

THE 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

MOTION FOR:

- 1. APPROVAL OF KEYSTONE'S TREE AND SHRUB SAMPLING PLAN FOR NATIVE GROWTH AREAS;**
- 2. APPROVAL OF STREAM CROSSING METHODS;**
- 3. CLARIFICATION OF INCONSISTENCY ON TREE CLEARING WIDTHS; AND**
- 4. APPROVAL OF EXTRA WORK SPACE IN FORESTED AREAS.**

Motion

TransCanada Keystone Pipeline LP (Keystone) hereby requests that the North Dakota Public Service Commission (Commission) approve Keystone's tree and shrub sampling plan for native growth areas; approve Keystone's stream crossing methods for certain streams; clarify certain apparent inconsistencies on tree clearing widths; and approve extra work space in certain forested areas.

Each of these requests are specifically addressed by the attached and supporting Affidavits of Loys A Gray, III and Affidavits of Stephen Craycroft. These affidavits with the various attachments provide a detailed explanation and basis for each of the requests. For the reasons indicated, Keystone respectfully requests that the Commission approve the tree and shrub sampling plan, approve the stream crossing methods, clarify tree clearing widths, and approve extra work space in forested areas as identified.

1. Approval of Keystone's tree and shrub sampling plan for native growth areas.

Keystone requests approval of its Tree and Shrub Sampling Method for Native Growth Areas as required in paragraph 24 of the Commission's Order dated February 21, 2008 and as requested in item 6 of the Tree and Shrub Mitigation Specifications.

Keystone has developed a Tree and Shrub Sampling Plan for Native Growth Areas which procedure and methodology is more fully described and included within Exhibit A of the Affidavit of Stephen Craycroft. The Plan describes the methods that Keystone will implement to count and document the woody vegetation to be removed during the pipeline construction process by Keystone through the native growth areas.

Keystone has provided its proposed sampling Plan to the North Dakota State Forester for review and comment. The North Dakota State Forest Service staff concurred with the proposed recommendations of the Plan as is indicated by the correspondence included within Exhibit B of the Affidavit of Stephen Craycroft.

The Tree and Shrub Sampling Plan for Native Growth Areas will accurately represent the quantity of trees and shrubs that will be replaced at a ratio of 2 to 1 after construction of the Keystone Project.

The Commission is requested to approve the Tree and Shrub Sampling Plan for Native Growth Areas as submitted by Keystone.

2. Approval of stream crossing methods.

With regard to the stream crossing methods, paragraph 12 of the Commission's Order dated February 21, 2008 requires as follows:

“Keystone shall study the feasibility of HDD at the crossings of the Pembina River; Tongue River; a tributary to the Tongue River running through section 18, Township 161 North, Range 56 West, Pembina County; the North Branch Park River; Middle Branch Park River; South Branch Park River; North Branch Forest River; Middle Branch Forest River; Sheyenne River; and Goose River, which are classified as valuable fisheries.”

As indicated in the supporting Affidavits of Loys A Gray, III and Stephen Craycroft, Keystone has evaluated the feasibility of Horizontal Directional Drilling (HDD) of the crossings at the streams listed above. With regard to HDD of the crossings of the tributary to the Tongue River running through section 18, Township 161 North, Range 56 West, Pembina County; the North Branch Park River; Middle Branch Park River; North Branch Forest River; Middle Branch Forest River; and Goose River, Keystone has determined that HDD of these streams would not be feasible. The reasons for such a determination are more fully explained within the Affidavit of Loys A Gray, III.

In addition, Keystone met with staff of the North Dakota Game and Fish Department on March 4, 2008 and discussed the relative sensitivity of the various stream crossings within the specific areas of the Keystone crossings. Keystone’s proposed methods of crossing the six stream crossings and the mitigation measures that Keystone proposes to implement to protect aquatic resources of these streams were also discussed with staff of the North Dakota Game and Fish Department. Attached as Exhibit A to the Affidavit of Stephen Craycroft are the minutes of the March 4, 2008 meeting with staff of the North Dakota Game and Fish Department.

There is a summary of the crossing methods that Keystone proposes to implement for each crossing outlined in the Affidavit of Stephen Craycroft and there is mapping of the

crossing areas shown in Exhibit B within the Affidavit of Stephen Craycroft. There is an Open Cut Wet Crossing Method for two locations and a Dry Crossing Method for four of the locations. The Dry Crossing Method designation refers to either dam and pump crossings or flumed crossing methods. All of the streams will be constructed after June 1st in order to avoid any construction during the period of April 15th to June 1st. However, bridges may be installed for access as long as equipment does not enter the stream to install the bridges.

Finally, Keystone is submitting site specific drawings and construction crossing details which are included as Exhibit A within the Affidavit of Stephen Craycroft. This also advises the Commission of Keystone's intention to utilize mitigation measures for the streams with the concurrence of the North Dakota Game and Fish Department. The North Dakota Game and Fish Department was consulted and concurs that Keystone's proposed methods of open cut stream crossings will protect the aquatic species of these streams without the need for installation by HDD. Exhibit C within the Affidavit of Stephen Craycroft provides verification of the concurrence by the North Dakota Game and Fish Department.

The Commission is requested to approve the stream crossing methods as described.

3. Clarification of inconsistency on tree clearing widths.

Keystone's request that the Commission provide clarification of an apparent inconsistency between the Commission's Order dated February 21, 2008 namely paragraph 14 and item number 8 of the Tree and Shrub Mitigation Specifications document. The inconsistency is described below.

Paragraph 14 of the Commission Order states as follows:

“The width of the clear cuts through any windbreaks and shelterbelts shall be limited to 50 feet or less. The width of clear cuts through extended lengths of wooded areas shall be limited to 85 feet or less.”

Item number 8 of the Tree and Shrub Mitigation Specifications states as follows:

“The width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 50 feet or less unless otherwise approved by the NDPSC.”

The inconsistency is that paragraph 14 of the Order provides the width of clear cuts through extended lengths of wooded areas shall be limited to 85 feet or less while item number 8 of the Tree and Shrub document provides the width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 50 feet or less.

Keystone proposes that the requirement as stated in paragraph 14 of the Commission’s Order was the actual requirement that was intended by the Commission and that is the requirement that should control regarding the width of clear cuts through such areas.

The Commission should clarify regarding this apparent inconsistency and direct that the width requirement as stated within the Order controls.

4. Approval of extra work space in forested areas.

According to the requirements of paragraph 13 of the Commission’s Order dated February 21, 2008, Keystone requests approval of the clearing plans for additional temporary work space in certain forested areas at certain stream or road crossings as are more specifically listed and shown within the Affidavit of Loys A. Gray, III.

Paragraph 13 of the Commission Order, included the following condition:

"If Keystone needs additional construction work space at stream or river crossings and would like to clear more than an 85 foot width of trees, Keystone shall submit a clearing plan with the Commission to be approved prior to start of construction. The plan shall indicate the width of the cut (up to 135 feet) and the distance from the crossing (number of feet on each side of the crossing) that is needed."

Keystone requested a 110 foot wide normal construction right of way and additional work space at topographical features including roads, railroads, streams, and other areas requiring additional workspace to facilitate normal pipeline construction activities. During the hearings, Keystone presented testimony that an 85 foot construction right of way in forested areas at certain streams was not sufficient for construction of a large diameter pipeline. Additional temporary workspace was needed to ensure that the work could be performed safely.

There are several areas that have been identified and are outlined within the Affidavit of Loys A. Gray, III which require additional temporary work space. There is a chart included within the Affidavit of Loys A. Gray, III, at pages 2-4, which identifies each location in which additional temporary work space is being requested and provides specific justification for this additional work space. Also, site specific drawings are included at Exhibit A of the Affidavit of Loys A. Gray, III. Exhibits B and C of the Affidavit of Loys A. Gray, III include photos depicting extra work space for construction of a pipeline at stream crossings.

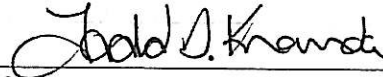
Additional work space at the stream crossings listed is necessary to install the pipeline safely and with the least environmental impact to the stream. Accordingly, Keystone is requesting that the Commission approve the clearing plans and additional work space for areas as identified in the Affidavit of Loys A. Gray, III with the attachment of Exhibit A.

The Commission is requested to approve the extra work space in the areas as identified.

Conclusion

In conclusion, Keystone respectfully requests that the Commission expedite its review and approve Keystone's tree and shrub sampling plan for native growth areas; approve Keystone's stream crossing methods for certain streams; clarify certain apparent inconsistencies on tree clearing widths; and approve extra work space in certain forested areas.

Dated this 7th day of April, 2008.



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