



100 1st Street SW
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November 26, 2007

VIA E-MAIL (ijs@nd.gov)

Illona Jeffcoat-Sacco
Executive Secretary
North Dakota Public Service Commission
State Capitol
Bismarck, ND 58505-0480

RE: In the Matter of the Siting Application and Application for Certificate of Public Convenience and Necessity of TransCanada Keystone Pipeline, LP (PSC Case Nos. PU-06-421 and PU-07-152; OAH File No. 20070181)

Dear Ms. Jeffcoat-Sacco:

Attached for filing please find the following documents:

1. Response to Objections to Motion to Continue Hearings; and
2. Certificate of Service.

Sincerely,

Jana M. Linderman

Enclosures

Copies (w/ enc) via e-mail to: Service List

Administrative Law Judge Al Wahl (awahl@nd.gov)
Lynn Wolff (lynn@drcinfo.com)
Janie and John Capp (janiecapp@csb100.com)
Ramona Klein (ramonak@daktel.com)
Linette and Merle Kratochvil (lckgoats@polarcomm.com)
Mark Novak (Neptune@polarcomm.com)

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

TransCanada Keystone Pipeline, LP	:	OAH File No. 20070181
	:	
	:	
30-Inch Crude Oil Pipeline Cavalier to Sargent Counties Siting Application	:	Case No. PU-06-421
	:	
	:	
Application for Certificate of Public Convenience and Necessity	:	Case No. PU-07-152
	:	

**RESPONSE TO OBJECTIONS BY CITY OF FARGO AND TRANSCANADA
KEYSTONE PIPELINE TO MOTION TO CONTINUE HEARINGS**

COME NOW the Intervenors Dakota Resource Council, Janie Capp, John Capp, Ramona Klein, Linette Kratochvil, Merle Kratochvil and Mark Novak (the Intervenors), by and through the undersigned counsel, with this Response to Objections by the City of Fargo (Fargo) and TransCanada Keystone Pipeline, LP (TransCanada) to Intervenors' Motion to Continue Hearings in the above-captioned matter. As response to said objections, the Intervenors hereby state as follows:

1. On November 21, 2007, the Intervenors submitted a motion requesting that the Commission continue the hearings scheduled in this matter for November 27 and November 28, 2007.
2. On November 23, 2007, Fargo and TransCanada submitted separate written responses to Intervenors' motion, setting forth several grounds for objection and requesting that the Commission deny the motion.
3. Fargo objects to the Intervenors' motion on the grounds that granting the motion would require Fargo to incur additional costs for transportation and lodging for witnesses and counsel in connection with the upcoming hearings. Intervenors' right to due process and

full and fair participation in these hearings exists independent of the travel plans of the witnesses and counsel for Fargo. While the Intervenors are sympathetic to Fargo's difficulties in this respect, the objections raised by Fargo only further exemplify the obstacles that have resulted for all parties from the expedited timeline of these new hearings and the particular difficulties faced by the Intervenors in proceeding on such short notice with new counsel. The Notice of Hearing in this matter was issued on November 8, 2007. Previous counsel for the Intervenors submitted a request to withdraw as counsel on November 9, 2007. Said request was granted on November 16, 2007. Intervenors' present counsel submitted a request to appear on November 20, 2007 and a motion to continue hearings on November 21, 2007. Intervenors' present counsel then received formal permission to appear on November 23, 2007. While all these actions occurred in a timely manner, the constricted timeline has created hardships that would not exist in a more expanded timeframe. This is the central point of Intervenors' motion. Time to prepare for these hearings would have presented enough difficulty had Intervenors continued with the same counsel, but previous counsel for the Intervenors withdrawing only one week prior to the hearings creates an almost impossible situation. Participating in the expedited discovery process, preparing evidence and submitting and responding to motions become significant burdens for the Intervenors and for the other parties as well.

4. Fargo also notes that the scope of the upcoming hearings is limited to a set of issues not heretofore focused on by the Intervenors. Without admitting to the accuracy of this allegation, the Intervenors urge that this point is irrelevant. As Fargo notes, the Intervenors have been parties to this proceeding "since its nascent stages." As parties to

this docket; the Intervenors have a right to full and fair participation in these hearings and to respond to any new evidence presented by the other parties to this matter. Although the record in this matter has been reopened at the request of Fargo, it does not follow that Fargo is the only party permitted to participate in the making of this record. The Applicant TransCanada intends to present additional evidence as well, and due process demands that the other parties, namely the Intervenors, be guaranteed the same opportunity, albeit within the limited scope of issues established for these hearings.

5. Fargo further states in its response that if Intervenors' motion is granted, that the Intervenors should be required to reimburse Fargo for any additional costs incurred as a result of continuing the upcoming hearings to a later date. The Intervenors object to this request. Intervenors' lack of funds has already proved a burden in this matter, as this was a primary reason for the request by Intervenors' previous counsel to withdraw. Fargo and TransCanada are both in much better positions to absorb the costs of minor procedural delays. In the event that the Commission intends to grant Intervenors' motion subject to payment of costs to either or both of the other parties, then the Intervenors would respectfully request to withdraw the motion, provided that the Commission notes for the record Intervenors' continuing objection to proceeding with the hearings as scheduled for the reasons stated herein and in Intervenors' motion of November 21, 2007.
6. TransCanada states in its resistance to Intervenors' motion that the Intervenors have participated in previous hearings and presented evidence for the record. This is true. It is also true that TransCanada has participated in all previous hearings and been allowed to present all its evidence for the record. Presumably TransCanada would not now argue that this previous participation limits the due process rights of TransCanada with respect

to the upcoming hearings. A new record will be made on the limited set of issues set forth by the Commission, and all parties have the right to full and fair participation. The right of Intervenors to fully and fairly participate in these new proceedings has been unduly burdened by the late withdrawal of Intervenors' previous counsel. TransCanada does not deny the timing of this event or assert that it has no prejudicial impact on Intervenors' ability to participate in the upcoming hearings. Rather TransCanada seems to urge that the lateness of withdrawal and Intervenors' lack of ability to meaningfully participate does not matter, because the Intervenors have participated in previous hearings. As parties to this matter, the Intervenors have the right to participate in the making of a new record, regardless of previous participation.

7. TransCanada further urges that Intervenors' motion should not be granted, because Intervenors did not object to the withdrawal of their previous counsel. As stated in the record of the hearing to consider the request by Intervenors' previous counsel to withdraw, the primary motive for the request was the lack of financial resources on the part of the Intervenors. When asked by the hearing officer, the Intervenors confirmed that they did not have the financial resources to continue with their previous counsel. As this is a factually accurate statement, the Intervenors were hardly in a position to dispute it in good faith. The Intervenors did not state that the withdrawal of previous counsel would not prejudice their ability to participate effectively in new hearings and when questioned by the hearing officer, expressed reservations about appearing on their own behalf and acting as their own counsel at formal hearings. Some of the individual Intervenors were unsure that they would even be able to attend the upcoming hearings on their own behalf. Furthermore, as TransCanada notes, the Intervenor Dakota Resource

Council could not participate at all in these new hearings if new counsel had not been retained. After the formal withdrawal of Intervenor's previous counsel, the Intervenor acted promptly to obtain new counsel. Unfortunately, in light of the timeframe of the upcoming hearings even prompt action by the Intervenor has left Intervenor's present counsel little time to effectively prepare.

8. Finally, TransCanada notes that any delay in these proceedings will constitute a serious financial burden to TransCanada in the construction and operation of its proposed pipeline. As already noted to this Commission in proceedings regarding Fargo's petition to intervene, TransCanada requires a number of permits before any action can be taken with regards to either the construction or the operation of the pipeline. Notably, the South Dakota Public Utilities Commission has not yet begun its siting hearings, the U.S. government has not yet published a final Environmental Impact Statement or issued the requisite Presidential Permit, and complex consultations with Native American tribes in the pipeline corridor regarding cultural resources are on-going. TransCanada does not cite in its response to Intervenor's motion what specific activities it would be prevented from carrying out if the Commission grants a continuance. This Commission has already significantly constricted its procedural schedule at the request of TransCanada. Any delay that would occur from granting Intervenor's motion would be minor and would not affect the overall permitting schedule for TransCanada, which will be on-going in other jurisdictions long after this Commission issues its final decision. As such, TransCanada's financial concerns do not outweigh the right of the Intervenor to full and fair participation in these new hearings.

WHEREFORE, the Intervenors Dakota Resource Council; Janie Capp; John Capp; Ramona Klein, Linette Kratochvil, Merle Kratochvil and Mark Novak hereby repeat their request that the hearings scheduled in this matter for November 27 and November 28, 2007 be continued until a later date to allow the Intervenors and counsel for the Intervenors sufficient time to prepare for said hearings and to effectively participate as parties in this matter, and that the objections by the City of Fargo and TransCanada Keystone Pipeline, LP to this motion be overruled. The Intervenors further request, that in the event the Commission intends to grant the Intervenors' motion conditioned on the payment of costs by the Intervenors to either or both of the other parties, that the Intervenors be granted leave to withdraw this motion, provided that the Commission notes for the record Intervenors' continuing objection to proceeding with the hearings as scheduled on November 27 and November 28, 2007 for all the reasons set forth herein above and in Intervenors' Motion to Continue Hearings dated November 21, 2007.

Dated this 26th day of November, 2007

Respectfully submitted,



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Application for Certificate of Public Convenience and Necessity	:	Case No. PU-07-152
	:	

CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the Response to Objections to Motion to Continue Hearing to which this Certificate is attached were served on the 26th day of November, 2007 by e-mail addressed to:

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