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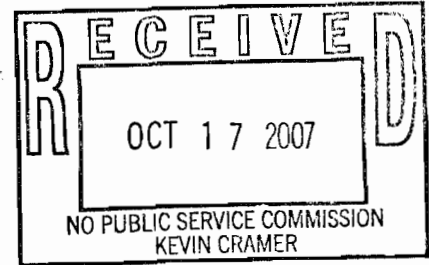
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October 17, 2007

ADMINISTRATIVE LAW JUDGE AL WAHL
OFFICE OF ADMINISTRATIVE HEARINGS
1707 N 9TH ST
BISMARCK ND 58501-1882



RE: TransCanada Keystone Pipeline, LP
Case No.'s PU-06-421 and PU-07-152
Consideration of Information Not Presented at a Hearing

Dear Judge Wahl:

The Public Service Commission requested a determination from you on the issue of how the following information should be considered from an evidentiary standpoint:

1. Mail and email correspondence from Intervenors (but not filed via counsel);
2. Correspondence from public witnesses who testified at the public hearings;
3. Correspondence from persons who have not intervened or testified at hearings;
4. Correspondence from governmental agencies and political subdivisions; and
5. Information that Commission Staff has found out in course of investigating a comment from late filed correspondence.

Keystone requests that the information submitted after the hearings were closed be treated as public comment and that it not be admitted into the record as evidence to be considered by the Commission in this action.

The Commission also requested an opinion on the procedures required to bring this information into the record to be considered as evidence by the Commission.



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I. Information submitted after the record has been closed in both proceedings should not be admitted as evidence.

The record in Case No.'s PU-06-421 and PU-07-152 have been closed by the Administrative Law Judge. At the public hearing in Park River on July 27, 2007, the Judge ruled that "The hearing for the certification of public convenience and necessity, Public Service Commission Case No. Pu-07-152 is closed." (Park River Tr. Pg. 174, lines 18-20)

The Judge at the public hearings in Bismarck ruled that no additional public evidence would be admitted on the Public Convenience and Necessity Case No. PU-07-152.

At the conclusion of the continued hearing on Case No. PU-06-421 in Bismarck on September 5th and 6th, the Judge closed the hearing subject to the filing of briefs and conclusions of law and identified late filed exhibits. (Bismarck Volume II Tr. Pgs. 578-581)

II. Government Agencies, Political Subdivisions and the Public had Ample Notice and Opportunity to Participate at Hearings

In this case Notice of the Hearings on both Cases PU-06-421 and PU-07-152 as required by statutes and N.D.Admin. Law §69-02-04.01 were published in the North Dakota daily newspapers. The first publication of the Notice of Hearing was published in May and the second publication was in July, Notice of Rescheduled hearings were published in August. (See copies of publications). These publications included the Fargo Forum. There were numerous opportunities for the public, governmental agencies and political subdivisions to participate in one of the four days of hearings.

N.D.C.C. §49-22-13 provides that "At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the evidence developed pursuant to §49-22-05.1, and the factors to be considered pursuant to §48-22-09." (Emphasis added)

The Commission held public hearings on July 23rd in Valley City for one full day, on July 24th in Park River for one-half day and in Bismarck on September 5th and 6th for two full days. All members of the public who requested to testify at the public hearings were permitted to do so.

III. Information does not fall within one of the exceptions provided in law to be included in record.

N.D.C.C. §28-32-24 Evidence to be considered by agency - Official notice provides:

1. The admissibility of evidence in any adjudicative proceeding before an administrative agency shall be determined in accordance with the North Dakota Rules of Evidence. An administrative agency, or any person conducting proceedings for it, may waive application of the North Dakota Rules of Evidence if a waiver is necessary to ascertain the substantial rights of a party to the proceeding, but only relevant evidence shall be admitted. The waiver must be specifically stated, orally or in writing, either prior to or at a hearing or other proceeding. (Emphasis added)

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In this case the questioned information was submitted after the hearing so a waiver of N.D. Rules of Evidence cannot be made prior to or at the hearing and should not be considered.

N.D.C.C. §28-32-24(5) provides:

5. All testimony must be made under oath or affirmation. Relevant statements presented by nonparties may be received as evidence if all parties are given an opportunity to cross-examine the nonparty witness or to otherwise challenge or rebut the statements. Nonparties may not examine or cross-examine witnesses except pursuant to a grant of intervention.

None of the questioned information submitted after the hearing was made under oath or affirmation. Nor were parties given any opportunity to cross-examine the witness on the correspondence or challenge or rebut the statements.

N.D.C.C. §28-32-25 provides:

"28-32-25. Adjudicative proceedings - Consideration of information not presented at a hearing. In any adjudicative proceeding, an administrative agency may avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by the agency, in addition to the evidence presented at the hearing."

This section permits the Commission to avail itself of competent and relevant information that is obtained "in the course of an independent investigation conducted by the agency." The material in question was not obtained in the course of any independent investigation.

IV. Information does not constitute new relevant facts that a decision could be made upon.

The letter from the City of Fargo does not offer any new evidence for the Commission to consider, it only raises a question about the risk of a possible spill and the potential impact on the Sheyenne River and Bald Hill Dam. This does not constitute testimony. It is more in the nature of a public comment asking the Commission to look into this risk and potential impact. This was fully addressed at the hearings in Bismarck. Keystone witness, Heidi Tillquist, was asked about the risk analysis in Sheyenne River and Lake Ashtabula area. Tillquist testified as follows on this issue:

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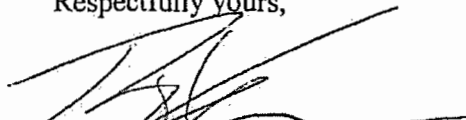
197. In the Sheyenne River-Lake Ashtabula area the pipeline is over two and one-half linear miles away from the water body, so sub-surface transport is not a viable route for crude oil to reach the Sheyenne River or Lake Ashtabula. The terrain is flat to the Sheyenne River, so overland transport is not a viable route for the crude oil. All of the intermittent streams, except for one stream that is right at the Sheyenne River, are at least 1.6 miles away from the river and, when dry, would not be a viable route for crude oil to reach the Sheyenne River. (BII Tr. Pg. 363)
198. The overall pipe that could contribute to a spill reaching the river is 2.8 miles. This results in a conservative risk of a spill reaching the river at once every 5,400 years. (BII Tr. Pg. 364)
199. The Keystone Pipeline is located in the Sheyenne River-Lake Ashtabula area it is on a terrace where the slope is zero. (BII Tr. Pg. 367)
200. The spill frequency figures considered any size spill. In order to get to the river a large spill of thousands of barrels would need to occur. To calculate the risk associated with a large spill, it would add a couple zeros to the already big frequency interval numbers. (BII Tr. Pg. 367-368)

A number of the other public correspondence dealt with easement acquisition issues that are not part of these docket cases.

CONCLUSION

Keystone requests that this material be considered public comment. This late filed correspondence should not be admitted as evidence in the record to be considered by the Commission.

Respectfully yours,



Thomas D. Kelsch

TDK;dr

cc: William Binek
Nicholas R. Delaney, Rinke-Noonan Law Firm
Jim White (Sidley Austin LLP)
Jennifer Scott (TransCanada)

Kent, Paula F.

From: Colleen Park [colleenp@ndna.com]
Sent: Wednesday, August 01, 2007 2:20 PM
To: Kent, Paula F.
Subject: RE: Notice of Continued Hearing PU-06-421
Attachments: image001.gif

Received. Notices will publish beginning 8/8 and the last papers will publish on 8/13.

Colleen

Colleen Park
North Dakota Newspaper Association
Advertising Coordinator / Public Notice Coordinator
1435 Interstate Loop • Bismarck ND 58503
Phone 701.223.6397 • Fax 701.223.8185

Every job is a self-portrait of the person who did it ... autograph yours with excellence.

From: Kent, Paula F. [mailto:pfkent@nd.gov]
Sent: Wednesday, August 01, 2007 11:17 AM
To: Colleen Park
Cc: Geiger, Gloria A.
Subject: Notice of Continued Hearing PU-06-421

Colleen Park
North Dakota Newspaper Association

Please have the attached Notice of Rescheduled Hearings published as a legal publication in the next issue of the following newspapers. Do not publish in the classifieds and run it as a "News Item Only" article as well. Do not publish in the classifieds.

- Cavalier County
- Cavalier County Republican
- The Walsh County Record
- Grand Forks Herald
- Steele County Press
- Valley City Times Record
- LaMoure Chronicle
- Dickey County Leader
- The Daily News
- Devils Lake Journal
- The Cavalier Chronicle
- Lakota American
- Griggs County Courier
- Hillsboro Banner
- Fargo Forum
- Ransom County Gazette
- The Teller
- Jamestown Sun

Send the bill to the Public Service Commission along with a tear sheet for billings purposes.

If you have any questions, please call me at 328-4076, or e-mail me.

Paula Kent
Public Utilities Division

pfkent@nd.gov
Public Service Commission
600 East Boulevard
Bismarck, ND 58505
701-328-4076
fax 701-328-2410

Geiger, Gloria A.

From: Kent, Paula F.
Sent: Thursday, June 14, 2007 2:08 PM
To: colleenp@ndna.com
Cc: Geiger, Gloria A.
Attachments: Notice of Hearing.docx; Keystone_mainline_North-Dakota_Newspaper_041707 (2).pdf

By email on May 4, 2007, the PSC requested that a Notice of Filing and Notice of Hearing and a map for Case No. PU-06-421 be published twice. The first publication has already occurred. The timing of the publication is as indicated in the first email and repeated below, however, the PSC is requesting that the map be reduced in size for the second publication (see below).

Please have the attached Notice of Filing and Notice of Hearing and map published as a legal publication in the following newspapers and run it as a "News Item Only" article as well. Do not publish in the classifieds.

- | | |
|--|--|
| <input checked="" type="checkbox"/> Cavalier County Republican | <input checked="" type="checkbox"/> The Cavalier Chronicle |
| <input checked="" type="checkbox"/> The Walsh County Record | <input checked="" type="checkbox"/> Lakota American |
| <input checked="" type="checkbox"/> Grand Forks Herald | <input checked="" type="checkbox"/> Griggs County Courier |
| <input checked="" type="checkbox"/> Steele County Press | <input checked="" type="checkbox"/> Hillsboro Banner |
| <input checked="" type="checkbox"/> Valley City Times Record | <input checked="" type="checkbox"/> Fargo Forum |
| <input checked="" type="checkbox"/> LaMoure Chronicle | <input checked="" type="checkbox"/> Ransom County Gazette |
| <input checked="" type="checkbox"/> Dickey County Leader | <input checked="" type="checkbox"/> The Teller |
| <input checked="" type="checkbox"/> The Daily News | <input checked="" type="checkbox"/> Jamestown Sun |
| <input checked="" type="checkbox"/> Devils Lake Journal | |

The notice and map must be published in the first issue after July 4. The map must be published 2 columns wide. If you cannot meet these deadlines, or publish the map as requested, please let me know.

Send the bill to the Public Service Commission, along with a tear sheet for billing purposes.

If you have any questions, or if you cannot open the pdf file of the map, please let me know. Thank you.

Paula Kent
Assistant to Commissioner Susan Wefald
pfkent@nd.gov
600 East Boulevard
Bismarck, ND 58505

701-328-2400

Miller, Patricia A.

From: Colleen Park [colleenp@ndna.com]
Sent: Monday, May 07, 2007 1:00 PM
To: Miller, Patricia A.
Subject: RE: Notice of Filing and Notice of Hearing and Map

Received. Notice will run beginning Friday the 11th, and the last publications on Thursday, May 17. The second run should be July 5 - 11. Let me know if those dates are OK.
Colleen

From: Miller, Patricia A. [mailto:patmiller@nd.gov]
Sent: Friday, May 04, 2007 12:16 PM
To: Colleen Park
Cc: Geiger, Gloria A.
Subject: Notice of Filing and Notice of Hearing and Map

Colleen Park
North Dakota Newspaper Association

Colleen:

Please have the attached Notice of Filing and Notice of Hearing and Map published as a legal publication in the following newspapers and run it as a "News Item Only" article as well. Do not publish in the classifieds

- | | |
|----------------------------|------------------------|
| Cavalier County Republican | The Cavalier Chronicle |
| The Walsh County Record | Lakota American |
| Grand Forks Herald | Griggs County Courier |
| Steele County Press | Hillsboro Banner |
| Valley City Times Record | Fargo Forum |
| LaMoure Chronicle | Ransom County Gazette |
| Dickey County Leader | The Teller |
| The Daily News | Jamestown Sun |
| Devils Lake Journal | |

The notice and map must be published twice, the first time in the next issue of the newspaper, and a second time in the first issue after July 4. The map must be published as is. If you cannot meet these deadlines, or publish the map as is, please let me know.

Send the bill to the Public Service Commission, along with a tear sheet for billing purposes.

If you have any questions, or if you cannot open the pdf file of the map, please let me know.
Thank you.

Pat Miller
Public Utilities Division
Public Service Commission
701-328-4076

Miller, Patricia A.

From: Miller, Patricia A.
Sent: Friday, May 04, 2007 12:16 PM
To: 'Colleen.Park'
Cc: Geiger, Gloria A.
Subject: Notice of Filing and Notice of Hearing and Map
Attachments: Notice of Hearing.doc; Keystone_mainline_North-Dakota_Newspaper_041707.pdf

Colleen Park
North Dakota Newspaper Association

Colleen:

Please have the attached Notice of Filing and Notice of Hearing and Map published as a legal publication in the following newspapers and run it as a "News Item Only" article as well. Do not publish in the classifieds

- | | |
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| Cavalier County Republican | The Cavalier Chronicle |
| The Walsh County Record | Lakota American |
| Grand Forks Herald | Griggs County Courier |
| Steele County Press | Hillsboro Banner |
| Valley City Times Record | Fargo Forum |
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| Dickey County Leader | The Teller |
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If you have any questions, or if you cannot open the pdf file of the map, please let me know.
Thank you.

Pat Miller
Public Utilities Division
Public Service Commission
701-328-4076