

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

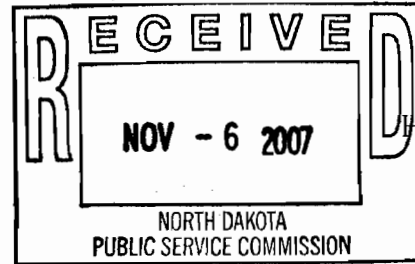
*Also Licensed in Minnesota

 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

November 6, 2007

TONY CLARK, COMMISSIONER
PUBLIC SERVICE COMMISSION
600 EAST BOULEVARD, DEPT 408
BISMARCK ND 58505-0480



Re: TransCanada - Keystone Pipeline Project
Case No: PU-06-142
Our File No. 11815

Dear Commissioner Clark:

A decision to reopen this proceeding, which was contemplated by the Commission at the November 5th work session, would be in clear violation of North Dakota law. Just because Fargo is the largest city in North Dakota does not give the Commission any legal ground to grant either the intervention or reopening. Preferential treatment for the city of Fargo is not provided for by statute. There is simply no legal basis for granting either the motion to intervene or the motion to reopen the proceeding.

To protect its legal rights, Keystone must consider all legal avenues open to it in the event of a decision by the Commission to grant Fargo's motions to intervene and reopen the hearing. Accordingly, Keystone requests access to the tape recording from the Monday, November 5, 2007 3:00 pm Commission work session, as well as the October 31, 2007 work session, for the purpose of transcribing the discussion that occurred between Commissioners and staff. Keystone has also made arrangements to have a court reporter present to transcribe the Commission's regular meeting on Wednesday, November 7, 2007.

As a matter of law Fargo's request to intervene is not timely. In order to intervene at this late date Fargo is required to show good cause for its failure to intervene within the schedule set forth within Section 69-02-02-05 ND Admin. C. The Commission has acknowledged that its publication of legal notice was not deficient and, in fact, agreed that the notice was published in the Fargo Forum more often than legally required and Commissioner Clark noted that it was the biggest publication of a map he had ever seen. According to Rule 4 of the ND Rules of Civil Procedure, service by publication is sufficient notice, even to the largest city in North Dakota, Fargo.



November 6, 2007

Page 2

No good cause has been shown by Fargo, or found by the Commission, as required by Section 69-02-02-05 N.D. Admin. C. Granting intervention is thus not allowed by North Dakota law. Grant of an untimely intervention where there is a total lack of good cause is subject to an injunction by the District Court pursuant to Section 69-02-02-05 N.D. Admin. C.

Absent good cause for intervention Fargo is not a party to this action, so the prerequisites of Section 69-02-06-01 N.D. Admin. C. have not been met. The Commission cannot by law even consider the request to reopen by a non party. Pursuant to Section 69-02-06-01 N.D. Admin. C. the legal grounds for reopening have not been shown to exist and should not be granted.

Leaving aside Fargo's lack of standing to request reopening, legal grounds for reopening do not exist. No argument has been presented that there have been material changes of law or fact since the hearing. The only remaining ground for reopening is public interest. In addressing the public interest factor the only way for the Commission to find that the public interest requires the reopening is to find that the water resources of the Sheyenne River and Lake Ashtabula were not already protected by the Commission, the ND Health Department, the US Department of Transportation Pipeline Hazardous Materials Safety Administration, or the US Department of State review under the National Environmental Policy Act. Such a finding would be inconsistent with the facts.

Keystone's objection summarized the reasons that the Commission should deny Fargo's untimely motion to intervene and reopen the siting proceeding. First, all of the issues that were raised by Fargo in its October 24th motion have all been fully explored by the Commission at the prior four hearings that were concluded on September 5 and 6, 2007. Furthermore, there is an administrative process already available to the Commission according to ALJ Wahl for considering the additional material that has been filed in Fargo's motion without granting the intervention and reopening the siting proceeding which will only unduly delay a decision in this case. Finally, a decision to allow Fargo to intervene and reopen the siting proceeding would result in serious adverse impacts to Keystone, potentially deny due process to Keystone and harm the state with the uncertainty that is created in the process for future applicants with the precedent that would be established.

None of the legal arguments addressed above are in any way mitigated by the fact that the Commission agreed to shorten the one year time frame, reduce the corridor and combined hearings for the route and corridor applications. These are simply red herrings. Granting these requests does not justify the Commission ignoring the legal standards for properly considering and evaluating the request for intervening and for reopening the record.

In place of a statutory basis we see decisions being argued and made in the media in advance of any formal consideration of the decision by the Commission, based on the properly presented facts of the case. At least for one applicant, this undermines the decision making process.

While Keystone recognizes that the Commission may not wish to appear to disregard the untimely concerns raised by Fargo, the Commission may not disregard the adverse impact upon Keystone, the North Dakota petroleum industry and the citizens of the state. The Commission found Keystone's application to be completed on May 2, 2007. Keystone had the right to rely on the six month statutory time frame for rendering a decision following such determination.

November 6, 2007

Page 3

In conclusion, Fargo's request for intervention does not meet the statutory requirements. Fargo's request for reopening meets neither the prerequisites nor the substantive statutory requirements. The Commission has a path open to them to consider the concerns. A win-win alternative is available for the Commission to consider Fargo's concerns without granting intervention or reopening the hearing which would allow a reasonable and timely schedule for rendering a decision.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Kelsch', written over a horizontal line.

Thomas D. Kelsch

TDK:ls

c: Executive Secretary Illona Jeffcoat Sacco
Attorney William Binek
Attorney Nicholas Delaney
Attorney Erik Johnson