



Public Service Commission

State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Kevin Cramer
Tony Clark

Executive Director
Ilona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.nd.gov/psc
e-mail: ndpsc@nd.gov
TTY 800-366-6888 or 711
Fax 701-328-2410
Phone 701-328-2400

February 11, 2008

Todd Kranda
Kelsch Kelsch Ruff & Kranda
PO Box 1266
Mandan, ND 58554-1266

Jana Linderman, Esq
Plains Justice
100 1st Street SW
Cedar Rapids, IA 52404

John & Janie Capp
12466 60th St. NE
Lankin, ND 58250

Matthew F. Shimanek
Hammarback, Dusek, & Associates, PLC
712 DeMers Ave.
PO Box 4
East Grand Forks, MN 56721-0004

Re: TransCanada Keystone Pipeline, LP
30-Inch Crude Oil Pipeline/Cavalier to Sargent City
Siting Application
Case Nos.: PU-06-421

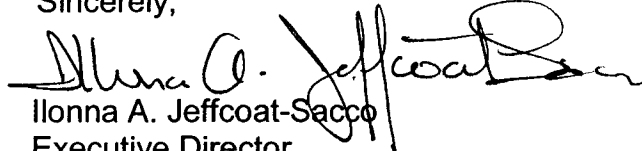
On February 11, 2008, Lynn Wolff sent an e-mail to all three Public Service Commissioners and some commission staff members, which included a Feb. 8, 2008 Associated Press news article entitled "SD Governor: Multiple Pipelines Possible." Mr. Wolff is a representative of Dakota Resource Council, a party to the case. There is no indication on the e-mail that the communication was served on other parties. Consequently, the e-mail is an ex parte communication, prohibited by N.D.C.C. section 28-32-37(3).

This ex parte does not concern an issue in the case and e-mail has been docketed in the captioned case and by enclosure with this letter, a copy is being served on the other parties to the case. Since the communication is not factual in nature, it is not being made part of the record evidence and we do not believe the notice and rebuttal requirements of N.D.C.C. section 28-32-37(6) apply. If you disagree or have other concerns about this conclusion, please inform the Commission as soon as possible. Copies of the statute are attached.

Parties are reminded that ex parte communications are prohibited under North Dakota law. Parties cannot communicate directly or indirectly with the Commission on a pending case without notice to other parties and an opportunity for other parties to participate in the communication.

If you have questions, please do not hesitate to call or e-mail.

Sincerely,


Ilonna A. Jeffcoat-Sacco
Executive Director

Enclosure

cc: Thomas Kelsch

Clark, Tony T.

From: Lynn C Wolff [lynn@drcinfo.com]
Sent: Monday, February 11, 2008 10:49 AM
To: Cramer, Kevin; Fahn, Patrick J.; PSC; Wefald, Susan E.; Clark, Tony T.; Binek, William W.
Subject: FW: 3 Pipes - Governor Rounds (fraud?)

FYI, how should/will (3 – 30 in pipes) this effect the ND route?

From: Curt Hohn
Sent: Saturday, February 09, 2008 2:17 PM
To: 'Scott Heidepriem'; Shannon Falon
Cc: Curt Hohn; Lillian Anderson
Subject: 3 Pipes - Governor Rounds (fraud?)

SD Governor: Multiple Pipelines Possible

S.D. Governor Says TransCanada Route Could Become Home to Multiple Pipelines

February 08, 2008: 05:45 PM EST

<http://money.cnn.com/news/newsfeeds/articles/apwire/dbae8ab444501e0e8441ac064396b1ff.htm>

NEW YORK (Associated Press) - Gov. Mike Rounds says he expects more than just one pipeline to share the TransCanada Keystone Pipeline route, with a second pipe supplying a proposed Union County oil refinery and a possible third bringing even more Canadian crude into the oil hungry U.S.

Dallas-based Hyperion Resources is considering building a \$10 billion oil refinery on 3,800 acres north of Elk Point, which would become the first new site for a U.S. oil refinery in more than 30 years. The Union County location is less than 50 miles from TransCanada Corp.'s 590,000-barrel-a-day proposed pipeline route.

Officials with both companies have said the two projects are not related.

Rounds, speaking to The Associated Press on Friday, said his suspicion is that Hyperion would develop its pipeline along the same route, and a third line could be considered because of the high demand for Canadian crude oil.

"I don't know of any others, and Hyperion hasn't told us that that's the route they'd take, but I know they've got to get oil there otherwise there's no reason to have the refinery," the Republican governor said. "So you know there's got to be a separate pipeline there.

"And I'm just convinced that if you've got two of them coming through, industries like to follow proven leaders that have been successful, and I just really believe that that would suggest that that would be a good alternative for a third pipeline there as well."

TransCanada this spring plans to begin construction on the 2,148-mile Keystone pipeline passing through the Dakotas, Nebraska, Kansas and Missouri before delivering Canadian crude to refineries in Patoka, Ill. and Cushing, Okla.

TransCanada has said passage along Keystone is essentially booked, and the line won't be able to supply South Dakota's other pending oil project _ the Hyperion Energy Center.

The refinery would process 400,000 barrels of thick Canadian crude a day, which company executives say would help the U.S. reduce its dependence on overseas oil.

Hyperion has submitted an air permit application to the state Department of Environment and Natural Resources and officials there are going through the document.

The current TransCanada route relies on the reuse of an existing pipeline in Canada and drops into the U.S. through the Dakotas en route to the markets TransCanada hopes to serve, said Jeff Rauh, a project spokesman. Rauh said pipeline routing is based on where the supply's coming from and where the customers are, and when Hyperion gets to a point in which it's ready to start talking about supply, those factors would influence and future pipelines routes.

2/11/2008

At a hearing in front of the South Dakota Public Utilities Commission in December, Robert Jones, vice president of the project, testified that the company was requesting an easement that had multiple line rights, with the permanent easement holding up to three lines, said Shela Shapiro, a TransCanada spokeswoman. TransCanada would have to go through the same federal and state regulatory processes and renegotiate access with landowners before adding lines, Rauh said.

Shapiro said the company has nothing to disclose at this point about any future projects and it is always looking at new opportunities. She said that considering there are 175 billion barrels of proven crude in Alberta and the largest market is the U.S., it makes sense to connect the two markets.

Curt Hohn, manager of the WEB Water Development Association in Aberdeen, said he's not against petroleum pipelines in general but he has concerns about TransCanada's proposed pipeline.

Hohn said it will use a thinner steel wall and operate at a higher pressure than other pipelines and he worries about crude oil seeping into farmland and aquifers.

"It makes it a new risk or hazard for the area, and three pipes will make it just three times as much risk," Hohn said.

Earlier this week, the South Dakota Senate rejected a proposal that would have added a 2-cents-a-barrel fee for crude oil moving through a pipeline in South Dakota and put the money into a fund to pay for cleaning up leaks.

"That seemed like a reasonable method of protecting the public and the ground water and private property," he said. Opponents to the bill said it would amount to over-regulation. □

28-32-37. Ex parte communications.

1. Except as provided in subsections 2 and 4 or unless required for the disposition of ex parte matters specifically authorized by another statute, an agency head or hearing officer in an adjudicative proceeding may not communicate, directly or indirectly, regarding any issue in the proceeding, while the proceeding is pending, with any party, with any person who has a direct or indirect interest in the outcome of the proceeding, with any other person allowed to participate in the proceeding, or with any person who presided at a previous stage of the proceeding, without notice and opportunity for all parties to participate in the communication.
2. When more than one person is the hearing officer in an adjudicative proceeding, those persons may communicate with each other regarding a matter pending before the panel. An agency head or hearing officer may communicate with or receive aid from staff assistants if the assistants do not furnish, augment, diminish, or modify the evidence in the record.
3. Except as provided in subsection 4 or unless required for the disposition of ex parte matters specifically authorized by statute, no party to an adjudicative proceeding, no person who has a direct or indirect interest in the outcome of the proceeding, no person allowed to participate in the proceeding, and no person who presided at a previous stage in the proceeding may communicate directly or indirectly in connection with any issue in that proceeding, while the proceeding is pending, with any agency head or hearing officer in the proceeding without notice and opportunity for all parties to participate in the communication.
4. In an adjudicative proceeding conducted by a hearing officer other than the agency head, counsel for the administrative agency and the agency head, without notice and opportunity for all parties to participate, may communicate and consult regarding the status of the adjudicative proceeding, discovery, settlement, litigation decisions, and other matters commonly communicated between attorney and client, to permit the agency head to make informed decisions. This subsection does not apply after recommended findings of fact, conclusions of law, and orders have been issued, except counsel for the administrative agency and the agency head may communicate regarding settlement and negotiation after recommended findings of fact, conclusions of law, and orders have been issued.
5. If, before being assigned, designated, or appointed to preside in an adjudicative proceeding, a person receives an ex parte communication of a type that could not properly be received while presiding, the person, promptly after being assigned, designated, or appointed, shall disclose the communication in the manner prescribed in subsection 6.
6. An agency head or hearing officer in an adjudicative proceeding who receives an ex parte communication in violation of this section shall place on the record of the pending matter all written communications received, all written responses to the communications, or a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person from whom the person received an ex parte oral communication, and shall advise all parties, interested persons, and other persons allowed to participate that these matters have been placed on the record. Any person desiring to rebut the ex parte communication must be allowed to do so, upon requesting the opportunity for rebuttal. A request for rebuttal must be made within ten days after notice of the communication.
7. If necessary to eliminate the effect of an ex parte communication received in violation of this section, an agency head or hearing officer in an adjudicative proceeding who receives the communication may be disqualified, upon good cause being shown in writing to the hearing officer or to the agency. The portions of the

record pertaining to the communication may be sealed by protective order issued by the agency.

8. The agency shall, and any party may, report any willful violation of this section to the appropriate authorities for any disciplinary proceedings provided by law. In addition, an administrative agency may, by rule, provide for appropriate sanctions, including default, for any violations of this section.
9. Nothing in this section prohibits a member of the general public, not acting on behalf or at the request of any party, from communicating with an agency in cases of general interest. The agency shall disclose such written communications in adjudicative proceedings.

28-32-38. Separation of functions.

1. No person who has served as investigator, prosecutor, or advocate in the investigatory or prehearing stage of an adjudicative proceeding may serve as hearing officer.
2. No person who is subject to the direct authority of one who has served as an investigator, prosecutor, or advocate in the investigatory or prehearing stage of an adjudicative proceeding may serve as hearing officer.
3. Any other person may serve as hearing officer in an adjudicative proceeding, unless a party demonstrates grounds for disqualification.
4. Any person may serve as hearing officer at successive stages of the same adjudicative proceeding, unless a party demonstrates grounds for disqualification.

28-32-39. Adjudicative proceedings - Findings of fact, conclusions of law, and order of agency - Notice.

1. In an adjudicative proceeding an administrative agency shall make and state concisely and explicitly its findings of fact and its separate conclusions of law and the order of the agency based upon its findings and conclusions.
2. If the agency head, or another person authorized by the agency head or by law to issue a final order, is presiding, the order issued is the final order. The agency shall serve a copy of the final order and the findings of fact and conclusions of law on which it is based upon all the parties to the proceeding within thirty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible, in the manner allowed for service under the North Dakota Rules of Civil Procedure.
3. If the agency head, or another person authorized by the agency head or by law to issue a final order, is not presiding, then the person presiding shall issue recommended findings of fact and conclusions of law and a recommended order within thirty days after the evidence has been received, briefs filed, and arguments closed, or as soon thereafter as possible. The recommended findings of fact and conclusions of law and the recommended order become final unless specifically amended or rejected by the agency head. The agency head may adopt the recommended findings of fact and conclusions of law and the recommended order as final. The agency may allow petitions for review of a recommended order and may allow oral argument pending issuance of a final order. An administrative agency may adopt rules regarding the review of recommended orders and other procedures for issuance of a final order by the agency. If a recommended order is issued, the agency must serve a copy of any final order issued and the findings of fact and conclusions of law on which it is based upon all the parties to the proceeding within sixty days after the evidence has been received, briefs filed, and