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November 9, 2007

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

BY FACSIMILE AND US MAIL  
(701)328-2410

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



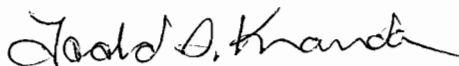
Dear Ms. Jeffcoat-Sacco:

Enclosed for filing in the above-referenced matter is an original and seven copies of the following documents:

1. Return to Notice of Withdrawal; and
2. Affidavit of Service.

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

Sincerely,



Todd D. Kranda

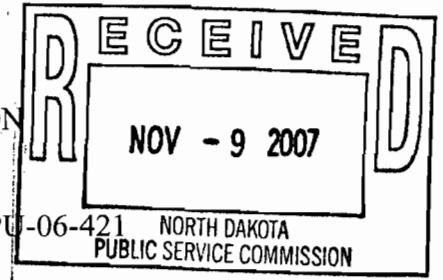
TK:ls

Encs

c: TransCanada Keystone  
ALJ Al Wahl  
Attorney Nicholas Delaney  
Attorney Erik Johnson  
Attorney Bill Binek  
John and Janie Capp



BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA



TRANSCANADA KEYSTONE PIPELINE, LP )  
30-INCH CRUDE OIL PIPELINE/CAVALIER TO )  
SARGENT COUNTIES SITING APPLICATION )

CASE NO. PU-06-421 NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

**RETURN TO NOTICE OF WITHDRAWAL**

TransCanada Keystone Pipeline, LP (Keystone), by and through its attorneys, Thomas D. Kelsch and Todd D. Kranda, of Kelsch, Kelsch, Ruff & Kranda law firm, of 103 Collins Avenue, P.O. Box 1266, Mandan, North Dakota 58554, hereby responds to the notice from Attorney Nicholas Delaney that he and his law firm withdraw as legal counsel from representation of the intervenors, namely Dakota Resource Council, John and Janie Capp, Linette and Merle Kratochvil, Mark Novak and Ramona Klein.

Section 98-02-02-18 of the North Dakota Administrative Code establishes the procedure for withdrawal as legal counsel. Section 98-02-02-18 provides as follows:

**“Section 98-02-02-18. Withdrawal of attorneys.**

1. Before the issuance of a notice of hearing, an attorney may withdraw an appearance for a party by filing a notice of withdrawal with the agency and, if the proceeding has been assigned to a hearing officer outside the agency, with the hearing officer. The notice must also be served upon the party at the party's last reasonably ascertainable post-office address.
2. After the issuance of a notice of hearing, an attorney may withdraw an appearance for a party only upon leave of the presiding hearing officer. To withdraw an appearance under this subsection, an attorney must give reasonable written notice of the time and place for presentation of a motion for leave to withdraw by personally serving on the party or by mailing to the party, using any form of mail requiring a signed receipt, addressed to the party at the party's last reasonably ascertainable post-office address, a copy of the notice and motion. The attorney must also file the notice and motion with the presiding hearing officer. All motions for leave to withdraw will be decided on briefs unless oral argument is specifically requested. The hearing officer may allow or require oral argument or testimony on the motion. All briefs must be filed with the hearing officer no later than the time noticed for presentation of the motion, unless, prior to that time, the hearing officer grants an extension of time for filing briefs. If oral argument or

testimony is allowed or required, the hearing officer may hear it by telephone conference at the time noticed for presentation of the motion or at another time as may be scheduled by the hearing officer.”

The first subparagraph deals with the process of withdrawal before a notice of hearing and the second subparagraph deals with the process of withdrawal after the issuance of a notice of hearing. In this situation, issuance of the notice of hearing preceded the notice of withdrawal by one day. Accordingly, the requirements and procedure set forth in the second subparagraph must be complied with in order for an attorney to withdraw as requested in this case for the reasons explained hereafter.

The Public Service Commission issued its Notice of Further Hearing on Expedited Time Frame dated November 8, 2007. According to the attached Affidavit of Service, the Notice of Further Hearing was served by mail on the parties that same date, namely on November 8, 2007.

The Notice of Withdrawal is dated November 9, 2007. According to the attached Affidavit of Service the Notice of Withdrawal was sent by facsimile on that same date, namely on November 9, 2007.

Rule 5 of the North Dakota Rules of Civil Procedure identifies how service is made in subsection (b) which provides as follows:

**“Rule 5. Service and filing of pleadings and other papers.**

**(b) Service--How Made.** Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service must be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party must be made by delivering a copy to the attorney or party, or by facsimile transmission if available to the attorney or party, or by mailing or delivering via third-party commercial carrier a copy to the attorney or party at the attorney's or party's last known address or, if no address is known, upon order of the court by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or, leaving it at the attorney's or party's office with a clerk or other individual in charge; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the party to be served has no office, leaving it at the party's dwelling or usual place of abode with some individual of suitable age and discretion then residing therein. Service by mail is complete upon mailing. Service via a third-party commercial carrier is complete upon deposit of the paper to be served with the

commercial carrier.” (Emphasis added).

Pursuant to Rule 5 of the North Dakota Rules of Civil Procedure, service was complete upon mailing of the Notice of Further Hearing by the Public Service Commission (PSC) which occurred on November 8, 2007.

The Notice of Withdrawal was on November 9, 2007, a day later than the issuance of the Notice of Further Hearing. Based on the rules regarding service, service of the Notice of Further Hearing occurred on November 8, 2007, which is upon mailing, as shown on the Affidavit of Service from the PSC.

Under North Dakota law, Notice of Further Hearing was served on the parties, including Attorney Delaney, on November 8, 2007 which was one day before he sent his withdrawal notice. As a result, the withdrawal can only be allowed in accordance with subsection (b) of Section 98-02-02-18 N.D. Admin. C. which controls the process after the issuance of a notice. Accordingly, the withdrawal is not in compliance with the requirements of Section 98-02-02-18 N.D. Admin. C.

Keystone resists the withdrawal request by Attorney Delaney unless there are protections and assurances that the proceedings will not be delayed and that the proceedings not become unmanageable by his withdrawal. Keystone requests that the withdrawal not be granted until these concerns are adequately addressed and appropriate parameters are established for the November 27 and 28, 2007 hearings.

Keystone does not have any objection to the granting of the withdrawal if all the intervenors agree in writing that they do not feel it is necessary to participate as a party in the reopened hearing. Otherwise, Keystone has a concern that there must not be any delay in the event the intervenors want to participate and are unable to obtain legal counsel for the November 27 and 28, 2007 hearings.

Further, if the intervenors do intend to participate then they should have substitute counsel available before Attorney Delaney's withdrawal is granted and the substitute counsel must be available to proceed with the hearings on the dates scheduled without delay. Likewise, Keystone would have a concern about the management of the reopened hearing proceedings if the individual intervenors were not represented by legal counsel and did not have a single unified spokesperson who is a licensed attorney. The hearing process could become unworkable.

Based upon the foregoing, Keystone respectfully requests that the granting of the withdrawal be conditioned as indicated to assure there is no delay and the upcoming hearings are manageable. Further, Keystone has informally requested that a prehearing conference be scheduled to address this matter and several other matters before the hearings are held on November 27 and 28, 2007. Accordingly, the withdrawal should only be allowed as long as it is made clear that there will be no delay nor continuance granted and that this matter will proceed with the hearings on November 27 and 28, 2007 as scheduled in this matter in an organized and manageable manner. If such an assurance cannot be made then the withdrawal should not be granted until the concerns raised herein are satisfactorily addressed..

Dated this 9<sup>th</sup> day of November, 2007.



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Mandan, North Dakota 58554-7266  
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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF NORTH DAKOTA

TRANSCANADA KEYSTONE PIPELINE, LP ) CASE NO. PU-06-421  
30-INCH CRUDE OIL PIPELINE/CAVALIER TO )  
SARGENT COUNTIES SITING APPLICATION )

STATE OF NORTH DAKOTA )  
 ) ss. **AFFIDAVIT OF SERVICE**  
COUNTY OF MORTON )

LORI SPENCER being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of eighteen and not a party to the above-entitled action.

That on the 9 day of November, 2007, this affiant deposited in the United States Post Office at Mandan, North Dakota, a true and correct copy of the following document(s) in the above-captioned action:

Return to Notice of Withdrawal

That a copy of the above document(s) was faxed as indicated and securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

ERIK R JOHNSON  
ATTORNEY AT LAW  
505 BROADWAY ST N - STE 206  
FARGO ND 58102  
Facsimile No. 1-701-280-1902

NICHOLAS R DELANEY  
ATTORNEY AT LAW  
PO BOX 1497  
ST CLOUD MN 56302-1497  
Facsimile No: 1-320-656-3500

JOHN & JANIE CAPP  
12466 60<sup>TH</sup> ST NE  
LANKIN ND 58250

  
LORI SPENCER

Subscribed and sworn to before me this 9 day of November, 2007.



  
Notary Public, State of North Dakota