STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to
Sargent Counties

Case No. PU-06-421

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Lisa Zeimer deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **3rd day of December, 2007,** she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

MOTION TO EXTEND TIME FOR DESIGNATION OF CORRIDOR AND ROUTE
ORDER DENYING INTERVENTION
ORDER DENYING MOTION TO CONTINUE HEARINGS

The envelope was addressed as follows:

Matthew Shimanek, Esq.
Hammarback, Dusek & Associates
712 DeMers Avenue
PO Box 4
East Grand Forks, MN 56721

Certified No. 7007 2560 0001 6057 8169

The address shown is the addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this **3rd day of December, 2007**

Notary Public

SEAL

CHARLENE A MAGSTADT
Notary Public
State of North Dakota
My Commission Expires Jan 7, 2010

CHARLENE A MAGSTADT
Notary Public
State of North Dakota
My Commission Expires Jan 7, 2010

APPROVED
DATE: 11-27-07

MOTION

November 27, 2007

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent Counties
Siting Application

Case No. PU-06-421

I move the Commission for just cause extend the time for designation of a corridor and a route to a date to be determined at a future time in TransCanada Keystone Pipeline, LP's application to construct a 30-inch crude petroleum pipeline in Cavalier to Sargent Counties, Case No. PU-06-421.

WWB

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent Counties
Siting Application

Case No. PU-06-421

ORDER DENYING INTERVENTION

November 27, 2007

Background

On April 11, 2007, TransCanada Keystone Pipeline, LP (TransCanada) filed an application for a waiver of procedures and time schedules, and consolidated applications for a certificate of corridor compatibility and a route permit authorizing construction of approximately 218 miles of 30-inch crude oil pipeline and associated facilities (Keystone Pipeline) in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties of North Dakota, Case No. PU-06-421.

On November 15, 2007 Richard Starke filed a request to intervene in the captioned proceeding. Starke states on his request that he would like to be awarded intervenor status "because there are many technical questions concerning the chemistry and fluids dynamics of the oil that you apparently have little knowledge of but must be known prior to your decision . . . ." Mr. Starke does not state what he would contribute to the hearing.

On November 20, 2007, TransCanada filed an objection to the request. TransCanada states that the initial hearings in the proceeding where held on July 23 and 24, 2007 and continued on September 5 and 6, 2007, and that Starke had notice of those hearings and appeared and participated in the hearings in Valley City and Bismarck. He now seeks to intervene in the reopened record with the very limited scope and focus of the "safety and public health issues relating to the water supply of the City of Fargo from Lake Ashtabula and the Sheyenne River." TransCanada states that the request was not filed ten (10) days before the hearings and that the request is in direct violation of Section 69-02-02-05 of the North Dakota Administrative Code.

TransCanada argues that Starke has not demonstrated good cause for his late and untimely request to intervene in this proceeding. TransCanada asserts that Starke has not alleged that material changes in fact or law have occurred since the prior hearings. TransCanada also asserts that Starke is not affected by the limited issue involved in the reopened proceeding.

Discussion

Section 69-02-02-05 of the North Dakota Administrative code provides in part that "[a]ny person with a substantial interest in a proceeding may petition to intervene in that proceeding by complying with this section. An intervention may be granted if the petitioner has a statutory right to be a party to the proceeding; or the petitioner has a legal interest which may be substantially affected by the proceeding, and intervention would not unduly broaden the issues or delay the proceeding."

Subsection 1 of section 69-02-02-05 states in part that the petition to intervene must set forth the grounds for intervention and what the petitioner would contribute to the hearing.

The issues that have been established for this reopened proceeding are 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. Mr. Starke has appeared and has testified as a landowner and member of the public in the previous hearings held in Valley City and Bismarck. Mr. Starke is not a resident of the City of Fargo and has not shown that he has any interest in the limited issues of this reopened proceeding. Mr. Starke has repeatedly sent rude, sarcastic and inflammatory e-mail messages to the Commissioners.

We find that Mr. Starke's request fails to set forth any grounds for intervention and fails to state what he would contribute to the hearing. We also find that Mr. Starke's request for intervention is untimely and unnecessary, and would likely unduly broaden the issues or delay the proceeding.

Order

The Commission orders that the request for intervention filed by Richard Starke is DENIED.

PUBLIC SERVICE COMMISSION

Tony Clark **Commissioner**	**Susan E. Wefald** **President**	**Kevin Cramer** **Commissioner**

DISSENTING OPINION
Commissioner Susan E. Wefald

November 27, 2007

TransCanada Keystone Pipeline
30-Inch Crude Oil Pipeline/
Cavalier to Sargent County
Siting Application

Case No. PU-06-421

I concur with the Commission's order to deny Mr. Starke intervention. However, the main reason I would deny Mr. Starke intervention is not mentioned in this order. Mr. Starke has not petitioned to intervene in this case in a timely manner. On November 7 I voted to deny late intervention to the City of Fargo for important procedural reasons, and these same procedural issues make it important to deny late intervention to Mr. Starke today.

Also, the present order lists a number of reasons Mr. Starke should be denied intervention. I agree with all of these reasons except for two. I do not agree that Mr. Starke should be denied intervention status because he is not a citizen of the city of Fargo. The Commission has granted intervention to other people who are not citizens of Fargo in this case. I also do not agree that Mr. Starke should not be granted intervention because he has written threatening communications to the Commission. Although it is unfortunate that Mr. Starke has not controlled his behavior in this regard, his behavior does not relate to his right to be granted or denied intervention.

Susan E. Wefald, Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

TransCanada Keystone Pipeline, LLC
30-Inch Crude Oil Pipeline/Cavalier to Sargent Counties
Siting Application

Case No. PU-06-421

ORDER DENYING MOTION TO CONTINUE HEARINGS

November 27, 2007

Background

On April 11, 2007, TransCanada Keystone Pipeline, LLC ("TransCanada") filed an application for a waiver of procedures and time schedules, and consolidated applications for a certificate of corridor compatibility and a route permit authorizing construction of approximately 218 miles of 30-inch crude oil pipeline and associated facilities in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties of North Dakota.

The hearing in Case No. PU-06-421 was closed on September 6, 2007. On October 15, 2007, Dakota Resource Council, Janie Capp, John Capp, Ramona Klein, Linette Kratochvil, Merle Kratochvil, and Mark Novak, collectively referred to as "Intervenors," filed their post hearing Memorandum Brief, and TransCanada filed its Memorandum Brief and proposed Findings of Fact, Conclusions of Law and Order.

On October 24, 2007, the City of Fargo filed a Motion to Intervene and Reopen the Hearing. On November 7, 2007, the Public Service Commission ("Commission") issued an order to reopen proceedings in Case No. PU-06-421 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 Al Wahl held a pre-hearing conference for the purpose of scheduling further hearing. The Intervenors' counsel, Nicholas Delaney, appeared along with Janie Capp. Both Delaney and Capp stated they could be available for further hearings on November 27th and 28th, 2007. These dates were also satisfactory to TransCanada, the City of Fargo and the Commission. Delaney indicated at that time 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, the Commission issued a Notice of Further Hearing on Expedited Time Frame scheduling the hearing to begin November 27, 2007 for the purpose of allowing the City of Fargo to provide evidence regarding the safety and public health issues relating to the water supply from Lake Ashtabula and the Sheyenne River. The hearing dates of November 27 and 28 were agreed upon by counsel representing the parties to this proceeding.

On November 9, 2007, Nicholas Delaney of the Rinke Noonan law firm filed a Notice of Withdrawal as legal counsel for the Intervenors, Dakota Resource Council and Ramona Klein, Merle and Linette Kratochvill, Janie and John Capp and Mark Novak.

On November 9, 2007, TransCanada filed a Return to Notice of Withdrawal opposing the withdrawal unless there are protections and assurances that the proceedings will not be delayed and that appropriate parameters are established for the November 27 and 28, 2007 hearings. TransCanada expressed 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 hearings. TransCanada specifically requested that withdrawal not be granted unless there is no continuance granted and the matter will proceed with the hearings on November 27 and 28 as scheduled.

On November 16, 2007, Nicholas Delaney filed a Notice and Motion for Withdrawal of Counsel together with a Memorandum of Law in Support of Motion for Withdrawal and supported by affidavits of Nicholas R. Delaney of the Rinke Noonan law firm and Lynn Wolff, an authorized agent and representative of the Dakota Resource Council. In his Affidavit dated November 15, 2007 and executed before a Notary Public on November 16, 2007, Lynn Wolff stated:

1. I am the organizer for the Dakota Resource Council. I am an authorized agent and representative of the Dakota Resource Council. We have obtained Intervenor status in the above referenced matter

2. The Dakota Resource Council does not wish to incur further legal expenses related to legal representation at the November 27th and 28th, 2007, hearings in Bismarck, ND. The Dakota Resource Council wishes to appear pro se at said hearing and does not wish for Rinke Noonan to travel to Bismarck and represent its interests. I have spoken with the other Intervenors who are all members of the Dakota Resource Council. They also agree that further legal expenses should not be incurred in this matter and do not wish for Rinke Noonan to appear at the hearings scheduled for November 27th and 28th, 2007. If the Dakota Resource Council were required to incur additional legal fees it would create great financial hardship on the Intervenors.

3. The Dakota Resource Council does, however, wish to retain all rights associated with their Intervenor status, including without limitation, the

right to present evidence and question witnesses at the hearings on November 27th and 28th, 2007.

On November 16, 2007, Administrative Law Judge, Al Wahl, held a prehearing conference to consider, among other matters, the Motion for Withdrawal of Counsel. Persons participating in the prehearing conference included attorneys Nicholas R. Delaney, Thomas D. Kelsch, Todd Kranda, Eric Johnson, John Dingess, and William W. Binek. Other persons participating included Lynn Wolff, Mark Novak, Linette and Merle Kratochvil, Janie Capp (on behalf of John and Janie Capp), Ramona Klein, and attorney Jana Linderman, an attorney with Plains Justice of Cedar Rapids, Iowa. At the prehearing conference Lynn Wolff, speaking on behalf of the Dakota Resource Council, stated that he agreed with Mr. Delaney's statement of facts and circumstances. The Intervenors participating in the prehearing conference each individually agreed with the statement of facts and circumstances presented by Nicholas R. Delaney. The Administrative Judge, before granting the Motion for Withdrawal of Counsel discussed in detail with the Intervenors the consequences of their decision to seek the withdrawal of counsel and explained how they would be able to participate pro se.

On November 16, 2007, Administrative Law Judge, Al Wahl, issued a Prehearing Order in which he granted the Motion for Withdrawal of Counsel.

On November 20, 2007, Matthew F. Shimanek, Hammarbach, Dusek & Associates, East Grand Forks, Minnesota, filed a Motion for Admission to Practice *Pro Hac Vice* for attorney Jana M. Linderman for the purpose of appearing as counsel for the Intervenors Dakota Resource Council, Janie Capp, John Capp, Ramona Klein, Linette Kratochvil, Merle Kratochvil, and Mark Novak. Mr. Shimanek advised that he will serve as co-counsel for Ms. Linderman in this matter.

On November 21, 2007, Matthew F. Shimanek, on behalf of the Intervenors, filed a Motion to Continue Hearings. Mr. Shimanek states that previous counsel was not granted leave to withdraw as counsel until November 16, 2007, and until that date, Intervenors did not have certain knowledge as to whether previous counsel would continue to represent them in this matter or whether counsel would be required. He states that upon previous counsel finally being granted permission to withdraw, Intervenors acted promptly to obtain alternate counsel. Mr. Shimanek further states that the laws of North Dakota governing the withdrawal of legal representation contemplate that withdrawal will be allowed only where it will not have material adverse impact on the interests of the client or clients being represented, and that if hearings proceed as scheduled, the interests of the Intervenors will have been materially prejudiced by counsel for the Intervenors withdrawing only a week prior to the hearings and Intervenors having to locate and retain new counsel to present their interests within a matter of just a few days.

On November 23, 2007, TransCanada filed a Response Resisting Request for Continuance. TransCanada states 1) that the Intervenors have participated in four days of hearings and according to their previous counsel, Nicholas Delaney, they have

already presented their case, testified, introduced exhibits, cross examined witnesses, and called witnesses; 2) the withdrawal of previous counsel was agreed to by the Intervenors; and 3) TransCanada has demonstrated serious adverse consequences of further delay in hearings in this case. TransCanada points out that even as late as November 16, 2007, at the prehearing conference where the Administrative Law Judge considered the motion for withdrawal of attorney, the individual Intervenors including Lynn Wolff and Jana Linderman on behalf of the Dakota Resource Council did not object to the hearing dates of November 27 and 28, 2007.

TransCanada states that 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. This motion for continuance was filed on November 21, 2007 at 3:29 p.m. The motion was filed only two working days (not including Thanksgiving Day and the intervening weekend) before the scheduled hearing date. TransCanada points out that the individual witnesses for TransCanada and presumably for the City of Fargo have made travel arrangements and revised schedules to appear on the scheduled dates for the hearing. Furthermore, the six month deadline for issuance of a decision in this case has already been extended, and it the reopened hearing were to be continued, the period of time for issuance of a decision would significantly increase and would result in unreasonable delay in the Commission acting on the application for corridor and route.

TransCanada states that the motion for continuance is untimely and appears to have been made solely for the purpose of delay. TransCanada argues that the Intervenors 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.

On November 23, 2007, the City of Fargo filed a Response resisting the Intervenors' motion for continuance. The City of Fargo requests that the Commission deny the motion, or in the alternative, if the motion is granted that the Commission order that the Dakota Resource Council be responsible for the costs that the City of Fargo will incur resulting from rescheduling of travel and lodging for witnesses and legal counsel. The City of Fargo states that it has used the services of witnesses who are located in the state of Minnesota, and that its special counsel is located in Colorado. All of Fargo's witnesses and counsel have made arrangements to be present for the November 27 and 28, 2007 hearings.

The City of Fargo points out that the Commission, through its Administrative Law Judge, and in cooperation with the parties to this matter, established the dates of November 27 and 28, 2007, as the time for hearing concerning the issues set forth in the November 7, 2007 Order. The City of Fargo also states that the Intervenors have not heretofore focused on the issues to be presented by the City of Fargo.

On November 26, 2007, Matthew Shimanek and Jana Linderman, on behalf of the Intervenors, filed a response to the objections of the City of Fargo and TransCanada

to continuance of the hearings. The Intervenors argue that their right to due process and full and fair participation in these hearings exist independent of travel plans of witnesses and counsel for the City of Fargo. The Intervenors object to the request of the City of Fargo for reimbursement of costs resulting from rescheduling of travel and lodging for witnesses and legal counsel if the Motion for Continuance is granted. Intervenors' state that the City of Fargo and TransCanada are both in much better positions to absorb costs of minor procedural delays.

Intervenors state that their right to fully and fairly participate in these proceedings has been unduly burdened by the late withdrawal of Intervenors' previous counsel. Intervenors argue that the constricted timeline for the hearing has created hardships that would not exist in a more expanded timeframe. Intervenors state that time to prepare for these hearings would have been difficult had Intervenors continued with the same counsel, but with previous counsel for the Intervenors withdrawing only one week prior to the hearings creates an almost impossible situation.

Discussion

The facts and circumstances relating to the withdrawal of counsel for these Intervenors differs substantially from the statements of Mr. Shimanek contained in the Motion to Continue Hearings. As pointed out above, the Intervenors all supported the withdrawal of the Rinke Noonan. The Affidavit of Lynn Wolff states that "[t]he Dakota Resource Council wishes to appear pro se at said hearing and does not wish for Rinke Noonan to travel to Bismarck and represent its interests. I have spoken with the other intervenors who are all members of the Dakota Resource Council. They also agree that further legal expenses should not be incurred in this matter and do not wish for Rinke Noonan to appear at the hearings scheduled for November 27th and 28th, 2007."

The Intervenors also had Jana Linderman participate in the November 16, 2007 prehearing conference by telephone. The Intervenors indicated that Jana Linderman would provide advice to the Intervenors but that she was not licensed to practice law in North Dakota. At no time during the prehearing conference did Jana Linderman indicate that she would seek to be admitted to practice *Pro Hac Vice* nor did she indicate any concern about the hearing dates.

The Intervenors understood the facts and circumstances of the withdrawal of their attorney and they all agreed to and supported the withdrawal of Rinke Noonan. They were also aware that the hearings were scheduled for November 27 and 28, and expressed no concern relating to the date of those hearings and made no request that the hearings be continued. Jana Linderman, the present counsel for the Intervenors, participated in the prehearing conference on November 16, 2007. The Intervenors gave no indication at the November 16, 2007 prehearing conference that they intended to retain other counsel to represent them at the further hearing. Had the Intervenors advised the Administrative Law Judge and the other parties of that intent, it may have influenced the decision on the motion to withdraw.

The Commission finds that good cause does not exist for the continuance of the hearings scheduled for November 26 and 27, 2007. The Intervenors chose to seek and support the withdrawal of Rinke Noonan knowing that hearings were scheduled for these dates. The Administrative Law Judge fully informed the Intervenors of their rights to present evidence and cross examine witnesses as well as the consequences of granting of the Withdrawal prior to his granting the Motion for Withdrawal of Counsel.

ORDER

The Commission orders that the Motion to Continue Hearings is DENIED.

PUBLIC SERVICE COMMISSION

Tony Clark **Commissioner**	**Susan E. Wefald** **President**	**Kevin Cramer** **Commissioner**