

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)

RESPONSE RESISTING REQUEST FOR CONTINUANCE

On May 2, 2007, the Public Service Commission, (Commission), noticed public hearings on the above Application scheduled for Monday, July 23, 2007 in Valley City, North Dakota, and Tuesday, July 24, 2007 in Park River, North Dakota. The public hearings were held as noticed and scheduled. Testimony was received and the public was allowed to fully participate and comment. However, after allowing the public the opportunity to comment and the Intervenors the opportunity to participate and provide testimony, the hearing for the above referenced matter had to be continued and rescheduled to September 5th and 6th 2007, at the Commission Chambers in Bismarck, in order to allow the Petitioner TransCanada Keystone Pipeline, LP (Keystone), to present the remainder of its case.

The hearing on PU-06-421 was closed on September 6, 2007. Intervenors filed their post hearing Memorandum Brief, and Keystone filed its Memorandum Brief and proposed Findings of Fact Conclusions of Law and Order, the morning of October 15, 2007.

On October 24, 2007, the City of Fargo filed a Motion to Intervene and to Reopen the Hearing. On November 7th 2007, the Commission granted Fargo's motion to Intervene, and reopened the hearing limited to "the safety and public health issues relating to the water supply of the City of Fargo from Lake Ashtabula and The Sheyenne River."

On November 6, 2007, Administrative Law Judge (ALJ), Wahl held a pre-hearing conference for case No PU-06-421, for the purpose of scheduling further hearing. The

Intervenors' counsel, Nicholas Delaney, appeared along with Janie Capp. Both Delaney and Capp stated that they could be available for further hearings on November 27th and 28th 2007. Keystone, the City of Fargo as well as the Commission were all available for the re-opened hearing on November 27th and 28th, 2007. Delaney indicated that he did not know if it would be necessary for him to participate in the re-opened hearing, because the Intervenors already put on their case, were able to testify, cross examine witnesses, introduce exhibits and put on their own witnesses in the previous four days of hearings.

On November 8, 2007, based on the stated availability of all parties, the Commission issued Notice of Further Hearing on Expedited Time Frame in Case PU-06-421 for hearing on November 27th 2007 at 8:00 a.m. In its notice the Commission found that an emergency exists under the circumstances of this proceeding and the hearing be scheduled on an expedited basis as authorized under NDCC 29-22-13(4).

On November 9, 2007, Rinke Noonan, attorneys for the Intervenors filed a Notice of Withdrawal. In the Notice attorney Delaney indicated he was no longer representing the Intervenors and the Intervenors planned to appear and to act "pro se" at the re-opened hearing on November 27th and 28th, 2007.

Keystone filed a Return to the Withdrawal of Delaney. Keystone objected to the withdrawal in that it was made after the Issuance of the Notice of hearing issued by the Commission. Keystone resisted the withdrawal unless there are assurances that the proceedings would not be delayed, and specifically requested that the request for withdrawal not be granted if Intervenors would argue that they would be unable to hire substitute legal counsel in time for the scheduled November 27th and 28th 2007 hearings. Keystone requested that the withdrawal be conditioned so that there is no delay in the scheduled hearings.

ALJ Wahl held a pre-hearing conference on November 16, 2007, for the purpose of considering the Notice of Withdrawal of Rinke Noonan and Keystone's objection, as well as discovery issues and conduct for the scheduled hearing. At the pre-hearing conference, counsel for Keystone, the City of Fargo and Nicholas Delaney on behalf of the Intervenors appeared. The following individual Intervenors appeared "pro se": Mark Novak, Merle Kratochvill, Linette Kratochvil, Ramona Klein, and Janie Capp, and DRC appeared through Lynn C. Wolff and Jana Linderman. At the pre-hearing conference all of the individual Intervenors and the DRC representatives were given an opportunity to participate. None of the individual Intervenors or DRC objected to the withdrawal of Rinke Noonan as their attorney in the re-opened hearing. All of the Intervenors agreed to act "pro se" at the hearings on November 27th and 28th, 2007 in Bismarck. Lynn C. Wolff was advised that the DRC could not participate "pro se" and would need substitute counsel if it desired to appear and participate at the re-opened hearing. ALJ Wahl stated that the parties have the right to represent themselves "pro se" and granted Rinke Noonan's Motion to withdraw. In the pre-hearing order, ALJ Wahl further ordered that each of the Intervenors who will participate at the hearing "pro se" shall notify the other parties, including the other "pro se" parties of their intension to participate at the hearing no later than November 26th 2007, at 9:00 a.m.

On November 21st, 2007, at 3:29 p.m. attorney Shimanek filed a motion for a continuance on behalf of attorney Jana Linderman and the Intervenors. This motion was filed only 2 days before the scheduled hearing not counting the Thanksgiving holiday and intervening weekend. The grounds listed in the motion was that the ALJ had only recently granted Rinke Noonan withdrawal request and Linderman and the Intervenors would not have adequate time to prepare for the scheduled hearing.

Keystone respectfully requests that this untimely request for a continuance be denied. The Intervenors have already had their due process. The Intervenors have participated in four days of hearings and as their counsel admitted they already presented their case, testified, introduced exhibits, cross examined witnesses, and called witnesses. Further the stated reason for the continuance, (i.e. Rinke Noonan's withdrawal), was agreed to by Intervenors and should not now be able to be used as grounds to grant a continuance. Finally, Keystone has demonstrated the serious adverse consequences of further delay in hearings in this case. The Commission has recognized this impact, (which could be as high as \$100 million dollars), and found that grounds existed to grant an expedited hearing process.

Prior to the rescheduling of the hearing date for November 27th and 28th, 2007, the attorneys for the Commission, Keystone, the City of Fargo, and for the Intervenors as well and Janie Capp, were consulted through the ALJ and their availability was confirmed for the rescheduled dates in November based on the Commission schedule. Even as late as November 16, 2007, the individual Intervenors including Lynn C. Wolff and Jana Linderman on behalf of DRC did not object to the hearing dates of November 27th and 28th 2007. Had any of the Intervenors advised the ALJ that they would not be willing or able to act "pro se", or indicated that they needed legal counsel and that the new legal counsel would need more time to prepare for the re-opened hearing, ALJ Wahl would most likely have denied the withdrawal of Rinke Noonan.

Now, pursuant to a Motion dated November 21, 2007, a request for continuance has been submitted by Intervenors DRC, John and Janie Capp, Mark Novak, Merle Kratochvill and Linette Kratochvill and Ramona Klein, requesting that the rescheduled November 27th and 28th 2007 hearing be continued to allow their new counsel more time to prepare.

Keystone hereby resists and opposes the request for continuance of the November 27th and 28th hearing. The request for continuance should be denied and the re-opened hearing should proceed on November 27th and 28th as scheduled and noticed.

Pursuant to Section 69-02-04-03 of the North Dakota Administrative Code, continuances may be granted for good cause and must be submitted as far in advance as possible. It is hereby submitted that the request for continuance is untimely and good cause does not exist for the continuance of the re-opened hearing date of November 27th and 28th 2007.

Any delay by a continuance of the re-opened hearing would cause substantial prejudice to Keystone. The individual witnesses for the Keystone and presumable for the City of Fargo, have already made travel arrangements and revised their schedules to return and appear at this re-opened hearing on November 27th and 28th 2007.

More importantly, there are deadlines that exist for the Commission in this case which have already been extended in this case. The Application was deemed complete on May 2, 2007 and therefore the 6 month deadline established by rule for the issuance of a determination on the Application would be November 2, 2007. The Commission has extended this time period for good cause to December 12, 2007. A continuance of the re-opened hearing date would significantly increase this time. If the re-opened hearing was continued, the earliest it could be held would be in January 2008. This would result in a significant and unreasonable delay in the Commission acting on the application for corridor and route.

Each of the Intervenors was present and each testified at the prior hearings in July 2007. In fact, Mr. Novak appeared and testified at the Valley City hearing on July 22nd while Merle Kratochvill, Linette Kratochvill, John Capp and Janie Capp all appeared and testified at the Park River hearing on July 23rd. Furthermore, the Intervenors were present through their counsel at


the hearings in September.

The continuance request in addition to being untimely appears to have been made solely for the purpose of delay. The Intervenor should not be permitted to consent to the withdrawal of their legal representation less than 10 days before a scheduled hearing that they consented to and then use that withdrawal to attempt to obtain a continuance. Their attorney of record was involved in the discussions for the rescheduling and did not oppose to the rescheduled hearing and the Intervenor did not object when the issue was raised by Keystone on November 16, 2007. These Intervenor waited until the last week prior to the re-opened hearing date before they submitted the request even though the hearing date was coordinated, scheduled, approved and noticed by the Commission on November 9, 2007.

For the foregoing reasons, Keystone objects to the request for continuance and requests that the Commission deny the request for continuance and allow the re-opened hearing on November 27th and 28th 2007 to proceed without a delay and that the Commission continue to act with all due speed in this matter.

Dated this 23 day of November, 2007. .

Respectfully submitted,
TransCanada Keystone Pipeline, LP

By 
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