

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Dakota Resource Council,  
Janie and John Capp,  
Ramona Klein,  
Linette and Merle Kratochvil, and  
Mark Novak,

Appellants

vs.

Public Service Commission, and  
TransCanada Keystone Pipeline, LP,  
  
Appellees

Civil No. \_\_\_\_\_

Agency Case No. PU-06-421

NOTICE OF APPEAL AND  
SPECIFICATIONS OF ERROR

**RECEIVED**

**MAR 25 2008**

**PUBLIC SERVICE COMMISSION**

TO: NORTH DAKOTA PUBLIC SERVICE COMMISSION AND  
TRANSCANADA KEYSTONE PIPELINE, LP

PLEASE TAKE NOTICE that the Appellants Dakota Resource Council, Janie and John Capp, Ramona Klein, Linette and Merle Kratochvil, and Mark Novak (“Appellants”), pursuant to N.D.C.C. §§ 28-32-42 and 49-22-19, hereby give notice of appeal from an agency determination of the North Dakota Public Service Commission (“Commission”), and in support thereof state:

1. The agency determination appealed from is the Commission’s Findings of Fact, Conclusions of Law and Order issued February 21, 2008 in the matter of TransCanada Keystone Pipeline, LP 30-Inch Crude Oil Pipeline/Cavalier to Sargent Counties Siting Application (Case No. PU-06-421). Pursuant to this Order, the Commission issued to TransCanada Keystone Pipeline, LP (“TransCanada Keystone”) a Certificate of Corridor Compatibility and Route Permit to construct and

operate a 218-mile, 30-inch crude oil pipeline with associated facilities and pipeline interconnections in Cavalier to Sargent Counties, North Dakota.

2. The Appellants named herein were Intervenors in the proceedings before the Commission.
3. The Appellees named herein are the Commission and TransCanada Keystone, the Applicant in the proceedings before the Commission.
4. Venue lies with this Court pursuant to N.D.C.C. § 28-32-42(3)(a), which provides that the appeal of an agency determination may be taken to the district court designated by law, and if none is designated, to the district court of the county in which the hearing or a part thereof was held. No other district court is designated by law for this appeal, and hearings in this matter were held in the Commission hearing room at the State Capitol in Bismarck, Burleigh County, North Dakota.
5. The specifications of error on which this appeal is based are enumerated below in paragraphs 6 through 9.
6. The order of the Commission is not in accordance with the law pursuant to N.D.C.C. § 28-32-46(1), to wit:
  - a. The order does not comply with the statement of legislative policy for the siting of transmission facilities pursuant to N.D.C.C. § 49-22-02.
  - b. The order does not properly consider adverse direct and indirect environmental effects of the proposed route pursuant to N.D.C.C. § 49-22-09(4).
  - c. The order does not properly consider alternatives to the proposed route pursuant to N.D.C.C. § 49-22-09(5).

- d. The order does not properly consider the irreversible and irretrievable commitments of natural resources from the proposed route pursuant to N.D.C.C. § 49-22-09(6).
  - e. The order does not properly consider the effect of the proposed route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites pursuant to N.D.C.C. § 49-22-09(9).
  - f. The order fails to properly identify all avoidance areas along the approved route pursuant to North Dakota Administrative Code § 69-06-08-02 (2).
  - g. The order fails to properly address the requirement that the Applicant show, for each avoidance area, that no reasonable route alternative was available, as required by North Dakota Administrative Code § 69-06-08-02(2).
  - h. The order fails to properly address the selection criteria in North Dakota Administrative Code § 69-06-08-02(3), which require that the Applicant demonstrate that significant adverse impacts to, *inter alia*, agricultural lands, the visual integrity of adjacent areas, wetlands, woodlands and wooded areas, human health and safety, animal health and safety, and plant life be kept to an acceptable minimum.
  - i. The order fails to properly address the policy criteria in North Dakota Administrative Code § 69-06-08-02(4), which give preference to, *inter alia*, proposals that utilize existing and proposed rights-of-way and corridors.
7. The findings of fact made by the Commission are not supported by a preponderance of the evidence pursuant to N.D.C.C. § 28-32-46(5), to wit:

- a. Finding of Fact No. 9 that “alternatives to the proposed route considered by Keystone would not minimize adverse effects and would likely increase the number of landowners affected and the environmental impacts.”
- b. Finding of Fact No. 40 that “the Commission has considered the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternative sites and finds Keystone’s corridor and route proposal has adequately considered avoidance areas.”
- c. Finding of Fact No. 54 that “neither the Fordville Aquifer nor the public wells in the Fordville Aquifer will likely be exposed to crude oil contamination or BTEX contamination.”
- d. Finding of Fact No. 68 that “the proposed Keystone Pipeline route in the Fordville area represents the minimal environmental impact and minimal impact to the landowners compared to either the east route or west route concepts.”
- e. Finding of Fact No. 76 that “the evidence in the record shows the proposed Keystone Pipeline route will not impact public water systems.”
- f. Finding of Fact No. 88 that “the proposed Keystone Pipeline route in the Lake Ashtabula/Sheyenne River area represents minimal environmental impact and minimal impact to the landowners compared to the east route concept” and that “neither the Sheyenne River nor Lake Ashtabula will likely be exposed to crude oil contamination or BTEX contamination.”

8. The conclusions of law and order of the Commission are not supported by its findings of fact pursuant to N.D.C.C. § 28-32-46(6), to wit:
  - a. The Commission's Conclusion of Law No. 5 that "the location, construction, and operation of the proposed pipeline, as conditioned in this Order, will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota."
  - b. The Commission's Conclusion of Law No. 6 that "the proposed pipeline corridor and route, as conditioned in this Order, are compatible with the environmental preservation and the efficient use of resources."
  - c. The Commission's Conclusion of Law No. 7 that "the proposed pipeline corridor and route, as conditioned in this Order, will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion."
  - d. The Commission's Conclusion of Law No. 8 that "the proposed project, as conditioned in this Order, is of such design and location that it will produce minimal adverse effects, as defined under North Dakota Century Code Section 49-22-07.2."
9. The findings of fact made by the agency do not sufficiently address the evidence presented to the agency by the Appellants pursuant to N.D.C.C. § 28-32-46(7), to wit:
  - a. Evidence presented by Appellants regarding the frequency and volume of future leaks and spills along the Keystone pipeline.

- b. Evidence presented by Appellants regarding risks to public and private water supplies from the route chosen by the Applicant and approved by the Commission.
- c. Evidence presented by Appellants regarding safer alternatives to the route chosen by the Applicant and approved by the Commission through the Forest River Watershed.

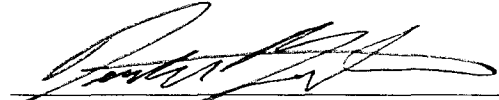
The Appellants therefore request that the Court review the agency determination pursuant to the specifications of error enumerated above, reverse and vacate the Commission's February 21, 2008 order, and remand the case to the Commission with instructions to correct the errors specified herein. The Appellants also request any such further relief as the Court may deem appropriate, including the assessment of costs to the Commission.

Dated this 24<sup>th</sup> day of March, 2008.

Respectfully submitted,

SARAH VOGEL LAW FIRM, PC

By:

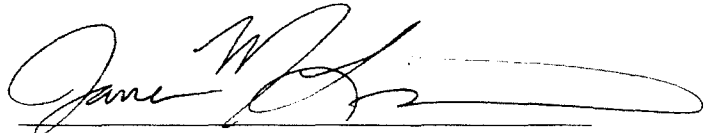


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PLAINS JUSTICE

By:



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ATTORNEYS FOR APPELLANTS

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

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Dakota Resource Council,	)	
Janie and John Capp,	)	Civil No. _____
Ramona Klein,	)	
Linette and Merle Kratochvil, and	)	Agency Case No. PU-06-421
Mark Novak,	)	
	)	
Appellants	)	UNDERTAKING OF COSTS
	)	ON APPEAL TO DISTRICT COURT
vs.	)	
	)	
Public Service Commission, and	)	
TransCanada Keystone Pipeline, LP,	)	
	)	
Appellees	)	
	)	

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The Appellants Dakota Resource Council, Janie and John Capp, Ramona Klein, Linette and Merle Kratochvil, and Mark Novak (“Appellants”), pursuant to N.D.C.C. §§ 28-32-42, hereby deposit with the Clerk of Court a check in the amount of Two Hundred and Fifty Dollars (\$250.00) as an undertaking of costs in this appeal, made to the State of North Dakota as obligee.

Dated this 24<sup>th</sup> day of March, 2008.

Respectfully submitted,

SARAH VOGEL LAW FIRM, PC

By:



Derrick Braaten (ID 06394)

222 N 4<sup>th</sup> Street

Bismarck, ND 58501

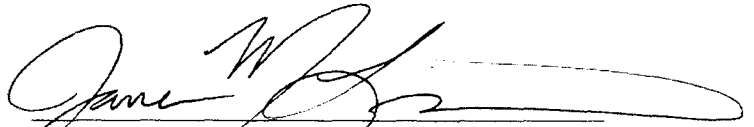
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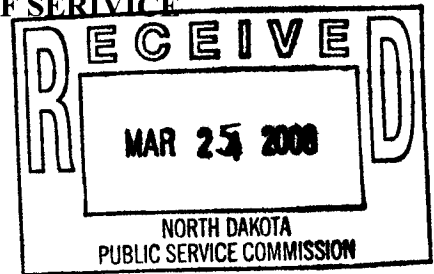
Agency Case No. PU-06-421

Appellants )

**AFFIDAVIT OF SERVICE  
BY MAIL**

v. )

Public Service Commission, and )  
TransCanada Keystone Pipeline, LP, )



Appellees )

On March 24, 2008, I, Derrick Braaten, served the party(s) described below with the documents described below by depositing such documents in the United States mail (at Bismarck, North Dakota), with postage prepaid. The address of each party served is the last reasonably ascertainable post office address of such party. I am of legal age and not a party to this action.

**Document Served:**


1. NOTICE OF APPEAL AND SPECIFICATIONS OF ERROR
2. UNDERTAKING OF COSTS ON APPEAL IN DISTRICT COURT

**Names & Address of Party(s) Served:**

Illona Jeffcoat-Sacco  
Executive Secretary  
Public Service Commission  
600 E Boulevard Avenue  
Department 408  
Bismarck, ND 58505

Wayne Stenehjem  
Attorney General  
600 E Boulevard Avenue  
Department 125  
Bismarck, ND 58505


Thomas Kelsch  
Kelsch Kelsch Ruff & Kranda  
103 Collins Avenue  
PO Box 126  
Mandan, ND 58554-7266

  
Derrick Braaten

State of North Dakota        )  
  )ss  
County of Burleigh         )

On March 24, 2008, before me personally appeared Derrick Braaten, known to me to be the same person described in and who executed the within and foregoing instrument and acknowledged to me that he executed the same.

**TRINA GILHOOLY**  
Notary Public  
State of North Dakota  
My Commission Expires February 25, 2010

  
Notary Public