that -- that drives
22 our decision.

23 MR. WAHL: Follow-up, Mr. Kelsch?

24 MR. KELSCH: No further questions.

25 MR. WAHL: Mr. Delaney?

1 MR. DELANEY: No further questions.

2 MR. WAHL: Mr. Binek?

3 MR. BINEK: No.

4 MR. WAHL: Thank you very much,
5 Mr. Mathews.

6 MR. DELANEY: Very -- very briefly,
7 your Honor, before the next gentleman speaks, I would
8 like to clarify something for the record. There's
9 been a number of references by the commissioners to
10 maps up there, and I guess this morning -- at this
11 morning's hearing we had admitted their application
12 as T7. Are the maps that the commissioners are
13 referring to, are those within the application? I
14 just want to make sure they're part of the record.

15 MS. WEFELD: They're part of the record
16 that had been submitted by the company as far as our
17 official case file.

18 MR. DELANEY: Okay. So they would also
19 be -- if they're filed, they would also be part of
20 the record of this hearing?

21 MS. WEFELD: Yes, that's what my
22 understanding is but maybe that's --

23 MR. WAHL: Yes. Yes. That's -- that's
24 correct. That doesn't say you can't mark them as an
25 exhibit. I don't believe it's necessary to mark them

1 as an exhibit. But as you saw Mr. Kelsch do this
2 morning, that was his preference, and there's nothing
3 wrong with that.

4 MR. KELSCH: And speaking to that, your
5 Honor, we would probably want that marked as an
6 exhibit in the siting case as well as the PC & N
7 case, the application.

8 MR. WAHL: All right.

9 MR. KELSCH: And I -- and how you want
10 to handle that, I know some of the people's exhibits
11 are in, but I believe you indicated it would be in
12 both cases.

13 MR. WAHL: No, that's not -- we -- the
14 exhibits --

15 MR. KELSCH: Okay.

16 MR. WAHL: -- that I have marked this
17 afternoon are marked in the siting application.

18 MR. KELSCH: Okay. Okay.

19 MR. WAHL: So if you -- if you wish to
20 have your application for the siting application
21 hearing also, then we should mark it accordingly.
22 And if my sheet is correct that would be Exhibit --
23 the application, would be Exhibit T2 for this siting
24 application hearing; all right?

25 MR. KELSCH: Yes, in its entirety.

1 That would include the supplemental filings and some
2 of these maps in the.... For both the corridor and
3 route applications.

4 MR. WAHL: Yes. Which are part of that
5 siting hearing --

6 MR. KELSCH: Yes.

7 MR. WAHL: -- yes. But now I -- I take
8 your statement, Mr. Kelsch, about whether the maps
9 are all part of the application. If you say they
10 are, that's -- I'm sure that's true. But I don't
11 know that for a fact. I'm not confirming that.

12 MR. KELSCH: Well, I guess I'd make the
13 statement, I -- if I'm incorrect, I'd -- I'd leave it
14 to Mr. Binek to -- to or Mr. Delaney to -- but I'm
15 sure they're all part of the application -- they were
16 submitted as -- as attachments to the application.

17 MR. WAHL: Right. I'm not saying
18 there's a question about that. I'm simply saying I
19 don't know. And what I'm describing as Exhibit T2 is
20 the application, whatever it is.

21 All right. May I have your name
22 please, sir?

23 MR. SONDERLAND: Buel Sonderland.
24 That's spelled B as in boy, u-e-l. Sonderland, S as
25 in Sam, o-n-d-e-r-l-a-n-d.

1 MR. WAHL: Mr. Sonderland, would you
2 take just a moment and sign the register? Maybe
3 you've already done that.

4 MR. SONDERLAND: Yea.

5 MR. WAHL: You're ahead of me. Very
6 good. Did you, Mr. Sonderland, hear my advice
7 regarding perjury today?

8 MR. SONDERLAND: Yes, I did.

9 MR. WAHL: Will you raise your right
10 hand, please? Being advised regarding perjury,
11 Mr. Sonderland, do you swear that the testimony which
12 you're about to give in this matter shall be the
13 truth, the whole truth and nothing but the truth?

14 MR. SONDERLAND: I so do.

15 MR. WAHL: Please state your name and
16 address for the record?

17 MR. SONDERLAND: Buel Sonderland. 2102
18 25 1/2 Avenue South, Fargo 58103.

19 MR. WAHL: All right. You may proceed
20 with your testimony, Mr. Sonderland.

21 MR. SONDERLAND: Thank you, your Honor,
22 Public Service commissioners. I'm going to just
23 address a couple areas of concern. They've both
24 been -- or all three have been mentioned. And first
25 of all, I acknowledge how important you commissioners

1 are because our concerns do rest in your hands, and I
2 appreciate your concern and your consideration.

3 So the first thing I want to address
4 is -- is how fast this is progressing. We've been
5 hearing all day about surveys, easements and so
6 forth, but nothing about permits being issued,
7 environmental impact studies being done. And as was
8 talked about, there's many, many agencies, both
9 federal and state, that have to give this approval.
10 So it behooves me to understand how this can progress
11 so fast and checks being written for easements when
12 all these permits are lacking.

13 The other thing that concerns me is
14 economic benefits have been mentioned. And, yeah,
15 it's good for a period of two years and then we get
16 some property tax, but more important economic
17 benefits to North Dakota would mean tapping into this
18 pipeline. Instead of taking discounts for the oil
19 production that we have in North Dakota, let's get
20 the full value out of it. And we do have this
21 control. We don't have to have this permit issued to
22 the Canadian company unless we get a firm agreement.

23 Now, I question what happened when
24 Governor Hoveen pressed this issue earlier this
25 spring. I understand that he -- he was insistent

1 that this be done. Now, it didn't I know. But again
2 we've got to stand up for ourselves and take what's
3 due us when we've got a chance to benefit our economy
4 for the lifetime of this pipeline.

5 The other area of concern is the
6 proposed route of this pipeline. I understand it's
7 going to benefit TransCanada to run it as far east
8 as -- and come down through Walhalla because it's got
9 an existing line there. Good for them. But that
10 doesn't help us. Again we have to look out for North
11 Dakota citizens. Why bring that pipeline down
12 through some of the most scenic areas we have in
13 eastern North Dakota? And you all know we don't have
14 too many of them as it is.

15 It comes right down between Walhalla
16 and the Pembina Gorge. And, boy, if you guys haven't
17 been up there and -- to see what that country is
18 like, it's unbelievable. It -- in addition to that,
19 it runs down, starts to parallel the Sheyenne River
20 for some 35 miles running right parallel to it. It
21 gets as close as two and a half miles I believe --
22 just estimating off the map within -- two and a half
23 miles within Lake Ashtabula.

24 And you talk -- we've heard people
25 talking about water supply and aquifers and how

1 important it is. Well, the Sheyenne River is going
2 to be a major source of water for all the cities in
3 the Valley in the future, and it all comes through
4 the Sheyenne River, Lake Ashtabula. Where does the
5 drainage go? You -- you run that pipeline down east
6 of the river and east of Lake Ashtabula, all drainage
7 goes right down to the lake or the river, and then as
8 it proceeds south cuts across south of I-94.

9 We've got another beautiful scenic area
10 that many eastern citizens of North Dakota enjoy, and
11 that is that area between Little Yellowstone and Fort
12 Ransom. It's hilly, it's wooded, it's beautiful, and
13 you can't convince me that you can go in there, take
14 a 110-foot easement to construct a pipeline and leave
15 with 50-foot of right-of-way and not leave a scar.
16 And realize these people need access to that pipeline
17 every -- every day. If there's a problem they have
18 to have an easement or a way to get in there. That
19 means we're going to lose. There's going to be a
20 scar, a big scar.

21 So that sums up my concerns. I -- I
22 would just like to urge that you consider getting the
23 pipeline rerouted. I mean, don't come through an
24 agricultural area where we cultivate crops. North
25 Dakota is notorious for its wide-open spaces. We've

1 got rangeland that's not going to be as impacted as
2 it would cultivated lands. Where there's a will to
3 do things, I know there's a way to do it so I urge
4 the commission to take these concerns into
5 consideration. Thank you very much.

6 MR. WAHL: Mr. Kelsch, any questions
7 for the witness?

8 MR. KELSCH: I think just one, your
9 Honor.

10 EXAMINATION

11 BY MR. KELSCH:

12 Q. Mr. Sonderland, do you own any property
13 along the proposed pipeline?

14 A. No, I don't.

15 MR. KELSCH: Okay. Thank you. That's
16 all.

17 MR. WAHL: Mr. Delaney?

18 MR. DELANEY: No questions.

19 MR. WAHL: Mr. Binek?

20 MR. BINEK: No questions.

21 MR. WAHL: Questions from the
22 commission?

23 MR. CRAMER: I don't --

24 MR. WAHL: Commissioner Cramer?

25 MR. CRAMER: I don't have any questions

1 other than again a statement to thank you for taking
2 the time to come over and give us your feedback. I
3 just -- I would like -- and I'm going to avoid a
4 civics lesson on what authority we have and we don't
5 have, but I will tell you one of the issues that
6 frustrates a lot of people is the speed with which
7 these things take place.

8 And you just -- I just want everyone to
9 know that regardless what happens apart from this
10 proceeding -- and this isn't the only type of a
11 situation where lots of things happen in parallel.
12 That does not diminish at all the responsibility we
13 have here today or in the next few months as we -- as
14 we discuss this within our staff, with our staff in
15 work sessions as we read -- not only reread testimony
16 but -- but late-filed exhibits, as we review those,
17 as we read briefs and -- and consider the law.

18 But one thing you should know is that
19 the timeline for us to act is in law. And one of the
20 values of having this hearing early in the process,
21 the law requires us to make a decision six months
22 after a completed application has been filed. That
23 puts us somewhere in mid to late October. I feel a
24 lot better about having a lot of these proceedings
25 and getting a lot of information early in that

1 process giving us time then to ask for more
2 information if it's necessary, to take the time to
3 consider all of the facts of the case rather than
4 push it all very late and then be forced into a very
5 quick decision.

6 So we do have some -- we are confined
7 by -- by law in terms of our timeline. I just want
8 everyone to understand that and that we do try to
9 optimize the opportunity to learn as much as we can
10 prior to making that decision. And -- and your
11 concerns are our concerns as well. Thank you.

12 MR. WAHL: Commissioner Wefald?

13 MS. WEFELD: Thank you. No questions.

14 MR. WAHL: Commissioner Clark?

15 MR. CLARK: No questions. Thanks.

16 MR. SONDERLAND: Your Honor, may I make
17 one more statement?

18 MR. WAHL: Sure.

19 MR. SONDERLAND: TransCanada testified
20 this morning that they've got, what, 50 years' of
21 experience, 36,000 miles of pipeline, and the
22 question was asked: What's your emergency response
23 plan for our -- the pipeline? You don't have one?
24 You don't have one until 2009. That -- that's a
25 question. Thank you.

1 MR. WAHL: Wait, just a moment,
2 Mr. Sonderland. We should --

3 MR. SONDERLAND: I'm sorry.

4 MR. WAHL: Yeah, that's fine.

5 Mr. Kelsch, questions?

6 MR. KELSCH: No questions.

7 MR. WAHL: Mr. Delaney?

8 MR. DELANEY: No questions.

9 MR. WAHL: Mr. Binek?

10 MR. BINEK: No.

11 MR. WAHL: Commissioners?

12 MS. WEFELD: No.

13 MR. WAHL: No questions. Thank you
14 very much, Mr. Sonderland.

15 (Off the record.)

16 MR. WAHL: What is your name, sir?

17 MR. BURCHILL: Nyle K. Burchill.

18 MR. WAHL: Mr. Burchill, will you sign
19 the register, print your name and --

20 MR. BURCHILL: I have. I have.

21 MR. WAHL: You have -- you're ahead of
22 me. Very good, sir. Did you, Mr. Burchill, hear my
23 advice regarding perjury today?

24 MR. BURCHILL: I did.

25 MR. WAHL: Will you raise your right

1 hand, please? Being advised regarding perjury,
2 Mr. Burchill, do you swear that the testimony which
3 you are about to give in this matter shall be the
4 truth, the whole truth and nothing but the truth?

5 MR. BURCHILL: I do.

6 MR. WAHL: Please state your name and
7 address for the record, Mr. Burchill.

8 MR. BURCHILL: Nyle K. Burchill.
9 That's N-y-l-e. Burchill is spelled B-u-r-c-h-i-l-l.
10 835 Eighth Avenue Northwest; Valley City, North
11 Dakota 58072.

12 MR. WAHL: You may proceed with your
13 testimony, Mr. Burchill.

14 MR. BURCHILL: Thank you, your Honor,
15 members of the commission, members of the Keystone
16 delegation. I am appearing here today on my own
17 concerns. I -- I do not have any land that's
18 involved at this time. I did in the original route
19 but not at this time. But I'm a retired farmer. My
20 land is in the northeast corner of Barnes County.
21 And my remarks today is going to be mainly as it
22 passes through Barnes County.

23 Now, I'm sure you have maps. And if
24 you do, start at the Luverne pumping station. As the
25 route proceeds from the Luverne pumping station, it

1 goes to the southwest approximately a mile and
2 three-quarters going west, but longer than that at an
3 angle of course. It gets closer than the gentleman
4 before me said, closer than -- as close as one to one
5 and a half miles of Lake Ashtabula. It parallels the
6 upper end of the lake for over 4 miles.

7 Then if you follow that route, it turns
8 and goes south through Grand Prairie Township. Then
9 it gets into Noltimier Township. It turns back east
10 for about the same distance as it has gone west.
11 Then it turns due south. Goes through all of the
12 townships until it gets to -- to the last one, the
13 bottom one, and then Barnes County which is
14 Thordenskjold. That's -- that's a Norwegian name.
15 And at that point -- and Vaughn -- it's in Vaughn's
16 area, Vaughn Zacharias's area. It gets within a mile
17 of the river at that point. And then it crosses
18 Highway 46 and then takes a -- veers to the west
19 again and crosses the river.

20 When it gets into the -- when it leaves
21 the Luverne pumping station, it gets into the
22 Sheyenne and the Lake Ashtabula Watershed which is a
23 very steep area. I'm very familiar with it. I own
24 land in the eastern portions of those townships.
25 I've lived there for all my life. And so it's very

1 steep. So a leak would get to the lake very fast,
2 particularly if it happened to be high water, heavy
3 rain or a spring runoff.

4 If the pipeline was to go southeast
5 from the Luverne pumping station for a mile and
6 three-quarter to two miles and then proceed straight
7 south, it would take it completely out of the
8 Sheyenne River Watershed. It would take it
9 completely out of the Little -- Little Yellowstone
10 area. It would cross the Sheyenne River somewhere
11 further down the line. So I am recommending that it
12 be moved from -- or rerouted from the Sheyenne -- or
13 from the Luverne pumping station to the southeast and
14 then proceed straight south through the -- through
15 the county.

16 Valley City gets its -- replenishes its
17 aquifer from the Sheyenne River. There's much talk
18 about bringing Missouri River water down to the
19 Sheyenne and then consequently -- and then down to
20 Fargo-Moorhead. So we need to be very, very careful
21 about what potentially could happen to the Sheyenne
22 River Valley and -- River I should say. So I think
23 it's very imperative that this route be changed.
24 Thank you.

25 MR. WAHL: Mr. Kelsch?

1 MR. KELSCH: No questions.

2 MR. WAHL: Mr. Delaney?

3 MR. DELANEY: No questions.

4 MR. WAHL: Mr. Binek?

5 MR. BINEK: No.

6 MR. WAHL: Commissioners?

7 MR. CRAMER: None.

8 MS. WEFELD: None.

9 MR. WAHL: Thank you. Thank you very
10 much, Mr. Burchill.

11 What is your name, please?

12 MS. KLEIN: Ramona Klein.

13 MR. WAHL: I'm sorry. I --

14 MS. KLEIN: Ramona Klein.

15 MR. WAHL: Klein. Ms. Klein, you heard
16 my advice this afternoon regarding perjury?

17 MS. KLEIN: Yes, I did.

18 MR. WAHL: Will you raise your right
19 hand, please? Being advised regarding perjury,
20 Ms. Klein, do you swear that the testimony which you
21 are about to give in this matter shall be the truth,
22 the whole truth and nothing but the truth?

23 MS. KLEIN: I do.

24 MR. WAHL: Please state your name and
25 address for the record.

1 MS. KLEIN: Ramona Starke Klein. 3340
2 123 R Avenue Southeast; Oriska, North Dakota 58063.

3 MR. WAHL: You may proceed with your
4 testimony, Ms. Klein.

5 MS. KLEIN: My land bought by my folks
6 long ago was supposed to be left for me and my kids.
7 It's paid for. They worked and slaved to get it.
8 Now I find myself in the position of having to defend
9 it. Even my tenants are worried about the fact that
10 they're going to fall into this trench. Who's liable
11 if they fall in the trench. Am I liable too? Are
12 they? We don't know. Nobody's telling us.

13 I don't even know exactly where the
14 trench is at this point. This is Gardenia soil. I
15 live -- my land is right across on the Peak exit
16 3 miles out of town. Gardena is about the best you
17 can get so why are we going through prime farmland on
18 top of it all. It's right across from Richard
19 Starke's land to put you two -- give you an idea of
20 where it is. He's my cousin. Right across the road.

21 Okay. So you've got my location. The
22 soil is Gardena. I don't know why you would even
23 think about putting a pipeline through here with all
24 this water, all the potential of getting into the
25 lake. I would think the lake people would have been

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1 here en masse today to protest this. Because if
2 there's a spill, where's it going to go? It's going
3 to run right into the lake.

4 By the way, I've got springs in my land
5 down there. Beautiful springs. I love them. They
6 go right behind Wolsky Plaza and right into Valley
7 City. And you know where it goes from there? Right
8 to the Sheyenne River. Bingo, 3 miles and it's in
9 the Sheyenne River. I'm sure the illustrious
10 gentleman over here can't say that it's not going to
11 wash 3 miles if we have a spill.

12 And that -- that probably is my final
13 point because I know you're running out of time.
14 I'll be brief. We were talking about the validity of
15 the statements made in the WEB Water Board.
16 TransCanada has had 576 spills in the past six years.
17 576 spills from TransCanada in the past six years.
18 You know where all this is? It's on their official
19 Web site, www.TransCanada.com for anybody to go and
20 see and they put it there.

21 So we don't need to dispute WEB Water,
22 we don't need to dispute anything unless TransCanada
23 doesn't have the right information on their own Web
24 site. And I know you're in a hurry so I think that's
25 all I have to say except, please, move it out to the

1 western -- if you guys want to connect with the
2 pipeline, to our oil -- which of course some of us
3 don't quite believe that. But let's say that you
4 really do. Wouldn't it make sense to go out where
5 our oil is and not here? How are you going to get it
6 here anyway? That's what I was trying to figure out
7 all morning. Thank you.

8 MR. WAHL: Mr. Kelsch, questions for
9 the witness?

10 MR. KELSCH: No questions, your Honor.

11 MR. WAHL: Mr. Delaney?

12 MR. DELANEY: I have none.

13 MR. WAHL: Mr. -- or Mr. Binek?

14 MR. BINEK: No.

15 MR. WAHL: Commissioners?

16 MR. CRAMER: I have none.

17 MS. WEFELD: None.

18 MR. CLARK: None.

19 MS. WEFELD: Thank you.

20 MR. WAHL: Thank you very much,

21 Ms. Klein.

22 What is your name, sir?

23 MR. ENGQUEST: My name is Randy

24 Engquist.

25 MR. WAHL: I'm sorry. Your last name?

1 MR. ENGQUEST: Engquist,
2 E-n-g-q-u-i-s-t.

3 MR. WAHL: Mr. Engquist, did you hear
4 my advice today regarding perjury?

5 MR. ENGQUEST: Yes, I did.

6 MR. WAHL: Will you raise your right
7 hand, please? Being advised regarding perjury,
8 Mr. Engquist, do you swear that the testimony which
9 you are about to give in this matter shall be the
10 truth, the whole truth and nothing but the truth?

11 MR. ENGQUEST: I do.

12 MR. WAHL: Please state your name and
13 address for the record.

14 MR. ENGQUEST: Randy Engquist. 8221
15 117th Avenue Southeast, Crete, C-r-e-t-e, North
16 Dakota.

17 MR. WAHL: You may proceed with your
18 testimony, Mr. Engquist.

19 MR. ENGQUEST: Okay. Thank you, your
20 Honor and -- and commissioners. I'm going to try to
21 keep this brief. I'm not a good public speaker.
22 Mr. Novak's comments here earlier hit on something
23 that I had intended to speak about, and I'm just
24 going to touch on it very quickly.

25 This past Thursday I attended a meeting

1 in -- in Forman, North Dakota, for our county
2 commissioners and our township officers. At that
3 time I asked members of the TransCanada pipeline that
4 were present if it is true that they cannot detect a
5 leak that's less than one and a half percent of their
6 volume of this -- of this pipeline. They said that
7 was true.

8 Okay. Just doing some -- some fast
9 math here -- I'm sure this is maybe a worst-case
10 scenario that they're putting down, but they did put
11 this in the presidential report that they reported to
12 the United States when they applied for this -- this
13 permit.

14 If we took 10 percent of that figure,
15 I'm figuring that 495,000 barrels of oil, including
16 the 155,000 they said they had included or since
17 added to this line, if we did the figuring on this at
18 a 10 percent of -- of what we're talking here, over a
19 90-day period -- they said it will take them up to 90
20 days to detect a one and a half percent leak. We're
21 talking over 2.8 million gallons of oil spilled.
22 That's at 10 percent of what they said.

23 Now, where I live my well is 38 feet
24 deep. They're coming through a ridge to the east of
25 my place a quarter mile. Everything flows directly

1 to my farm site. This also indirectly, like 500 feet
2 further east, the -- the water or the oil would flow
3 to the east.

4 In the early '80s I -- I had attended a
5 meeting in Fargo where I was subpoenaed to do a
6 deposition for Sargent County. Our -- our water
7 commission cleaned drained in what they call Drain
8 No. 11. It was put in in the early 1900s. Our
9 county was in a lawsuit for many years at a fine of
10 over a million dollars a day because we put dirt in
11 the water.

12 Now, if there's a leak in this area,
13 it's very sensitive. It will directly go into Drain
14 No. 11 -- well, indirectly. You know -- you know, it
15 can go one of two directions, but it will go into
16 Drain No. 11 on down into the Wild Rice River and
17 over to the Red. Canada will get their oil back.

18 I would be lying if I said I want this
19 thing to go through. I don't want it on my land.
20 But if I can't stop it, please put some controls on
21 it. Like at our -- close to a residence, I think
22 there was some very good points brought up in this
23 WEB Water thing, you know, kind of some
24 recommendations they had. I think one very good one
25 was if you come close to a residence or a -- a

1 sensitive area, make them double the thickness of the
2 pipeline. Make it safe. Let's do it right. Thank
3 you.

4 MR. WAHL: Mr. Kelsch, questions for
5 the witness?

6 MR. KELSCH: No questions.

7 MR. WAHL: Mr. Delaney?

8 MR. DELANEY: I have no questions.

9 MR. WAHL: Mr. Binek?

10 MR. BINEK: No questions.

11 MR. WAHL: Questions by the
12 commissioners?

13 MR. CRAMER: No questions. Just thank
14 you.

15 EXAMINATION

16 BY MS. WEFALD:

17 Q. Is your -- is the pipeline crossing
18 your land as proposed in its proposed route?

19 A. Yes, it is.

20 Q. Yes, it is.

21 A. If I could say one more thing. Again
22 this is beside the point. I guess I'm thinking let's
23 maybe say it. I've had people want to purchase land
24 to build on. When I mentioned this to the pipeline
25 company, they said, "If you're not developing it now,

1 it's not our problem."

2 MR. WAHL: I'm sorry. Mr. Engquist,
3 I'm sorry. The court reporter is having difficulty
4 hearing you.

5 MR. ENGQUIST: Am I not speaking into
6 it correctly?

7 MR. WAHL: And speak louder if you
8 could.

9 MR. ENGQUEST: Okay. Okay.

10 MR. WAHL: Pretend that you're talking
11 to me without the mic and you'll do fine.

12 A. Okay. I have property that people have
13 tried to purchase. I'm 13 miles from Bobcat along
14 the State Highway No. 13. People have approached me
15 to buy property there because it's in the Oakes
16 School District, not the North Sargent School
17 District. I haven't chose to develop it because I
18 don't want people there, but that's not saying that
19 some day I may not change my mind. If this line goes
20 through there, a lot of that option is gone. I am
21 going -- I am going to be financially hurt. I'm
22 going to get a dollar here and lose three over there.
23 That's really I have.

24 MS. WEFELD: Thank you.

25 MR. WAHL: Well, we better do this.

1 Mr. Kelsch?

2 MR. KELSCH: No, no questions.

3 MR. WAHL: Mr. Delaney?

4 MR. DELANEY: I have nothing.

5 MR. WAHL: Mr. Binek?

6 MR. BINEK: No questions.

7 MR. WAHL: Thank you very much,

8 Mr. Engquist.

9 What is your name, sir?

10 MR. STRANDER: Emery Strander.

11 MR. WAHL: Mr. Strander, did you hear
12 me -- here my advice regarding perjury today?

13 MR. STRANDER: Yes, I did.

14 MR. WAHL: Will you raise your right
15 hand, please? Being advised regarding perjury,
16 Mr. Strander, do you swear that the testimony which
17 you are about to give in this matter shall be the
18 truth, the whole truth and nothing but the truth?

19 MR. STRANDER: Yes, I do.

20 MR. WAHL: Will you please state your
21 name and address for the record?

22 MR. STRANDER: Okay. My name is Emery
23 Strander, Lisbon, North Dakota, and I'm talking about
24 land that they are going to run through that I own at
25 Fort Ransom Township 158, 38 on Section 22 in Fort

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1 Ransom Township.

2 My concern is they're within feet of a
3 cemetery. This cemetery, I have bought a plot
4 myself, and I am very concerned about how close they
5 can -- want to put that line. It's right now I would
6 say about 250 feet from the cemetery. The land it
7 runs through I'm selling to a young man. He's got
8 control of the land so far, but it isn't paid for so
9 I still have it too. I still have equity in that
10 land that they're going across. I ain't quite as
11 concerned about the pipeline itself going through as
12 where they're putting it is what I'm concerned about.

13 I -- my parents are buried there. I
14 have lived on that land 132 years -- or it's been in
15 the family. I haven't lived there, but it's been in
16 the family 132 years and I'm very concerned about
17 what's going to happen out there. And it's not only
18 me. My parents are there and my sisters and brothers
19 are there and my sister-in-law are buried out there,
20 and I'm very, very concerned of what's going to
21 happen out there being that close to the cemetery.

22 And that's on the northeast -- or that
23 would be on the northeast one-fourth of 158, 38 -- or
24 58 -- 135, 58 in Fort Ransom Township. I own that
25 half section that it's on there. Or actually the

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1 cemetery is on the northeast corner of Section 22,
2 northwest Section 22. And that's my concern. And I
3 haven't been approached by anybody about easements or
4 anything either from me. My -- the person that is
5 buying my land has been told that you either sign or
6 we'll get after you and make you sign.

7 Well, I don't know if that was true or
8 not. I -- I really haven't talked to the gentleman
9 that was out and seen him or not, see. I haven't
10 signed anything myself because I'm concerned about
11 what's going to happen first about where the line is
12 going to go or where the pipeline runs through the
13 land there.

14 MR. WAHL: All right.

15 MR. STRANDER: And that's all I've got
16 to say.

17 MR. WAHL: Mr. Kelsch?

18 MR. KELSCH: No questions.

19 MR. WAHL: Mr. Delaney?

20 MR. DELANEY: No questions.

21 MR. WAHL: Mr. Binek?

22 MR. BINEK: No questions.

23 MR. WAHL: Commissioners?

24 MR. CRAMER: No questions.

25 MS. WEFELD: No questions.

1 MR. WAHL: Thank you very much,
2 Mr. Strander.

3 MR. STRANDER: Thank you.

4 MR. CRAMER: Thank you.

5 MR. WAHL: It's 5:00.

6 MS. WEFELD: 5:30.

7 MR. CLARK: And then some.

8 MR. WAHL: Nobody else is -- oh, in
9 fact it's past 5:00. I'm going to -- I'm going to
10 continue this hearing until tomorrow July 24th at
11 Park River. Tomorrow at Park River we'll continue
12 with -- in fact I'm also going to continue the
13 hearing for the -- for the certificate of convenience
14 and necessity. I don't think there's anything more
15 to be done for the hearing of convenience and
16 necessity, but we have not on the record proceeded
17 and I -- Mr. Kelsch, there may be rebuttal for the
18 certificate of convenience and necessity. So that
19 hearing also will be continued to tomorrow at Park
20 River at 1:00.

21 Then this hearing, the siting hearing,
22 the siting application hearing will also be continued
23 to tomorrow, July 24th, 1:00 at Park River for the
24 completion of the testimony of TransCanada witnesses
25 and for any further evidence to be offered by the

1 intervenors as well as further public testimony on
2 either question, either the question of the
3 certificate of public convenience and necessity or
4 the siting of the -- of the pipeline.

5 All right. We stand adjourned until
6 tomorrow at 1:00 in Park River. Thank you.

7 (Whereupon, the hearing was adjourned
8 at 5:29 p.m.)

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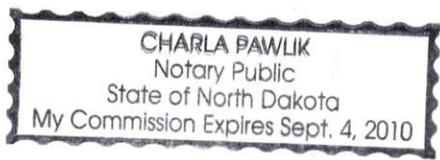
C E R T I F I C A T E

I, CHARLA A. PAWLIK, hereby certify that I am qualified as a verbatim shorthand reporter; that I reported in Stenographic shorthand the foregoing Public Service Commission hearing at the time and place aforesaid; and that the foregoing transcript, consisting of three hundred nineteen (319) pages, is a true and correct, full and complete transcription of said shorthand notes to the best of my ability.

Dated at Fargo, North Dakota, this 3rd day of August, 2007.



CHARLA A. PAWLIK - R.P.R.
Notary Public



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