

**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**

**RECEIVED**

**MAY 23 2008**

**FIRST SUPPLEMENTAL ORDER**

**May 23, 2008**

**PUBLIC SERVICE COMMISSION**

**Preliminary Statement**

On February 21, 2008 the Commission issued Findings of Fact, Conclusions of Law and Order (Order) granting to TransCanada Keystone Pipeline, LP (Keystone) Certificate of Corridor Compatibility No. 101 and Route Permit No. 111 for a 218 mile, 30-inch crude oil pipeline (Keystone Pipeline) in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties of North Dakota. The route approved for this purpose was the route identified in the Keystone's April 11, 2007 Application, as supplemented by Exhibit Nos. T16 and T17 that were submitted at the hearing for the reroutes at the Bures and Zacharias properties. The Route Permit between mileposts 168 and 170 was conditioned upon Commission approval of an acceptable HDD proposal that goes under the Sheyenne River and the trees and shrubs on both the north and south embankments of the Sheyenne River valley.

The Order also required that:

1. Keystone obtain approval from the Commission prior to any changes or deviations to the pipeline route, and
2. any route changes necessitated by requirements of the SHPO be filed with the Commission and approved prior to the start of construction.

On April 7, 2008 Keystone filed for approval of forty-nine (49) refinements to the route approved in the Order.

On April 16, 2008 the Commission issued a Notice of Opportunity for Hearing and Notice of Informal Hearing concerning the 49 route refinements which provided until May 19, 2008 for comments and requests for hearing. The Notice indicated that the Commission may determine the matter without a hearing.

The March 31, 2008 affidavit of Loys A Gray stated that the 49 route refinements were initiated for the following reasons:

- a. At the request of landowners to avoid shelter belts and newly planted trees, increase distance from residences, to move farther from graves,

- and to shorten length,
- b. At the request of U.S. Fish and Wildlife to avoid wet land easements,
- c. Revised Stream Crossings to minimize crossing lengths of streams,
- d. To avoid power poles, transmission towers, and guy wires,
- e. To accommodate HDD of rivers,
- f. To relocation valves, and agreements to place additional valves,
- g. To place additional valves,
- g. At the request of landowners, to move pump stations,
- h. To eliminate a bend in the pipeline, and
- i. To avoid a cultural site.

Keystone indicated that the 49 route refinements cross the property of the same landowners as the current approved route, and where new landowners are involved, the new landowners have agreed to the route refinement and have signed voluntary easements. All rural residences in the area of the route refinements are more than 500 feet from the pipeline and any that are not have submitted waivers. No new section lines, roads or water crossings are impacted. No new naturally occurring woody areas are impacted. No new shelterbelt/tree rows are impacted, and no archaeological areas of potential exposure are impacted by the route refinements.

On April 21, 2008 Keystone filed a motion requesting approval of a pipeline route between mileposts 168 and 170 affecting the Sheyenne River and the Sheyenne River valley area. On May 13, 2008 the Commission held an Informal Hearing on this matter.

On April 29, 2008 Keystone filed a motion for approval of five (5) route refinements to be contingent of Keystone obtaining voluntary acquisition of easements from affected landowners. Keystone served notice of these route refinements with the North Dakota Agencies listed in Section 69-06-01-05 of the North Dakota Administrative Code. The April 28, 2008 affidavit of Loys A Gray stated that the 5 route refinements were initiated for the following reasons:

- a. Gray met with 5 landowners or landowners' attorneys who are currently part of eminent domain proceedings to attempt to voluntarily acquire easements from these landowners, and
- b. The 5 reroutes will accommodate landowner requests and prevent Keystone's need to utilize eminent domain proceedings to acquire easements from these landowners.

Keystone requests that the 5 route refinements be approved by the Commission contingent upon the filing of voluntary easements from the affected landowners. If the voluntary easements cannot be obtained and filed for a route refinement, that route refinement will not take effect.

On May 12, 2008 Keystone provided notice to State agencies and officials as required by North Dakota Administrative Code § 69-06-01-05 that they had until 5:00 p.m. on Friday May 16, 2008 to file written comments with the Commission concerning Keystone's motions for the 49 route refinements and concerning the 5 route refinements.

On May 13, 2008 Keystone provided notice to county auditors, county commissions, and legislators, as required by North Dakota Administrative Code § 69-06-01-02 that they had until 5:00 p.m. on Friday May 16, 2008 to file written comments with the Commission concerning Keystone's motions for the 49 route refinements and on the 5 route refinements.

Job Service North Dakota's May 13, 2008 letter indicated no comment on the project.

On May 13, 2008 the Commission held an Informal Hearing to discuss the proposed pipeline route crossing the Sheyenne River and Sheyenne River Valley between mile post markets 168 and 170 and to consider Keystone's April 29 Motion for Approval of the 5 route refinements.

By email on May 14, 2008, the State Historic Preservation Office indicated their review remains ongoing.

By its May 15, 2008 email the North Dakota Parks and Recreation agreed that route alignment between mileposts 168 and 170 be done through open areas to minimize disturbance of the forested valley and scenic view shed and asked that biological and cultural review be advanced on the proposed alignment to minimize impact and asked that mitigation of impacted areas be accomplished to retain or improve the visual quality of the National Scenic Byway corridor.

The North Dakota Department of Health, Division of Water Quality, by its May 16, 2008 letter states that the route refinements will have limited impacts on surface or ground water.

On May 19, 2008 Intervenors Dakota Resource Council, John and Janie Cap, Ramona Klein, Linette and Merle Kratochvil and Mark Novak commented that, to the extent that the Commission is considering only whether the proposed reroutes will satisfy the criteria of North Dakota Century Code § 49-22-02 when compared with the reroute approved by the Commission on February 21, 2008, Intervenors do not offer additional comments on that limited question.

On May 19, 2008 Keystone submitted material for clarification and for supplementation regarding certain matters discussed regarding the route refinements and approval of the route between mileposts 168 to 170. Keystone confirmed the legal

description for landowner Peterson's concurrence letter was accurate and he was the owner despite the use of the pronoun "we" in the letter. Also, Keystone filed and served verification that landowner Hansen agreed as shown by her two Option Agreements.

On May 20, 2008 Keystone submitted the Urlaub Waiver for the residence located within 500 feet of the route refinement requested for landowner Belanus. Also, Keystone submitted the two substitute exhibits for the revised routes with Belanus and Johansen as a result of cultural resource sites being discovered on the revised route.

On May 20, 2008 Keystone filed further revisions concerning the April 29 route refinement filings. The revisions are modifications of the routes for landowner Belanus and landowner Johansen as a result of cultural resource sites.

On May 20, 2008 Keystone provided Notice to State Agencies and Officials as identified pursuant to North Dakota Administrative Code Section 69-06-01-05, Notice to County Auditors and County Commissions pursuant to North Dakota Administrative Code Section 69-06-01-02, and Notice to State Senators and Representatives pursuant to North Dakota Administrative Code § 69-06-01-02 that they had until 5:00 p.m. on Thursday May 22, 2008 to file written comments with the Commission concerning Keystone's motions for two (2) refinements of the April 29, 2008 motion for 5 route refinements.

On May 21, 2008 the Commission held an Informal Hearing to discuss all remaining issues concerning the April 7, April 21, and April 29, and May 20, 2008 filings.

No other agencies, counties or representatives have communicated a concern regarding the proposed route changes.

The issues to be considered in this proceeding are:

1. Will the location, construction, and operation of the proposed pipeline produce minimal adverse effects on the environment, natural resources, and upon the welfare of the citizens of North Dakota?
2. Is the proposed pipeline compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed pipeline corridor and route 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?

The proposed route refinements are compatible with the environmental preservation and the efficient use of resources and will result in minimal adverse effects on the


environment, natural resources, and upon the welfare of the citizens of North Dakota while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

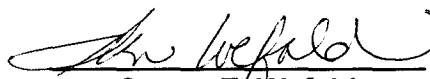
### Order

The Commission orders:

1. TransCanada Keystone Pipeline, LP's request for forty-nine (49) refinements in the transmission line route, is granted with the exception of that route variations depicted by Map ND-280-1 supersedes Map ND-239-5, Map ND-327-1-rev1 supersedes Map ND-240-1, Map ND-336-1 supersedes ND-236-1, and Map ND-341-1 supersedes Map ND-309-3.
2. TransCanada Keystone Pipeline, LP's April 29, 2008 request for the five (5) additional route refinements in the transmission line route as amended by the May 20, 2008 request for (2) further route refinements is granted conditional upon the landowners granting voluntary easements to Keystone and the filing of the easements with the Commission.
3. TransCanada Keystone Pipeline, LP's request for approval of a pipeline route between mileposts 168 and 170 is granted.
3. TransCanada Pipeline, LP is issued First Amended Route Permit No. 111.
4. First Amended Route Permit No. 111 is effective for the life of the pipeline, but is subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

### PUBLIC SERVICE COMMISSION

  
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