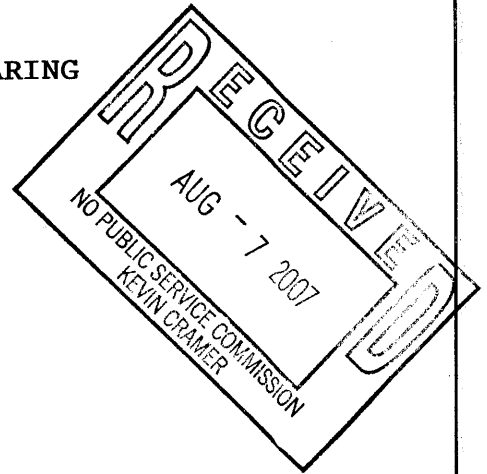


TransCanada Keystone Pipeline

PUBLIC SERVICE COMMISSION HEARING

July 23, 2007



By: Charla A. Pawlik, R.P.R.
Notary Public

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STATE OF NORTH DAKOTA PUBLIC SERVICE COMMISSION TransCanada Keystone Pipeline, LP Case No. Keystone Pipeline PU-07-152 Public Convenience & Necessity TransCanada Keystone Pipeline, LP Case No. 30-Inch Crude Oil Pipeline/ Cavalier to Sargent Counties PU-06-421 Siting Application PUBLIC SERVICE COMMISSION HEARING DATE: Monday, July 23, 2007 TIME: 9:05 a.m. PLACE: Valley City Auditorium, Valley City, ND BY: Charla A. Pawlik, R.P.R. NORMAN E. MARK - COURT REPORTER SERVICE 312 BLACK BUILDING, FARGO, ND 58102 (701) 235-7571	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	3 C O N T E N T S W I T N E S S E S (PUBLIC CONVENIENCE AND NECESSITY APPLICATION) PAGE DEAN COWLING Examination by Mr. Kelsch 21 Examination by Mr. Delaney 39 Examination by Mr. Binek 53 Examination by Mr. Cramer 65 Examination by Ms. Wefald 76 Examination by Mr. Clark 81 Examination by Mr. Kelsch 88 Examination by Mr. Delaney 93 Examination by Mr. Clark 108 MICHAEL DILLER Examination by Mr. Kelsch 110 Examination by Mr. Delaney 115 MARK MAKELKY Examination by Mr. Kelsch 117 Examination by Mr. Delaney 124 Examination by Mr. Cramer 128 Examination by Mr. Kelsch 129 Examination by Mr. Delaney 130 Examination by Mr. Cramer 131 Examination by Mr. Clark 132 Examination by Mr. Cramer 133
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1 any directions for the hearing beginning with
 2 Commission President Susan Wefald.
 3 MS. WEFALD: Good morning. It is very
 4 good to be here in Valley City this morning and to
 5 have a chance to proceed with this hearing. The
 6 commission has been receiving information about this
 7 hearing for about the last six months, and this
 8 hearing today, the one on case No. PU-07-152, the
 9 public convenience and necessity, is a very important
 10 part of this case. Every company who decides that
 11 they want to build any type of an energy conversion
 12 facility in the state of North Dakota has to have a
 13 public convenience and necessity certificate from the
 14 commission, and so that's why we're meeting here
 15 today, to go over those details.
 16 And there's been a number of parties
 17 who have expressed interest in this case, and we're
 18 glad to have their participation today. These
 19 types of -- the hearing that you're going -- you're
 20 attending today is a very formal hearing. This is
 21 not a -- what we call a public input meeting from the
 22 commission, but it is a chance for people who want to
 23 offer testimony on the record under oath to have a
 24 chance to be able to do that and to present that
 25 information to the commission.

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1 We are -- we have passed out
 2 information sheets, but they're not about this
 3 particular case. The information sheet that you
 4 received at the back of the room is about the siting
 5 hearing that will be held this afternoon starting at
 6 1:00. However, they both do -- the information on
 7 that sheet relates to the very same pipeline that
 8 we're holding the public convenience and necessity
 9 certificate on this morning.
 10 Welcome. I'm looking forward to a good
 11 record. It is a hot day. We're a lot of people in
 12 a -- in a good-size room, but again we're all
 13 interested in staying as cool as possible. It will
 14 be up to the hearing officer to determine when we
 15 have breaks in the hearing, but of course anyone
 16 who's sitting in the audience has the opportunity to
 17 get up and leave and come and go as they wish. I
 18 notice there's a pop machine and a water cooler up on
 19 the first floor, lavatories around the side of each
 20 room, and there is a free water cooler on the side --
 21 on this side of the auditorium. So make yourself as
 22 comfortable as possible.
 23 We don't promise any entertainment here
 24 this morning. This is a professional hearing for us
 25 just to get the facts on the record. The way the

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1 commission proceeds is we make no decision today. We
 2 will hold a working session at the end of this
 3 hearing. You know, not at the end of this hearing,
 4 but a working session in -- probably in several weeks
 5 after other material has come into the commission,
 6 and we'll make a final decision probably within six
 7 weeks or so. Thank you.
 8 MR. WAHL: Commissioner Tony Clark.
 9 MR. CLARK: Well, I would just like to
 10 welcome everyone here today. Thank you for turning
 11 out. Thank you for your interest in these cases.
 12 Similar to what Commissioner Wefald said, one of the
 13 things that you'll probably be struck by, I know I
 14 was a number of years when I attended my first
 15 regulatory proceeding, is how much more these look
 16 like a sort of court, quasijudicial proceeding than
 17 maybe what you're used to in going to a county
 18 commission proceeding or a -- a city commission or
 19 legislative hearing or something like that.
 20 And there's a -- there's a very
 21 important reason for it, and that is the way that
 22 utility commissions operate and -- and have to
 23 operate under the law is on the basis of a record.
 24 So, in other words, when we make a decision on
 25 this -- this public convenience and necessity permit

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1 or the siting's permit that we'll be hearing later
 2 today, we do so on the basis of only the evidence
 3 that's brought before us under sworn testimony and
 4 has the ability to be cross-examined by intervenors
 5 and other people who are interested in, in the case,
 6 those folks who have formally intervened.
 7 And so what you'll see is -- is really
 8 a fairly formal proceeding as Commissioner Wefald
 9 said, and the rationale for that is -- is as this
 10 moves along anyone who reviews it, a court, anyone
 11 else up the line, has to be able to take the decision
 12 that we make and tie it back to the formal record.
 13 And if it's not in that formal record, then we're not
 14 able to make a decision based on it, and so the
 15 success or failure of this application will -- will
 16 fall or stand on the basis of the record that's built
 17 here today and one that we'll have at the continued
 18 hearing tomorrow in Park River.
 19 So again I thank you for your
 20 participation and -- and interest and involvement in
 21 this case and look forward to a good afternoon of
 22 hearings.
 23 MR. WAHL: Commissioner Kevin Cramer.
 24 MR. CRAMER: Thanks, Judge Wahl. The
 25 pipeline portfolio is my portfolio, and I have

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1 probably spent as much and I'm certain probably more
 2 time studying this record than any I've studied in
 3 the four years I've been on the commission. Not only
 4 because it's in my portfolio, not only because it's a
 5 major investment in not only North Dakota but in our
 6 country, but also because it affects my home area.
 7 Just as recently as Sunday I spent some
 8 time in Little Yellowstone Park. I drove up the
 9 Kathryn road as I often do. My home is in Kindred,
 10 and that's where my parents live. I have brothers
 11 and sisters there as well. So the impact on the
 12 environment and on people is very important to me.
 13 It's important to all of us.
 14 And that's why it warms my heart to see
 15 so many of you. It's great to see all of the
 16 attorneys and the intervenors and of course the
 17 expert witnesses, but it's also important to see many
 18 people in the public participate. My fellow
 19 commissioners have already outlined and the judge
 20 will further outline your involvement in this, but
 21 let me say this for sure.
 22 Whether your input becomes evidence or
 23 not, you can be certain that your input certainly to
 24 this point -- and there's been a lot of it. I've
 25 talked to many of you on the phone. I've read your

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1 e-mails. I've talked to several of you I know on the
 2 radio. And the fact is your questions and your
 3 comments have helped formulate the questions in my
 4 mind and in my heart.
 5 So whether or not your testimony gets
 6 on the record, believe me your concerns will be
 7 through -- through the Q and A that will take place
 8 through -- throughout the hearing. Thank you very
 9 much for being here. We hope that there is at least
 10 this much participation in the afternoon hearing as
 11 well. We look forward to a very thorough record.
 12 MR. WAHL: The record will show that it
 13 is some after 9:00 a.m. July 23, 2007, the time and
 14 the date noticed for a hearing of the application of
 15 TransCanada Keystone Pipeline, LLC, for a certificate
 16 of public convenience and necessity to construct and
 17 operate the Keystone pipeline in Cavalier, Pembina,
 18 Walsh, Nelson, Steele, Barnes, Ransom and Sargent
 19 Counties, North Dakota.
 20 The commission's notice of hearing
 21 specified the following issues to be considered and
 22 determined upon this hearing: First, whether public
 23 convenience and necessity will be served by
 24 construction and operation of the pipeline
 25 facilities; and, second, whether the applicants are

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1 fit, willing and able to provide the service.
 2 Counsel, please state your appearance
 3 for the record. Mr. Kelsch.
 4 MR. KELSCH: Thomas D. Kelsch here on
 5 behalf of TransCanada Keystone. Also with me are --
 6 are Jim White and Todd Kranda.
 7 MR. WAHL: Mr. Delaney.
 8 MR. DELANEY: Nicholas R. Delaney here
 9 on behalf of the intervenors, the Dakota Resource
 10 Council, Ramona Klein, Merle and Linette Kratochvill,
 11 Janie and John Capp and Mark Novak.
 12 MR. WAHL: And, Mr. Binek, please, and
 13 identify also commission staff who will participate
 14 in the hearing.
 15 MR. BINEK: My name is William Binek.
 16 I'm counsel for the Public Service Commission.
 17 Seated to my left is Patrick Fahn, public utility
 18 analyst. And to my right is Mike Diller, the chief
 19 accountant for the commission.
 20 MR. WAHL: For the record, I notice
 21 that John Capp and Janie Capp were granted intervenor
 22 status by order of the commission. And speaking with
 23 Mr. and Mrs. Capp this morning, I'm advised by them
 24 that Mr. Delaney will represent their interests along
 25 with the other interests of the other intervenors.

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1 And that Mr. and Mrs. Capp will offer their testimony
 2 as public testimony. Do I understand that correctly,
 3 Mr. Capp?
 4 MR. CAPP: Correct.
 5 MR. WAHL: Your answer is yes?
 6 MR. CAPP: (Indicating yes.)
 7 MR. WAHL: And, Mrs. Capp, do I
 8 understand that correctly?
 9 MRS. CAPP: Yes.
 10 MR. WAHL: And your answer is yes.
 11 Thank you.
 12 Well, I need to stand up to talk to you
 13 for the rest of this. I -- I understand certainly
 14 that -- there we go. I understand certainly that
 15 there are many of you who plan to testify for the
 16 hearing. Let me speak just briefly and in general
 17 about how the hearing will be conducted and when you
 18 will be able to offer your testimony and how you can
 19 do that.
 20 We will begin this morning with the
 21 presentation by TransCanada Keystone. As TransCanada
 22 presents its witnesses, the other parties, the
 23 intervenors will be allowed to cross-examine those
 24 witnesses followed by questions from Mr. Binek as the
 25 commission's counsel and then followed by questions

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1 from the commissioners.
 2 When TransCanada has completed its
 3 presentation, then the intervenors, they make their
 4 presentation. After the intervenors have made their
 5 presentation, then I will ask for public testimony.
 6 First I will ask for the testimony of any persons --
 7 in the same order that we presented testimony
 8 earlier, for people who support the pipeline. If --
 9 if there's anyone here who -- from the public who is
 10 going to testify in support of the application, I
 11 would ask them to testify first. After those people
 12 have testified, I would then ask people who are
 13 opposed to the application.
 14 And there's no particular order. I
 15 would ask that you stand and be recognized. You can
 16 do one of two things, however you're most
 17 comfortable. You can use that lectern, and I expect
 18 that for most of you you will feel most comfortable
 19 doing that. There will be a -- a sheet on the
 20 lectern for your name and your address so that you
 21 can -- we can have a record of your testimony.
 22 Preliminary to your testimony I will ask -- for the
 23 record I will simply ask you your name and your
 24 address so that it can be recorded by the court
 25 reporter and recorded on the audio recording that's

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1 also being made of the hearing.
 2 After -- after I have asked you your
 3 name and your address, you should proceed with your
 4 testimony. Your testimony is required to be under
 5 oath. So I will administer the oath to you at -- as
 6 soon as you have signed in. And by law I am required
 7 to advise you regarding perjury before administering
 8 the oath. Well, to save time I am going to do that
 9 right now.
 10 I'm going to advise all of you, and
 11 specifically any of you who will testify for this
 12 hearing, that perjury is a false statement of
 13 material fact that you do not believe to be true; in
 14 other words, generally speaking a lie. In North
 15 Dakota perjury is a class C felony punishable by a
 16 fine up to \$5,000, imprisonment for a period of up to
 17 five years or both. I will ask you before I
 18 administer the oath whether you heard my advice of
 19 perjury. You need simply say yes, and I will proceed
 20 to administer the oath to you and you can then
 21 proceed with your testimony.
 22 Now, as a witness for this hearing, the
 23 lawyers, TransCanada -- counsel for TransCanada,
 24 counsel for the intervenors and counsel for the
 25 commission, can ask you questions. And the

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1 commissioners may each ask you questions. Now, I
 2 want to tell you that I -- I can -- I think I can
 3 promise you that you will not be cross-examined.
 4 Forget about what you see on television, what you
 5 have seen on television. Nobody is going to
 6 cross-examine you, but I suspect that -- that one or
 7 another of the lawyers and I certainly think the
 8 commission may have some questions for you to clarify
 9 some part of your testimony or to ask your thoughts
 10 on something else that the commissioners may feel is
 11 relevant. So while you should expect to be
 12 questioned about your testimony, as I said, you
 13 should -- you will not be cross-examined. The
 14 commissioners welcome your testimony. In fact I
 15 expect the commissioners are looking forward to your
 16 testimony as probably the more important part of
 17 this -- of this hearing.
 18 Please -- if I don't happen to remind
 19 you, please don't forget to sign the register. That
 20 will be helpful if somebody wants to go back and try
 21 and find your testimony on -- either in the record of
 22 the court reporter or in the record of the recording.
 23 And otherwise take your time with your testimony.
 24 You should be comfortable. I -- I suspect this may
 25 be a rather long hearing, and I would encourage you,

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1 it will be very helpful if you try to avoid repeating
 2 information that has been provided by other people.
 3 I understand of course that you have
 4 your own particular view. You may have your own
 5 particular information even though it may have been
 6 mentioned by someone else. I don't say that's not
 7 important. And you should -- you should let the
 8 commissioners know. You should tell them. But on
 9 the other hand, if you can avoid repeating
 10 information, that will help move things along.
 11 Does anyone have any particular
 12 question about -- about how I will conduct the
 13 hearing or about your testimony?
 14 If not, let's proceed.
 15 Mr. Kelsch, when you're ready.
 16 MR. KELSCH: Thank you. Thank you,
 17 your Honor. I would like to call Dean Cowling to the
 18 stand.
 19 MR. WAHL: Mr. Cowling. Mr. Cowling, I
 20 am told by the people who are operating our sound
 21 that it's important that we move the microphone close
 22 to our face in order to get a good recording.
 23 Mr. Cowling, as you heard me advise the
 24 people who are here, your testimony is required to be
 25 under oath, and I am required by law to advise you

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1 regarding perjury before administering the oath.
 2 Perjury is a false statement of material fact which
 3 you do not believe to be true; in other words, a lie.
 4 In North Dakota perjury is a class C felony
 5 punishable by a fine up to \$5,000, imprisonment for a
 6 period of up to five years or both.
 7 Will you raise your right hand, please?
 8 Being advised regarding perjury, Mr. Cowling, do you
 9 swear that the testimony which you're about to give
 10 in this matter shall be the truth, the whole truth
 11 and nothing but the truth?
 12 MR. COWLING: I do.
 13 MR. WAHL: Mr. Kelsch.
 14 MR. KELSCH: Thank you, your Honor.
 15 EXAMINATION
 16 BY MR. KELSCH:
 17 Q. Mr. Cowling, could you please state
 18 your name for the record?
 19 **A. My name is Dean Cowling.**
 20 Q. And what is your position with
 21 TransCanada Keystone?
 22 **A. I am the project director for the**
 23 **Keystone pipeline project.**
 24 Q. Okay. And what -- in what capacity
 25 today are you testifying?

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1 **A. I am filing my testimony today on**
 2 **behalf of Keystone in support of its application for**
 3 **a certificate of public convenience and necessity.**
 4 **Keystone's parent company is TransCanada's**
 5 **Corporation.**
 6 Q. And that's TransCanada?
 7 **A. Yes.**
 8 Q. Do you have a resume with your
 9 professional qualifications?
 10 **A. Yes. I have attached a copy of my**
 11 **resume and educational qualifications which I believe**
 12 **you have a copy of.**
 13 MR. KELSCH: Judge -- Judge Wahl, just
 14 for procedural, we have filed -- excuse me, we have
 15 filed the written testimony, and attached to that is
 16 a copy of the resume. Do you -- is that sufficient
 17 or do you want a separate document marked?
 18 MR. WAHL: I would prefer to have your
 19 exhibits marked as exhibits.
 20 MR. KELSCH: Okay.
 21 (Whereupon, Exhibit No. T1
 22 was marked for identification by
 23 the court reporter.)
 24 Q. (Mr. Kelsch continuing) Mr. --
 25 Mr. Cowling, I have placed in front of you an exhibit
 marked T1. Could you tell the commission what that

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1 is?
 2 **A. This is my qualifications and resume.**
 3 Q. Can you briefly just indicate what your
 4 education and -- and history is?
 5 **A. I have been -- I have approximately 17**
 6 **years' experience in the areas of pipeline project**
 7 **development, pipeline and power operations and**
 8 **maintenance and pipeline business development. My**
 9 **educational summary, I have a bachelor of science**
 10 **degree in business in 1989 from Ferris State**
 11 **University in Big Rapids Michigan.**
 12 MR. KELSCH: Okay. I would move to
 13 admit Exhibit T1.
 14 MR. DELANEY: No objection.
 15 MR. WAHL: Mr. Delaney?
 16 MR. DELANEY: No objection, your Honor.
 17 MR. WAHL: Mr. Binek?
 18 MR. BINEK: No objection.
 19 MR. WAHL: Exhibit T1 is received.
 20 Q. (Mr. Kelsch continuing) Can you
 21 describe -- Mr. Cowling, can you describe the
 22 application for public convenience and necessity?
 23 **A. TransCanada filed an application for a**
 24 **certificate of public convenience and necessity to**
 25 **construct and operate the Keystone pipeline in North**

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1 **Dakota, in particular in the counties of Cavalier,**
 2 **Pembina, Walsh, Nelson, Steele, Barnes, Ransom and**
 3 **Sargent.**
 4 Q. Where will the pipeline cross North
 5 Dakota?
 6 **A. The pipeline will cross North Dakota --**
 7 **approximately 218 miles of North Dakota from the**
 8 **Canadian-U.S. border to the border of North Dakota**
 9 **and South Dakota.**
 10 Q. What is the purpose of the pipeline?
 11 **A. The purpose of the pipeline is to**
 12 **transport crude oil from Hardesty, Alberta, Canada,**
 13 **to Patoka, Illinois, with an extension into Cushing,**
 14 **Oklahoma.**
 15 Q. In this pipeline process is Keystone
 16 required to obtain any United States, federal permits
 17 and -- and....
 18 **A. As a cross-border pipeline, crude oil**
 19 **pipeline, Keystone is required to obtain a**
 20 **presidential permit from the United States Department**
 21 **of State authorizing the construction, operations and**
 22 **maintenance of its pipeline border crossings. In**
 23 **order to grant a presidential permit, the Department**
 24 **of State must find that a proposed project will serve**
 25 **the national interest in the United States.**

25

1 **In its application for a presidential**
 2 **permit filed with the Department of State in**
 3 **April 2006, Keystone explained that the construction**
 4 **of the Keystone pipeline project, including the**
 5 **proposed border crossing facilities, will serve the**
 6 **national interest of the United States by providing**
 7 **refineries and markets with access to a substantial**
 8 **and reliable incremental supply of Canadian crude oil**
 9 **to meet growing U.S. demand for petroleum products.**
 10 **As summarized in the environmental**
 11 **report submitted with Keystone's presidential permit**
 12 **application and attached as an appendix to Keystone**
 13 **application to the North Dakota Public Service**
 14 **Commission for a certificate of corridor capability,**
 15 **the need for the project is dictated by: Increasing**
 16 **crude oil supplies combined with --**
 17 MR. DELANEY: Your Honor, I'm going to
 18 object to foundation.
 19 MR. WAHL: Mr. Kelsch.
 20 MR. KELSCH: Your Honor, this -- this
 21 witness has testified as to his position in
 22 TransCanada Keystone. He's certainly qualified to
 23 testify why the -- the pipeline -- their company has
 24 decided to build the pipeline and what the reasons
 25 and support and need for that pipeline are. It's a

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1 business decision for the company, and he's certainly
 2 qualified to testify to that.
 3 MR. WAHL: The objection's overruled.
 4 MR. DELANEY: Your Honor, I don't want
 5 to be an obstructionist on this matter so I would
 6 just at this point note a standing objection to any
 7 testimony related to any economic benefit to the
 8 nation or North Dakota for that matter from this
 9 witness.
 10 MR. WAHL: The objection is noted for
 11 the record.
 12 Q. (Mr. Kelsch continuing) You may
 13 answer.
 14 **A. The need for the project being as**
 15 **follows: Increasing Canadian crude oil supplies**
 16 **combined with inefficient (sic) export pipeline**
 17 **capacity in Canada. Increasing crude oil demand in**
 18 **the U.S. coupled with decreasing domestic supply.**
 19 **The opportunity to reduce U.S. dependence on foreign**
 20 **offshore oil through increased access to stable,**
 21 **secure crude oil supplies from Canada. Demonstrated**
 22 **shipper interest in the Keystone pipeline project.**
 23 Q. Mr. Cowling, are you familiar with the
 24 crude oil resources in -- or reserves in western
 25 Canada?

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1 **A. Yes.**
 2 Q. And what are those?
 3 **A. Well, in Section 1.2.1 of our**
 4 **environmental report, it discusses crude oil supplies**
 5 **in the Western Canadian Sedimentary Basin, and in**
 6 **particular in Canada's vast oil sands reserves**
 7 **located in northern Alberta. The Canadian**
 8 **Association of Petroleum Producers reports that**
 9 **established crude oil reserves in Western -- in the**
 10 **Western Canada Sedimentary Basin are estimated at**
 11 **179 billion barrels.**
 12 **Over 97 percent of those reserves are**
 13 **sourced from Canada's oil sands regions. The Alberta**
 14 **Energy and Utilities Board estimates that there are**
 15 **175 billion barrels of established reserves**
 16 **recoverable from the oil sands. The Oil and Gas**
 17 **Journal has reported that Alberta has the second**
 18 **largest crude oil reserves in the world, second only**
 19 **to Saudi Arabia.**
 20 Q. Is there a need for additional pipeline
 21 export capacity from Canada to the U.S.?
 22 **A. Existing crude oil pipeline export**
 23 **capacity out of the Western Canadian Sedimentary**
 24 **Basin is insufficient to accommodate the forecasted**
 25 **crude oil supply growth. The Keystone pipeline**

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1 **project initially will provide 435,000 barrels of**
 2 **incremental export capacity to address this**
 3 **deficiency.**
 4 **Moreover, TransCanada recently**
 5 **announced that it has received adequate shipper**
 6 **support commitments to go forward with its plans for**
 7 **a proposed expansion of the Keystone -- of Keystone's**
 8 **capacity to 590,000 barrels per day through the**
 9 **addition of incremental pumping capacity and an**
 10 **extension of the proposed pipeline to Cushing,**
 11 **Oklahoma.**
 12 Q. Do you have any knowledge about the
 13 U.S. demand for petroleum?
 14 **A. Section 1.2.2 of the environmental**
 15 **report notes that according to the Energy Information**
 16 **Administration, U.S. demand for petroleum products**
 17 **has increased by over 17 percent or 3 million barrels**
 18 **per day over the past ten years and is expected to**
 19 **increase further. The Energy Information**
 20 **Administration estimates that total U.S. petroleum**
 21 **consumption will increase by approximately**
 22 **5.3 million barrels per day over the next 20 years**
 23 **representing average demand growth for approximately**
 24 **265,000 barrels per year.**
 25 Q. Is the United States crude oil

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1 production decreasing?
 2 **A. At the same time domestic U.S. crude**
 3 **oil production continues to decline. According to**
 4 **CAPP, the Canadian Association of Petroleum**
 5 **Producers, domestic crude production in the Petroleum**
 6 **Area for Defense District II, PADD II, is declining**
 7 **at an average rate of about 3 percent per year. Over**
 8 **the past 20 years PADD II crude oil production has**
 9 **decreased by over 600,000 barrels per day or**
 10 **60 percent.**
 11 Q. In what ways will the Keystone pipeline
 12 help the United States?
 13 **A. The Keystone pipeline project will**
 14 **provide the United States with access to secure and**
 15 **growing Canadian crude oil supplies. Access to**
 16 **incremental crude oil supplies will provide the**
 17 **United States with an opportunity to offset declines**
 18 **of domestic crude oil production and decrease in**
 19 **dependence on offshore foreign crude oil supplies**
 20 **consistent with national policies.**
 21 Q. Will the Keystone pipeline be a common
 22 carrier pipeline?
 23 **A. Oil pipelines operating in**
 24 **interstate --**
 25 MR. DELANEY: Objection, your Honor.

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1 The question calls for a legal conclusion.
 2 MR. WAHL: Overruled.
 3 Q. (Mr. Kelsch continuing) You can
 4 answer.
 5 **A. Oil pipelines operating -- operating in**
 6 **interstate commerce are subject to regulation by the**
 7 **Federal Energy Regulatory Commission, FERC, under the**
 8 **Interstate Commerce Act, under the ICA, or Interstate**
 9 **Commerce Act, oil pipelines are statutory common**
 10 **carriers. Keystone is willing and able to entertain**
 11 **discussions also with North Dakota producers**
 12 **concerning entering into interconnection agreements.**
 13 Q. Will Keystone -- Keystone pipeline
 14 benefit the people of North Dakota?
 15 **A. Keystone will acquire pipeline**
 16 **right-of-way easements from landowners in**
 17 **predominantly rural areas. Landowners will receive**
 18 **compensation for the easements as well as**
 19 **compensation for crop loss or other damages.**
 20 **Other areas of benefit include**
 21 **construction will involve two spreads of pipeline**
 22 **construction in North Dakota with 500 to 600 workers**
 23 **working on each spread.**
 24 Q. Will additional workers be hired after
 25 construction of the pipeline or for the pump

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1 stations?
 2 **A. Yes. An additional 20 workers will be**
 3 **hired for construction of each pump station that**
 4 **we -- that will be built.**
 5 Q. Will some of these workers be local
 6 North Dakota citizens?
 7 **A. We forecast or anticipate that 10 to**
 8 **15 percent of the workforce will be hired locally.**
 9 Q. How long will the construction be going
 10 on, and will there be a benefit to North Dakota
 11 during that time?
 12 **A. There will be a net positive impact on**
 13 **the local economy for approximately 18 months of**
 14 **construction.**
 15 Q. What are the estimated construction
 16 costs of the Keystone project in North Dakota?
 17 **A. In North Dakota capital construction**
 18 **costs will be in excess of \$300 million.**
 19 Q. Will there be food and -- and lodging
 20 expenses as well?
 21 **A. Food and lodging for the construction**
 22 **will -- we forecast at approximately \$3.25 million.**
 23 Q. Will Keystone be purchasing
 24 construction equipment materials and supplies in
 25 North Dakota?

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1 **A. Yes. Construction materials and other**
 2 **supplies will be approximately \$750,000 in North**
 3 **Dakota.**
 4 Q. Once the Keystone pipeline is -- is
 5 completed, will Keystone pay property tax to the
 6 state and local governments?
 7 **A. Yes. Based on 2005 property assessment**
 8 **and tax rate information, Keystone's North Dakota**
 9 **property taxes will be approximately 5.2 million in**
 10 **the first year after construction and will be**
 11 **continued to be paid over the lifetime of the**
 12 **pipeline.**
 13 Q. What's the estimated lifetime of the
 14 pipeline?
 15 **A. Right now 30 years is -- is the way**
 16 **that we run financial models. But as -- as of course**
 17 **you know, TransCanada has been in operations for over**
 18 **50 years, and we are still operating and maintaining**
 19 **the same pipelines that we've had in the ground for**
 20 **over 50 years.**
 21 Q. Will there be additional taxes paid by
 22 Keystone other than property taxes?
 23 **A. In addition Keystone will pay**
 24 **ad valorem taxes to the local governments during the**
 25 **years of operation of the pipeline.**

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1 Q. Once the pipeline is -- is constructed
 2 and in operation, will there be -- Keystone continue
 3 to have employees in the state and -- and hire
 4 services from people in the state?
 5 **A. Yes. We would expect to have both
 6 direct and contract employees which will be hired
 7 locally for pipeline operations.**
 8 Q. Now, you -- you just previously
 9 testified about purchasing materials and construction
 10 costs in the state. Will Keystone pay taxes on those
 11 items purchased?
 12 **A. Keystone will pay sales and use taxes
 13 as well.**
 14 Q. Are you familiar with the current North
 15 Dakota crude oil pipelines that are in existence
 16 today?
 17 **A. I am familiar.**
 18 Q. Is there a pipeline bottleneck in the
 19 state of North Dakota?
 20 **A. Pipeline bottlenecks currently exist in
 21 North Dakota which inhibits area producers from
 22 readily accessing markets with their production.**
 23 Q. Does that bottleneck have an effect on
 24 the price of -- that the producers receive?
 25 **A. This has caused depressed prices for**

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1 **western North Dakota crude oil.**
 2 Q. Will the Keystone pipeline have any
 3 impact on this bottleneck?
 4 **A. The Keystone pipeline could play a role
 5 in resolving this problem by providing another
 6 transportation route for moving crude oil to
 7 refineries in the United States.**
 8 Q. Do you know whether the North Dakota
 9 Industrial Commission has taken any position on the
 10 Keystone pipeline?
 11 (Whereupon, Exhibit No. T2
 12 was marked for identification by
 13 the court reporter.)
 14 **A. Yes. The North Dakota Industrial
 15 Commission, acting in its capacity as the North
 16 Dakota Pipeline Authority, is in support of the
 17 TransCanada Keystone Pipeline project. A letter
 18 stating the North Dakota Industrial Commission's
 19 position has also been provided and attached.**
 20 Q. (Mr. Kelsch continuing) Mr. Cowling,
 21 in -- in front of you is Exhibit T2. Is that the
 22 letter that was submitted by the North Dakota
 23 Industrial Commission?
 24 **A. Yes, it is.**
 25 MR. KELSCH: I would move to admit
 Exhibit T2.

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1 MR. WAHL: Mr. Delaney?
 2 MR. DELANEY: Could I have just one
 3 minute to read it?
 4 MR. WAHL: You may.
 5 MR. KELSCH: Your Honor, we can -- we
 6 can wait. We do have the -- the individual who wrote
 7 the letter. Perhaps it's best to put it in through
 8 him.
 9 MR. DELANEY: I have no objection, your
 10 Honor.
 11 MR. WAHL: Mr. Binek?
 12 MR. BINEK: No objection.
 13 MR. WAHL: Exhibit T2 is received.
 14 Q. (Mr. Kelsch continuing) How many --
 15 Mr. Cowling, how many miles of pipeline does
 16 TransCanada have currently?
 17 **A. TransCanada has 36,500 miles of wholly
 18 owned pipeline.**
 19 Q. And how -- I think you testified to
 20 this before, but how long has TransCanada been in
 21 existence?
 22 **A. TransCanada has more than 50 years' of
 23 pipeline construction and operating experience.**
 24 Q. Does TransCanada have experience in
 25 cold weather pipeline?

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1 **A. TransCanada has developed significant
 2 experience in large-diameter cold-weather pipeline,
 3 design, construction, operations and maintenance.**
 4 Q. Could you just generally describe the
 5 TransCanada pipeline operation?
 6 **A. Well, it is our belief TransCanada
 7 operates one of the largest, most sophisticated
 8 remote-controlled pipeline networks in the world with
 9 a solid reputation for safety and reliability.**
 10 Q. What about the TransCanada employees?
 11 **A. TransCanada also has skilled and expert
 12 people located across North America.**
 13 Q. With all those miles of pipeline, does
 14 Canada have -- or TransCanada have relations with the
 15 property owners that your pipeline goes across?
 16 **A. Currently TransCanada has
 17 relationships with approximately 40,000 landowners.**
 18 Q. Has TransCanada taken efforts to -- to
 19 try to be a good neighbor to -- to those landowners?
 20 **A. Through its annual customer
 21 satisfaction survey, TransCanada received feedback
 22 from customers served by it's Canadian pipelines.
 23 The survey found that TransCanada maintained high
 24 levels of overall -- of overall customer
 25 satisfaction.**

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1 Q. Does Keystone have a pipeline
 2 management program?
 3 **A. Keystone has a pipeline management
 4 program that meets or exceeds federal requirements
 5 and includes in-line inspection, repair criteria and
 6 ongoing monitoring.**
 7 Q. What type of monitoring does Keystone
 8 do for its pipelines?
 9 **A. Keystone has 24-hour monitoring 365
 10 days a year through the use of a dedicated leak
 11 detection system.**
 12 Q. As -- does Keystone have an emergency
 13 response plan or is it developing one?
 14 **A. As required by the United States
 15 Department of Transportation, Pipeline Hazardous
 16 Materials and Safety Administration, acronym PHMSA,
 17 Keystone is developing a detailed emergency response
 18 plan that will include response equipment
 19 prepositioned at manned locations, first responders
 20 located along the route able to respond in compliance
 21 with 49 CFR part 194 and remediation of the -- of the
 22 area of any spill in coordination with both federal
 23 and state agencies.**
 24 Q. Before Keystone -- assuming -- or if
 25 this commission authorizes the pipeline and before

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1 commencing operation of the pipeline, will Keystone
 2 have a completed and filed emergency response plan?
 3 **A. Yes. We have filed a preliminary
 4 emergency response plan, and we will file with PHMSA
 5 prior to Keystone commencing operations a final
 6 emergency response plan.**
 7 Q. One of the issues that the commission
 8 has to look at is the -- I guess the fitness and
 9 financial ability of Keystone or TransCanada to
 10 operate this -- this pipeline. What can you tell me
 11 about TransCanada's financial ability to -- to manage
 12 a pipeline or financial worth?
 13 **A. TransCanada in 2006 annual financial
 14 report in Canadian dollars: 25,909,000,000 in total
 15 assets. 7,520,000,000 in gross revenues. And
 16 1,079,000,000 in total net income.**
 17 Q. So does -- in your opinion does
 18 TransCanada have the financial ability to provide the
 19 pipeline service?
 20 **A. Yes.**
 21 MR. KELSCH: I have no further
 22 questions of this witness.
 23 MR. WAHL: Mr. Delaney.
 24 MR. DELANEY: Thank you, your Honor.
 25

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1 EXAMINATION
 2 BY MR. DELANEY:
 3 Q. Good morning, Mr. Cowling.
 4 **A. Good morning.**
 5 Q. What I'm going to do is I'm going to
 6 walk through some of the testimony that you gave so
 7 it may even help for you to follow along in your
 8 submitted testimony.
 9 **A. Sure.**
 10 Q. But first and foremost, what is your
 11 role exactly as project director with respect to the
 12 application and preparing the application?
 13 **A. My role as project director for
 14 Keystone is I am responsible for the permitting, the
 15 land, the environment, the engineering, the
 16 construction and the commissioning of the pipeline
 17 project.**
 18 Q. Are there portions of the application
 19 that you yourself prepared or did you take more of a
 20 I guess overseer's role?
 21 **A. I took more of the oversight of the
 22 preparation.**
 23 Q. Okay. And you referenced in your
 24 testimony Section 1.2.1 of the environmental report
 25 and also Section 1.2.2 of the environmental report.

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1 This environmental report that you're speaking of, is
 2 that the environmental report prepared by Keystone in
 3 conjunction with the application?
 4 **A. Yes.**
 5 Q. Mr. Cowling, do you have any degrees in
 6 economics?
 7 **A. No, I do not.**
 8 Q. Okay. Have you had any specialized
 9 training on economics?
 10 **A. Just through my education and through
 11 my experience working for TransCanada over the last
 12 number of years.**
 13 Q. Let's walk through your experience with
 14 TransCanada. When were you first employed?
 15 **A. If you don't mind, what I'll -- I'll
 16 start with -- or do you want to just talk about
 17 TransCanada?**
 18 Q. Yeah, for right now.
 19 **A. Okay. I became a TransCanada employee
 20 in -- in and around 2000.**
 21 Q. And what did you do at that time?
 22 **A. At that time I was -- I managed our
 23 eastern business development on the natural gas side
 24 of our business.**
 25 Q. And then I see in 2003 you became the

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1 director of field operations. What -- can you
 2 explain what the director of field operations does?
 3 **A. Yes. It -- in and around 2000 I was**
 4 **charged with the responsibility of overseeing our**
 5 **northern Alberta operating region. This operating**
 6 **region included a significant amount of pipelines,**
 7 **compressor stations, meter stations and power plants.**
 8 **We were responsible for operating and maintaining**
 9 **that equipment as well as the health, safety and**
 10 **environment and of course managing -- managing costs.**
 11 Q. And currently you're the director of
 12 the Keystone pipeline project. Have you ever been
 13 the director of any other projects that Keystone has
 14 done?
 15 **A. Prior to this role I was the director**
 16 **of pipeline projects implementation which looked**
 17 **after all of TransCanada's other pipeline projects.**
 18 **This is -- this is a larger project, and the way that**
 19 **we're organized we have our pipeline projects that**
 20 **support all of our other businesses in North America**
 21 **reporting to another business and that's where I had**
 22 **come from. So looked after a number or was**
 23 **responsible for the implementation of a number of**
 24 **pipelines across North America.**
 25 Q. Now, in your testimony you stated that

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1 the Keystone pipeline project will serve the national
 2 interest of the United States by providing refineries
 3 and markets with access to a substantial and reliable
 4 incremental supply of Canadian crude oil to meet
 5 growing U.S. demand for petroleum products. Upon
 6 what do you -- you base that on?
 7 **A. I base that on forecasts that are**
 8 **outlined in my testimony as well as information --**
 9 **public information as it relates to the growing**
 10 **supply in northern Alberta. I believe today the**
 11 **Western Canadian Sedimentary Basin currently produces**
 12 **I believe about 2.6 billion barrels of oil, and**
 13 **this -- that number is forecast to grow**
 14 **significantly.**
 15 Q. Okay. What I want to key in on is the
 16 national interest, and you mentioned you're basing
 17 that comment or your testimony on forecasts. What
 18 forecasts?
 19 **A. The forecasts that are outlined in my**
 20 **testimony.**
 21 Q. Can you point me to what forecasts
 22 you're talking about?
 23 MR. KELSCH: I believe it's the bottom
 24 of page 3, second paragraph from the bottom.
 25 Q. (Mr. Delaney continuing) Well, I'll

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1 read -- I'll start reading the last paragraph of your
 2 testimony on page 3.
 3 The Keystone pipeline project will
 4 provide the United States with access to secure and
 5 growing Canadian crude oil supplies. Access to
 6 incremental Canadian crude supplies will supply (sic)
 7 the United States with an opportunity to offset
 8 declines in domestic crude oil production and to
 9 decrease its dependence on offshore foreign crude oil
 10 supplies consistent with national policies.
 11 And my question is, upon what do you
 12 base that upon? Did you do a study? Did Keystone do
 13 a study that they're basing this upon?
 14 **A. We -- we have used information provided**
 15 **by the Canadian Association -- Association of**
 16 **Petroleum Producers and their forecasts as well as**
 17 **forecasts from the Alberta Energy and Utilities Board**
 18 **as well as TransCanada has -- has its own forecasts.**
 19 Q. Okay. And these Canadian forecasts are
 20 speaking to the issue of the United States'
 21 interests?
 22 **A. No, they're not. Those forecasts are**
 23 **forecasting the -- the supply growth in the Western**
 24 **Canadian Sedimentary Basin.**
 25 Q. Okay. And the purpose for this hearing

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1 today is the necessity of this project here in the
 2 United States, and what I -- what I'm curious to know
 3 is on -- on what grounds do you state that this will
 4 serve a national interest?
 5 **A. Well, I think outlined in my -- in my**
 6 **testimony we had four -- four points as it relates to**
 7 **national interest. The first point being increasing**
 8 **Canadian crude oil supplies combined with inefficient**
 9 **export pipeline capacity. That really is probably**
 10 **focused in on -- on the growing supply in Canada**
 11 **and -- and the need to push that supply to a very**
 12 **large market. Increasing crude oil demand in the**
 13 **U.S. coupled with decreasing domestic supply. Of**
 14 **course when you have demand going up and supply going**
 15 **down -- going down domestically, that will have**
 16 **implications on price.**
 17 Q. Well, let me -- let me stop you right
 18 there.
 19 **A. Yeah.**
 20 Q. Have you done a study on the current
 21 demand and supply of oil in the United States?
 22 **A. Not part of this testimony, no.**
 23 Q. Okay. Because I'm reading your general
 24 comments here and -- but I don't see where they're
 25 supported by any study or specific --

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1 **A. Well.**
2 Q. -- research done by Keystone pipeline.
3 **A. Actually I'll point to -- actually I'll**
4 **point to my testimony. And if you don't mind,**
5 **I'll -- I'll -- I'll read it to you.**
6 **At the same time domestic crude oil**
7 **production continues to decline. And this is**
8 **according to CAPP, the Canadian Association of**
9 **Petroleum Producers, domestic crude oil production in**
10 **Petroleum Area for Defense District (PADD) II, which**
11 **is really the U.S. Midwest which is the -- the area**
12 **that Keystone will be -- will be delivering crude oil**
13 **to, is declining at an average rate of about**
14 **3 percent per year. Over the past 20 years, PADD II**
15 **crude oil production has decreased by approximately**
16 **600,000 barrels per day or a 60 percent reduction.**
17 Q. Okay. And this is according to CAPP,
18 and remind me again what CAPP stands for.
19 **A. The Canadian Association of Petroleum**
20 **Producers.**
21 Q. Okay. And so you're basing your
22 statement that increasing crude oil demand in the
23 U.S. coupled with decreasing domestic supply is based
24 upon this CAPP report; am I -- am I right?
25 **A. That's correct.**

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1 Q. Has Keystone done any studies on their
2 own or are you relying upon other reports?
3 **A. TransCanada has done studies on its own**
4 **as well. This is a very large project for**
5 **TransCanada, and we typically do not make large**
6 **investment decisions and work with a lot of folks**
7 **unless we feel very comfortable that there's a**
8 **business need and a national interest in this case**
9 **for the United States.**
10 Q. And there is a business need in this --
11 in this instance for TransCanada; correct?
12 **A. Yes. We're a publicly traded company.**
13 Q. How much profit do you anticipate
14 TransCanada will make off of this pipeline?
15 **A. I don't have that information here with**
16 **me today.**
17 Q. Okay. I want to point to a statement
18 on the -- line 7 of page 3. You testified: Existing
19 crude oil pipeline export capacity out of the WCSB is
20 insufficient to accommodate the forecasted crude oil
21 supply growth. Now, first, remind me, what does the
22 WCSB acronym stand for?
23 **A. That's the Western Canadian Supply**
24 **(sic) Basin.**
25 Q. And upon what do you base that

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1 statement?
2 **A. Today -- in my opinion, today we've got**
3 **a number of pipelines that transport crude oil out of**
4 **the Western Canadian Sedimentary Basin of which**
5 **include Express-Platte and include Enbridge. I**
6 **believe over the last number of years Express-Platte**
7 **has been in apportionment over the last few years**
8 **which really means that you have more oil wanting to**
9 **get onto the system than the system has capacity for.**
10 **Secondly, Enbridge is actually running**
11 **at capacity. So that -- with that in mind, the**
12 **pipelines are full today and actually in**
13 **apportionment with -- for one of them at times. And**
14 **with the demand -- or the supply growth in the**
15 **Western Canadian Sedimentary Basin there is a**
16 **requirement to build pipeline capacity out of the**
17 **basin.**
18 Q. Did you do any independent studies or
19 research to -- to base these statements upon?
20 **A. I did not. TransCanada, again as I've**
21 **mentioned earlier, would have completed studies on**
22 **this -- on this topic.**
23 Q. You stated that you're familiar with
24 the reserves in Canada. How is it exactly that
25 you're personally familiar with the -- the oil

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1 reserves in Canada?
2 **A. I'm familiar with the reserves in**
3 **Canada as it relates through information --**
4 **information that's shared to me through TransCanada.**
5 Q. Have you visited the reserves in
6 Canada?
7 **A. When I operated -- when I was part of**
8 **the operating group in northern Alberta, I actually**
9 **had an asset that was -- that was a host site to one**
10 **of these plants.**
11 Q. The actual pipe that is anticipated to
12 be used for the project, where is that coming from?
13 **A. The pipe will be sourced from a number**
14 **of different actually countries. Today we're**
15 **finalizing our -- our -- our pipe commitments and our**
16 **pipe order. I would anticipate that pipe will be**
17 **coming from the domestic North American market. I**
18 **also anticipate that pipe will be coming from**
19 **overseas markets.**
20 Q. Do you know this for a fact or -- where
21 the pipe's coming from at this point or do you not?
22 **A. I have a very good idea that it's --**
23 **that it's coming from the North American domestic**
24 **market and overseas market.**
25 Q. Okay. Are there any -- are you getting

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1 any pipe from anywhere in North Dakota?

2 **A. No, we are not.**

3 Q. Okay.

4 **A. I don't believe that there's that**

5 **opportunity for the -- for the pipe that we're --**

6 **that we're building.**

7 Q. Okay. When do you anticipate your

8 emergency response plan will be completed?

9 **A. Our emergency response plan will be**

10 **completed in the first quarter of 2009.**

11 Q. You testified that Keystone is willing

12 and able to entertain discussions with North Dakota

13 producers concerning entering into interconnection

14 agreements. Have there been any agreements or

15 contracts for such interconnections?

16 **A. There has been no -- there have been no**

17 **agreements or contracts for such interconnection**

18 **agreements.**

19 Q. You also testified that 10 to

20 15 percent of the workforce will be hired locally.

21 Who is going to be hired locally?

22 **A. More than likely we will have -- we**

23 **will supplement our workforce with labor. If you**

24 **think about the amount of -- for example, gravel that**

25 **we'll need for our project, that type of service will**

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1 **be hired locally.**

2 Q. So you haven't as of yet hired anyone

3 locally?

4 **A. For operations -- construction and**

5 **operations, no.**

6 Q. Okay. Well, for any reason for that

7 matter. Have you hired anyone locally for any reason

8 whatsoever?

9 **A. There's a couple sitting at the table**

10 **beside you.**

11 Q. Are you speaking of your attorneys?

12 **A. Yes.**

13 Q. Oh, okay. The -- you testified that

14 there will be a net positive impact on the local

15 economy for the approximately 18 months of

16 construction. What do you base that upon?

17 **A. That is based on experience, and that's**

18 **also based on some work that we undertook along with**

19 **our engineering contractors to put that information**

20 **together.**

21 Q. Have you done any studies to indicate

22 this net positive impact that will occur?

23 **A. It's tough to find study. We've**

24 **estimated that these benefits will be realized in**

25 **North Dakota.**

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1 Q. Can you -- can you speak a little bit

2 to this estimation process and how you went about

3 estimating that there will be \$3.25 million for

4 lodging and construction, capital construction costs

5 of \$300 million and construction materials and other

6 supplies of approximately \$750,000?

7 **A. Yes. As an example, for the capital**

8 **construction costs for the -- for the lodging for**

9 **construction, I had folks that work for the project**

10 **actually go through -- and understanding the amount**

11 **of manpower that it takes to build pipeline, I think**

12 **we -- we tried to count just about every hotel along**

13 **our pipeline route in North Dakota, and we also**

14 **forecasted the amount of time that a typical pipeline**

15 **spread would take. And -- and we're forecasting**

16 **today or anticipate today that we'll -- that we will**

17 **be using hotel lodging to -- to lodge all of the**

18 **workers.**

19 Q. This must have taken some time to come

20 up with these numbers. Do you have any of your

21 calculations? Have any calculations been submitted

22 to the PSC?

23 **A. I do not believe so.**

24 Q. So I guess -- I guess what I'm asking,

25 are these numbers just tongue-in-cheek or did you sit

52

1 down in a room and just throw out numbers or what are

2 you -- what are you basing them on?

3 **A. No, the numbers are not**

4 **tongue-in-cheek. With our -- with our over 50 years'**

5 **of pipeline experience and building pipelines and**

6 **pipeline spreads, this is what we would typically see**

7 **as it relates to benefit to the local communities.**

8 Q. For this project my understanding is

9 that it originates in Canada and it ends in Illinois;

10 is that correct?

11 **A. The project originates in -- in**

12 **Hardesty, Alberta, which is southeast of Edmonton,**

13 **Alberta. The project will deliver crude oil into**

14 **Illinois at two deliver points as outlined in our**

15 **application, Wood River and Patoka. And also as I**

16 **highlighted in my -- my testimony, we have**

17 **subsequently went out for an open season and were**

18 **able to acquire additional contracts to Cushing,**

19 **Oklahoma. What we filed with the North Dakota Public**

20 **Service Commission is actually that expanded case.**

21 Q. And this will not be delivering any

22 crude oil to anywhere in North Dakota specifically?

23 **A. No, not today.**

24 Q. Okay. And there's -- there's no

25 agreement or contract that would -- at this point

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1 that would indicate that there will be?
 2 **A. Not today.**
 3 MR. DELANEY: Okay. I have no more
 4 questions, your Honor.
 5 MR. WAHL: Mr. Binek.
 6 MR. BINEK: Yes, I have a few
 7 questions.
 8 EXAMINATION
 9 BY MR. BINEK:
 10 Q. Are you familiar with the common
 11 pipeline carrier statute in North Dakota?
 12 **A. Yes, I am.**
 13 Q. And under what provisions of that
 14 section is the Keystone pipeline a common carrier?
 15 And I'll refer specifically to Section 49-19-01 which
 16 sets forth the definition of the common pipeline
 17 carrier.
 18 MR. DELANEY: And again I'm just going
 19 to note an objection for the record that it calls for
 20 a legal conclusion.
 21 MR. WAHL: The objection is noted.
 22 **A. Just give me a second here, and I'll**
 23 **just take a look at it.**
 24 Q. (Mr. Binek continuing) Certainly.
 25 **A. Under 49-19-01 item 1, "Owning,**

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1 **operating or managing any pipeline or any part of any**
 2 **pipeline within this state for the transportation of**
 3 **crude petroleum, gas, coal or carbon dioxide to or**
 4 **for the public for hire, or engaged in the business**
 5 **of transporting crude petroleum, gas, coal or carbon**
 6 **dioxide by pipelines."**
 7 **So I think item 1 as well as item or**
 8 **No. 4. "Made a common carrier by or under the terms**
 9 **of a contract with or in pursuance of the laws of the**
 10 **United States."**
 11 Q. Under No. 4, in your testimony you
 12 talked about the Keystone pipeline being a common
 13 carrier, and I'm referring specifically to the
 14 paragraph beginning on line 3 of page 4 of your
 15 testimony. You refer to the -- that it's -- it's
 16 subject to regulation under -- under the Federal
 17 Energy Regulatory Commission under the Interstate
 18 Commerce Act, and that under the Interstate Commerce
 19 Act oil pipelines are statutory common carriers.
 20 Could you give the citation for that provision in the
 21 act?
 22 **A. At this time I -- I cannot.**
 23 MR. KELSCH: We would be happy to
 24 provide that after that in the a briefing, your --
 25 your Honor.

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1 MR. WAHL: Noted for the record.
 2 Q. (Mr. Binek continuing) You
 3 testified --
 4 MR. WAHL: In fact -- I'm sorry,
 5 Mr. Binek. Why don't we be careful. Let's -- let's
 6 do that as a late-filed exhibit --
 7 MR. BINEK: Very good.
 8 MR. WAHL: -- T3. You may proceed,
 9 Mr. Binek.
 10 MR. BINEK: Thank you.
 11 Q. (Mr. Binek continuing) I believe you
 12 testified that Keystone is willing and able to
 13 entertain -- I can't read my own writing here --
 14 entering into an interconnection agreement. Are
 15 you -- are you referring to interconnection
 16 agreements with North Dakota producers or North
 17 Dakota pipelines?
 18 **A. If you -- what I -- if you don't mind,**
 19 **I'll -- I'll review the -- the statement that I made.**
 20 **Keystone is willing and able to entertain discussions**
 21 **with North Dakota producers concerning entering into**
 22 **interconnection agreements was the statement that I**
 23 **made.**
 24 Q. Okay. And I believe you also said that
 25 there haven't been any agreements made?

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1 **A. That is correct. There --**
 2 Q. Have you --
 3 **A. There have not been any agreements**
 4 **entered into.**
 5 Q. Have there been any discussions with
 6 any producers?
 7 **A. I can say that there has been**
 8 **discussions.**
 9 Q. Will there be taps or points along the
 10 pipeline where North Dakota-produced crude oil can be
 11 put into the pipeline?
 12 **A. The way that the system is designed, we**
 13 **are not prebuilding taps or interconnections per say.**
 14 **Through discussions those types of details would be**
 15 **part of any discussions with any business or person**
 16 **wanting to discuss with us connection to Keystone.**
 17 Q. Would it -- how difficult is it to put
 18 in those connections or taps, whatever you want to
 19 call it, after the pipeline has been built?
 20 **A. I -- to -- to simply put a tap in --**
 21 **and again maybe I'll go back a little bit more. As**
 22 **it relates to our pipeline, there are certain**
 23 **requirements that we have as it relates to our**
 24 **tariff, et cetera, so we'd have to chat about or**
 25 **discuss our tariff.**

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1 **A pipeline -- based on what I know**
2 **today, an additional pipeline capacity would be**
3 **required from the basin to access Keystone, and more**
4 **than likely there would be additional infrastructure**
5 **once you got to Keystone. For example, a storage**
6 **tank, et cetera, would be required as part of that**
7 **discussion.**

8 Q. All right. I guess basically my
9 question is, is it possible -- if there aren't any
10 taps or points of interconnect in the -- in the
11 pipeline at the time it's -- it's constructed, how
12 difficult is it to -- to create that interconnection
13 at a later time if a North Dakota producer says, I --
14 I -- I would like to use your pipeline to transport
15 crude oil to Illinois or....

16 **A. What I can say is it is very practical**
17 **and feasible to -- to engineer that solution.**

18 Q. As a common pipeline carrier in North
19 Dakota, Keystone does have an obligation to -- to
20 carry crude for North Dakota producers; doesn't it?

21 **A. I'm sorry. Could you repeat that?**

22 Q. As a common pipeline carrier under
23 North Dakota law, Keystone does have an obligation to
24 transport crude petroleum for North Dakota producers
25 if they wish to have that transported and -- and are

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1 willing to enter into an agreement with you; is that
2 correct?

3 **A. That's what I understand.**

4 Q. You said that TransCanada has done
5 studies regarding the need for the pipeline. Are
6 those studies available?

7 **A. Typically those studies are -- internal**
8 **to TransCanada are confidential as we make these**
9 **investment decisions. There are a number -- and**
10 **we've tried to provide you with a number of other**
11 **sources that actually fall in line with -- with**
12 **TransCanada's understanding.**

13 Q. Well, do you have any reports or -- or
14 forecasts, that sort of thing, that -- that were
15 talked about here that are not confidential
16 information that you could provide copies of? You --
17 you made statements about the need for -- for
18 pipeline capacity and it's based on -- on the
19 information that -- that you cited. Are -- are those
20 reports a part of your testimony or are they evidence
21 that -- that is being presented in this case?

22 MR. KELSCH: Your Honor, I -- we would
23 be willing to submit the EIA annual energy outlook
24 report that was cited in Mr. Cowling's testimony as
25 well. That shows EIA's, Energy Information

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1 Administration -- it shows the demand in the U.S. and
2 then as well as the CAPP -- the 2005 CAPP report that
3 was cited by Mr. Cowling as well. Those are public
4 documents, and -- and we would be willing to submit
5 those as a late-filed exhibits.

6 MR. BINEK: I think that would be good.

7 MR. WAHL: TransCanada may submit that
8 information as late-filed Exhibit T4.

9 MR. KELSCH: They are two separate
10 documents. I guess I would request that the EIA be
11 T4 and the CAPP one be T5.

12 MR. WAHL: Mr. Kelsch, you'll have to
13 help me. Which exhibit do you wish identified as T4?

14 MR. KELSCH: The EIA annual energy
15 outlook 2006 would be T4, and the CAPP, C-A-P-P, 2005
16 report would be T5.

17 MR. WAHL: The record is noted.

18 Q. (Mr. Binek continuing) You mentioned a
19 date that the emergency response plan will be
20 available. It's the first quarter of something, and
21 I -- and I didn't jot that down. When -- when is
22 that due?

23 **A. Yes, I'm sorry. Our -- our plan today**
24 **is to have -- will be to have that emergency response**
25 **plan in final order and sent to the appropriate**

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1 **agencies in Q1 of 2009.**

2 Q. Excuse me. You also in your
3 testimony -- and I -- and I don't have noted where it
4 was, but you -- you talked about the dedicated leak
5 detection system. Would you explain how that works,
6 this leak detection system?

7 **A. I can explain how that works at a high**
8 **level during this hearing or we can talk about it**
9 **this afternoon. We're going to go into that in some**
10 **detail.**

11 Q. I think if you'd just give an overview,
12 that would be good.

13 **A. TransCanada will have a dedicated leak**
14 **detection system located on its pipeline that will**
15 **relay real-time information to an operations control**
16 **center. And this information -- of course the**
17 **operations control center will be manned 24 hours a**
18 **day, seven days a week, 365 days a year, and this**
19 **leak detection system will -- will relay information**
20 **back to that operations control center and....**

21 Q. How small a leak can be detected by
22 this leak detection system, if -- if you can answer
23 that?

24 **A. Well, I -- I'd like to -- subject to**
25 **check, my -- the group that will have -- discussing**

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1 **it this afternoon, but typically you're talking in**
 2 **the neighborhood of I believe 2 percent.**
 3 Q. What -- what was that -- the last part?
 4 **A. Typically I -- you would anticipate**
 5 **that you would -- you would be able to identify a**
 6 **leak at 2 percent over a certain time period.**
 7 Q. What -- what if there's -- let's -- a
 8 small -- a leak smaller than 2 percent, how is -- how
 9 will that be detected?
 10 MR. WAHL: Mr. Binek, I hesitate to
 11 interrupt, but this is probably outside the scope of
 12 this hearing.
 13 MR. BINEK: It was just part of his
 14 testimony. I'm just --
 15 MR. WAHL: It was also outside the
 16 scope of this hearing but...
 17 MR. BINEK: I'm -- we can go into it
 18 this afternoon.
 19 MR. WAHL: I would recommend that.
 20 All right. We're going to change the
 21 tapes, Mr. Binek. Just a moment, please.
 22 MR. BINEK: Okay.
 23 MR. WAHL: Proceed. You may proceed
 24 when you're ready, Mr. Binek.
 25 MR. BINEK: Thank you.

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1 Q. (Mr. Binek continuing) Under chapter
 2 49-19 of the North Dakota Century Code there -- there
 3 are different provisions that relate to -- to the
 4 carrier's acceptance of the provisions of this
 5 chapter. For instance, 49-19-12 deals with eminent
 6 domain, and it says, "Every common pipeline carrier
 7 which shall have filed with the commission its
 8 acceptance of the provisions ... has, subject to
 9 chapter 32-15, the right and power of eminent
 10 domain." And 49-19-11 states that "a common pipeline
 11 carrier, in the acceptance of the provisions ...
 12 shall agree expressly that it, without
 13 discrimination, will ... carry or purchase the oil,
 14 coal, gas," et cetera.
 15 Does TransCanada accept the provisions
 16 of chapter 49-19?
 17 **A. And are we talking -- so specifically**
 18 **49-19-10?**
 19 MR. KELSCH: Your Honor --
 20 Q. (Mr. Binek continuing) I'm referring
 21 to chapter -- the statute -- and we -- I can
 22 reference specifically Section 49-19-12 which is the
 23 one that deals with eminent domain. It specifically
 24 says that "a common pipeline carrier which shall have
 25 filed with the commission its acceptance with the

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1 provisions of this chapter," et cetera.
 2 And my question to you is, does
 3 TransCanada accept -- accept the provisions of
 4 chapter 49-19 of the North Dakota Century Code?
 5 And -- and that would be all provisions of that
 6 chapter.
 7 MR. KELSCH: Your Honor, I guess this
 8 is really a legal conclusion. We certainly will
 9 comply with North Dakota law if this pipeline is
 10 approved.
 11 MR. BINEK: The law talks about
 12 acceptance of the provisions. My --
 13 MR. WAHL: Yeah.
 14 MR. BINEK: My question simply is
 15 whether TransCanada will agree to accept the
 16 provisions of chapter 49-19.
 17 MR. WAHL: Right. That's the question,
 18 Mr. Kelsch. And Mr. Cowling is asked to answer on
 19 behalf of the corporation.
 20 MR. KELSCH: As I understand, that
 21 if -- if we accept the provisions of this chapters,
 22 then we do the right of eminent domain. If we don't
 23 need eminent domain, whether we would be doing that
 24 or not, I'm not sure. So there are -- is some legal
 25 questions there that I'm not sure that this witness

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1 has --
 2 You know, certainly if we are going to
 3 accept the benefits of 49-19, we have to accept all
 4 the -- the regulations concerned in 49-19. You can't
 5 have the benefits without whatever burden is there,
 6 and -- and certainly we would accept -- accept that.
 7 But as I read that, it's a -- it's a -- if you choose
 8 to do this, you have to do -- if you choose these
 9 rights, you have these obligations as well, and
 10 certainly that would be the case.
 11 MR. BINEK: Your Honor, I believe that
 12 Mr. Cowling previously testified that this -- that
 13 TransCanada is a common pipeline carrier in North
 14 Dakota, and all I'm asking is whether they agree
 15 to -- to comply with the provisions of the pipeline
 16 common carrier chapter and -- which is chapter 49-19
 17 of the North Dakota Century Code. It's pretty
 18 simple.
 19 MR. WAHL: I agree, Mr. Kelsch. If --
 20 if it that was an objection, it's overruled. The
 21 witness may answer the question.
 22 **A. I haven't reviewed this in over 24**
 23 **hours, but I would -- I would suggest to you, yes.**
 24 MR. BINEK: Thank you. I have no
 25 further questions.

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1 MR. WAHL: All right. And I think that
 2 this is a time to stretch and move around a little
 3 bit. But we really are going to be terribly jealous
 4 of our time so let's say five minutes, please. And
 5 by my watch at 10:40.
 6 (A recess was taken from 10:32 a.m.to
 7 10:39 a.m.)
 8 MR. WAHL: Back on the record. We'll
 9 proceed with questions from the commissioners
 10 beginning with Commissioner Cramer.
 11 MR. CRAMER: Thank you, Judge Wahl.
 12 EXAMINATION
 13 BY MR. CRAMER:
 14 Q. A couple of my questions have been
 15 answered -- or asked and answered I guess, especially
 16 as the relates to the EIA forecast, but I have kind
 17 of a couple of different lines of questions. And,
 18 Mr. Cowling, your original testimony has kind of
 19 dragged you into some legal questions that have
 20 obviously become a bit of an issue so I may ask some
 21 similar questions that may require a legal
 22 conclusion. I'll try to ask them in such a way as
 23 to -- to not come to that point.
 24 But the first one getting back to
 25 Mr. Binek's line of questioning regarding common

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1 pipeline carriers and -- and the four criteria. And
 2 just leaving 1, 2 and 3 for a minute, the fourth
 3 criteria reads, "or made a common carrier by or under
 4 the terms of a contract with or in pursuance of the
 5 laws of the United States."
 6 So my question is, if -- if you didn't
 7 meet -- if Keystone didn't meet the first three
 8 criteria as relates to North Dakota access and all of
 9 those things holding yourself out to the public
 10 generally, if FERC or the State Department through
 11 the presidential permit were to determine that
 12 Keystone is in fact a common carrier, do we -- is it
 13 your understanding that this commission would have no
 14 choice but to determine that you're a common carrier?
 15 And I realize again that is a legal conclusion. And
 16 if you can't answer it, at least the question is on
 17 the record; is that fair?
 18 **A. Yeah, I -- at this point in time I**
 19 **cannot answer that.**
 20 Q. All right. Then my next one is, if the
 21 State Department conclude that Keystone does in fact
 22 serve the national interest again through its permit,
 23 presidential permit, do you believe it's this
 24 commission's obligation to determine that the project
 25 serves the North Dakota public interest even if all

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1 the pipeline does is runs through the state?
 2 **A. I do.**
 3 Q. Then you've testified at some length to
 4 the economic impact and value to this construction
 5 project, the construction jobs, the tax revenue
 6 generated, the lease payments. Is it your
 7 understanding that economic impact or value as a
 8 result of the construction and the lease payments and
 9 the taxes that are -- that are received are part of
 10 the standard of public interest or public
 11 convenience? Because I'm not sure that they are.
 12 **A. My -- the benefit to North Dakota that**
 13 **we have tried or attempted to show here are real**
 14 **value as it relates to construction and operations.**
 15 **There's also another benefit to North Dakota as it**
 16 **relates to the basin, the oil basin, and the -- and**
 17 **the pipe capacity around the oil basin. And it is --**
 18 **it is my view that when Keystone is built it will**
 19 **free up pipeline capacity, actually free up pipeline**
 20 **capacity outside of North Dakota that North Dakota**
 21 **producers require to actually leave the state of**
 22 **North Dakota, and with that that will alleviate some**
 23 **of the -- some of the issues or potential issues that**
 24 **North Dakota producers have today with regards to**
 25 **pricing.**

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1 Q. So even if no North Dakota crude gets
 2 on your pipeline, the relief in -- of the bottlenecks
 3 in other places could have some value to North Dakota
 4 exports?
 5 **A. I believe that to be true, yeah.**
 6 Q. All right. Now, you testified earlier
 7 about -- you referred to apportionment, and
 8 apportionment -- those of us on the commission are
 9 very familiar with apportionment and certainly people
 10 in the energy industry in North Dakota are. But
 11 that's when supply and demand exceeds capacity on the
 12 pipeline, and then you have got to through historic
 13 apportions and things to determine whose oil gets on.
 14 I understand all of that.
 15 **A. That's correct.**
 16 Q. Now, you've also testified that
 17 the first 435,000 barrels per day of capacity on the
 18 Keystone project are spoken for, you have contracts
 19 for them through the open bid process which is why
 20 you have made this decision in Patoka, Illinois;
 21 correct?
 22 **A. Yeah. No, I'll just -- I will -- we**
 23 **are designing a pipeline for 435,000 barrels per day**
 24 **of nominal capacity. We have contracts for**
 25 **340,000 barrels a day.**

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1 Q. Okay. So they -- okay. Thank you for
 2 that.
 3 **A. So we do --**
 4 Q. So there's 95,000 barrels of capacity
 5 still remaining on the pipe?
 6 **A. That is correct.**
 7 Q. Now, the Cushing piece is an
 8 additional, what, 155,000 barrels or did I miss...
 9 **A. You're correct. We concluded our open**
 10 **season earlier this year in approximately -- it was**
 11 **approximately three weeks ago now so that we received**
 12 **155,000 barrels of firm commitments for Cushing.**
 13 Q. If at -- well, if at some point there
 14 would be more availability or more opportunity for
 15 this Alberta crude that will be going through the
 16 Keystone pipeline to be utilized by refineries in
 17 Patoka, Cushing or other more -- I'll call them
 18 industrial Midwest areas so that that pipe would will
 19 be filled to capacity, how would that impact the
 20 availability of that pipe for North Dakota crude
 21 should shippers contact you and wish to tap into it
 22 and -- and the common carrier obligations compel you
 23 to -- to allow them on the pipe?
 24 **A. Typically we would manage and operate**
 25 **our pipes so that we would have some excess capacity**

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1 **as it relates to managing our operations and**
 2 **maintenance and downtime. So typically, you know,**
 3 **your availability or load factor is probably in that**
 4 **90 percent so there will -- there will be excess on**
 5 **our pipeline.**
 6 Q. There will be you said. I mean, and
 7 the reason I ask that, you know, so firmly and ask
 8 for a firm --
 9 **A. Yeah.**
 10 Q. -- answer is obviously you've testified
 11 that there's apportionment on all --
 12 **A. Yeah.**
 13 Q. -- many of the existing pipelines. We
 14 know that you've testified and the EIA concludes that
 15 there is a growing demand so are we certain that
 16 there will always be that capacity?
 17 **A. And maybe I will preface that. Based**
 18 **on where we're at today with our project, our**
 19 **project -- the original project had a design of**
 20 **435,000 barrels, and we have 340 in contract. When**
 21 **you add in the addition of Cushing, we still have a**
 22 **nice portion of excess capacity in our pipeline.**
 23 **TransCanada, slash, Keystone, if there are**
 24 **opportunities again in the future as the U.S. demand**
 25 **for oil continues to rise -- and if -- if you look at**

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1 **today's environment with regards to uncertainty and**
 2 **unrest in other parts of the world of which the U.S.**
 3 **relies on today, I would anticipate that supply will**
 4 **grow from Canada, a reliable supply will grow from**
 5 **Canada. And I -- I would anticipate that in the**
 6 **next -- I would anticipate in the next five to ten**
 7 **years there will be additional pipelines from Canada**
 8 **built down through to the Midwest and -- and other**
 9 **parts of -- of -- of the U.S.**
 10 Q. Okay. I have a question then about the
 11 type of oil that -- that is produced from the tar
 12 sands of Alberta that will be on this pipeline. Is
 13 it true that it is a rather sour oil?
 14 **A. We've got -- the tariff that -- that we**
 15 **have we can ship depending upon what customers want.**
 16 Q. I was going to get to that, yes.
 17 **A. We're able to ship different products.**
 18 **Essentially to simplify it, we will -- we anticipate**
 19 **shipping synthetic and heavy crude oil blends.**
 20 Q. Okay. I want to flesh this out a
 21 little more. Is it -- before -- before the
 22 refineries in places like Patoka or Cushing signed
 23 the contract with you for your type of oil or for --
 24 for your product, do they have to retrofit or if
 25 they're -- if they're expanding their refinery

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1 capacity, do they customize it to a specific type of
 2 oil to make sure that they're maximizing productivity
 3 and efficiency?
 4 **A. I would certainly anticipate that**
 5 **the -- that the delivery points off our system that**
 6 **there would be investment at those facilities to --**
 7 **both to retrofit and actually I think probably there**
 8 **may be some expansion. So I think there will be a**
 9 **need to invest in those -- in those refineries.**
 10 Q. But in that investment then, are they
 11 investing or customizing the process that they use to
 12 meet the specs of your oil? And the reason I ask
 13 that is probably obvious. As you look to provide
 14 more capacity on the pipeline -- or say that North
 15 Dakota is a very sweet North Dakota crude from the
 16 Bakken clay which is a different type of oil than
 17 you're receiving --
 18 **A. Yes.**
 19 Q. -- would you have a conflict if your
 20 customers on the other end require your type of oil
 21 versus this sweet crude? Does that ever -- does that
 22 ever enter in?
 23 **A. Yeah, the way that -- the way the**
 24 **pipeline is actually designed and will be operated is**
 25 **we will have batches of -- of commodity going down**

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1 **our pipeline. So that if a customer has a type of**
 2 **oil, we will send that oil down our pipeline, and we**
 3 **will -- the way that we've got the system designed is**
 4 **to alleviate any comingling between batches so that**
 5 **we're keeping the -- the product as per our -- what**
 6 **our customers are expecting.**
 7 Q. So a North Dakota shipper that wanted
 8 to put Bakken sweet crude on the pipeline would have
 9 to have their own customer at the other end probably
 10 that may not be yours?
 11 **A. Yeah. I -- you know, I'm not -- again**
 12 **I think the key for us is that we are dealing with --**
 13 **first of all, we don't own the oil.**
 14 Q. Right.
 15 **A. We're dealing with upstream producers,**
 16 **and we're dealing with downstream refiners. And we**
 17 **would leave it up to the producers of North Dakota to**
 18 **manage that -- that type of transaction.**
 19 Q. Do you -- do you happen to know off the
 20 top of your head -- and it's -- it may be referenced
 21 in the EIA study. I've read that study three or four
 22 times, the newest one, and I don't recall, but do you
 23 have any idea what percentage of the United States
 24 consumption comes from places that we have -- I think
 25 you referred to it, unrest, the Middle East,

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1 Venezuela, places where we might have some conflict?
 2 **A. I -- I think -- and if I -- if my**
 3 **memory serves me correct, as it relates to**
 4 **macroeconomics --**
 5 Q. Yes.
 6 **A. -- five of the top six oil reserves are**
 7 **found outside of North America. Today, as outlined**
 8 **in my testimony, Canada is currently second as it**
 9 **relates to known oil reserves.**
 10 Q. But in terms of what we import, you
 11 don't know what percentage of that comes from the
 12 Middle East?
 13 **A. Actually at this point in time I don't.**
 14 Q. All right.
 15 **A. I can certainly --**
 16 Q. I just have one other question then as
 17 it relates to new sources of supply. Has TransCanada
 18 done any studies or does the EIA report that you know
 19 of reference the impact that alternative forms of
 20 products and/or forms of fuel, refined product or
 21 energy, what role that might play in meeting the
 22 growing demand and how that impacts your investment
 23 decisions?
 24 **A. I'm sorry. I -- I'm having -- I had a**
 25 **little bit of difficulty understanding your question.**

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1 Q. Sure. The question is, do you know --
 2 do you know what is it -- the anticipated impact of
 3 alternative forms of energy moving forward on meeting
 4 the growing demand and perhaps a diminishing demand
 5 for traditional products?
 6 **A. I can certainly say I'm not an expert**
 7 **at that --**
 8 Q. Uh-huh.
 9 **A. -- and I -- I cannot answer that**
 10 **question as it relates to the United States.**
 11 Q. Uh-huh.
 12 **A. I do know that a lot of companies like**
 13 **ourselves are -- think that's very important, and we**
 14 **have in one of our portfolios, energy portfolios,**
 15 **wind assets and -- and hydrodams, et cetera, to -- so**
 16 **we believe that's important, but I can't answer your**
 17 **question.**
 18 Q. All right. I just have one final
 19 question then, and this might be one of those legal
 20 conclusions. Is it your understanding if it was
 21 determined that this is not -- that the Keystone
 22 pipeline is not a common carrier that a PC & N
 23 certificate is not necessary? Do you know anything
 24 about that? Again I know you're not an attorney --
 25 **A. Yeah, I'm --**

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1 Q. -- and you don't know the answer.
 2 **A. I'm not an attorney. I -- all I --**
 3 **what I would respond to that is based on the**
 4 **discussions that I've had with -- with our attorneys**
 5 **is that I believe that we are a common carrier**
 6 **pipeline in North Dakota.**
 7 MR. CRAMER: Thank you. I have nothing
 8 further.
 9 MR. WAHL: Commissioner Wefald?
 10 MS. WEFALD: Yes.
 11 EXAMINATION
 12 BY MS. WEFALD:
 13 Q. In terms of commitments from producers
 14 who wish to have you transport their oil, you said
 15 that the open season is done and you've gotten a
 16 number of commitments. What's the next time frame
 17 if -- what is the next time frame for people to
 18 get -- to make arrangements with you for transporting
 19 their product?
 20 **A. In particular for Keystone we are -- we**
 21 **are focused now on building this project as it**
 22 **relates to TransCanada. TransCanada Corporation or**
 23 **TransCanada continues to look at opportunities**
 24 **throughout North America, and I'm not privy to any**
 25 **other open seasons and in particular for Keystone**

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1 **that -- the project that we have in front of us**
 2 **today.**
 3 Q. So what does that mean when you
 4 answered earlier that you're still open to any
 5 negotiations and agreements from North Dakota
 6 producers for North Dakota oil products?
 7 **A. From -- that is not, quote, unquote,**
 8 **what I would call an open season. That is daily**
 9 **business transactions and activities that would --**
 10 **that would occur between the North Dakota producers**
 11 **and TransCanada.**
 12 Q. But help me understand this. They
 13 don't need to sign up under the open season?
 14 **A. They would -- the open season is a term**
 15 **when -- and it's a long process that you go out to**
 16 **the entire market --**
 17 Q. Yes.
 18 **A. -- for. What we're talking about here**
 19 **specifically with the North Dakota producers would be**
 20 **a relationship between the North Dakota producers and**
 21 **TransCanada and a negotiation on an interconnection**
 22 **agreement, and then subsequent to that a contract if**
 23 **both parties found that it was reasonable.**
 24 Q. Thank you. This has -- this -- these
 25 questions relate to the labor force that you referred

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1 to in No. -- on page 4 under -- under line 16: 10 to
 2 15 percent of the workforce will be hired locally.
 3 How will you be doing this? Will these be contracts
 4 that will go out for different product that's needed
 5 and work that's needed? How will people in North
 6 Dakota be hired? What is that process?
 7 **A. I can't go into detail today about the**
 8 **process. Currently what we are -- we're currently**
 9 **undergoing detailed construction planning for the**
 10 **project. And as we go through that detailed**
 11 **construction planning putting together our spread**
 12 **plans for the construction of the pipeline and the**
 13 **pump stations, it will be a by-product of that as it**
 14 **relates to the type of -- the type of individual**
 15 **or -- or contractor company or core person that we**
 16 **would require as well as any materials that would --**
 17 **that we would require, and we would go through that**
 18 **through detailed execution planning of the project.**
 19 Q. Are those listed through North Dakota
 20 Job Service or through -- if it's a contract for bid
 21 listed in the -- somewhere in a public notice?
 22 **A. I don't know yet. I haven't -- I**
 23 **haven't given a lot of thought with regards to how we**
 24 **would -- how we would go to the marketplace whether**
 25 **it would be in local newspapers or -- or bid -- bid**

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1 **contracts. More than likely it could be all of the**
 2 **above as we work through the process.**
 3 Q. And are you willing to go through North
 4 Dakota Job Service and to put things in the paper
 5 regarding bids that are needed from contractors and
 6 public notices?
 7 **A. Well, again I think what we need --**
 8 **what -- what we need to do as a company is -- is**
 9 **fine-tune our construction, implementation plan. I**
 10 **would suggest to you that I would not be -- I would**
 11 **not -- I think that that may be a useful product for**
 12 **us or a useful media for us.**
 13 Q. But you can't commit to that at this
 14 time?
 15 **A. I -- that's a tough one. I think I --**
 16 **if you can tell me a little bit more about -- I'm not**
 17 **sure I even know what the product is that you're**
 18 **talking about or the -- the North Dakota media.**
 19 MR. KELSCH: Are you -- are you asking
 20 about laborers and workers?
 21 MS. WEFALD: Yes, I am. Laborers and
 22 workers, uh-huh.
 23 MR. KELSCH: So finding laborers and
 24 workers for the --
 25 MS. WEFALD: Right.

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1 MR. KELSCH: -- for the job --
 2 MS. WEFALD: Uh-huh.
 3 MR. KELSCH: -- and where they would
 4 find those?
 5 MS. WEFALD: Uh-huh. Yes, I am.
 6 **A. I think -- you know, again I think at**
 7 **this time we've -- we've got to understand how we**
 8 **will go out to the marketplace. Be rest assured that**
 9 **we will be hiring folks from North Dakota. Now, how**
 10 **we -- how we go about hiring them I think is still**
 11 **something that we need to go into -- into more**
 12 **detail.**
 13 Q. (Ms. Wefald continuing) Do you hire
 14 union workers?
 15 **A. Yes. Again the pipeline construction**
 16 **business, in particular in the United States, the**
 17 **bulk of our -- our construction crews will be -- will**
 18 **be coming from -- from unions.**
 19 Q. And it -- on page 4, line 13:
 20 Construction will involve two spreads of North Dakota
 21 with 500 to 600 workers for each spread. Describe
 22 for us what a spread is, please.
 23 **A. And we're going to go into that in**
 24 **detail this afternoon with pictures, et cetera,**
 25 **for -- for everybody. A spread is essentially, if**

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1 **you think about it, a construction crew that goes**
 2 **through and prepares the right-of-way that digs the**
 3 **ditch for the pipe, that lays the pipe, welds the**
 4 **pipe, lays the pipe in the -- in the -- in the**
 5 **pipeline ditch, and then actually goes through and**
 6 **remediates the work. And -- and we will go into that**
 7 **in -- in a little bit more detail this afternoon with**
 8 **some -- some graphics and pictures.**
 9 MS. WEFALD: Thank you. That's all the
 10 questions I have at this time.
 11 MR. WAHL: Commissioner Clark?
 12 MR. CLARK: Just a few.
 13 EXAMINATION
 14 BY MR. CLARK:
 15 Q. Could you define again for me the
 16 Petroleum Area for Defense District II?
 17 Geographically what area are we talking about?
 18 **A. It's -- I'd have to -- actually have to**
 19 **show you a picture. Do we have a....**
 20 Q. Maybe I'll ask. Will that be in the --
 21 the late-filed exhibit?
 22 **A. I think it is. And if it's not, I**
 23 **will -- I will --**
 24 Q. Okay.
 25 **A. -- make sure that it's in there.**

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1 Q. Okay. Thanks.
 2 MR. WAHL: And I'm sorry, Commissioner.
 3 As part of what exhibit, please?
 4 MR. CLARK: T5 I think.
 5 MR. KELSCH: The --
 6 MR. WAHL: T5?
 7 MR. KELSCH: That's -- that's in the
 8 CAPP T5.
 9 MR. WAHL: T5. All right.
 10 **A. So -- I believe it is in there.**
 11 Q. (Mr. Clark continuing) Okay. Thank
 12 you. In your testimony on page 4 you had some
 13 discussion of oil pipelines operated as interstate
 14 commerce subject to FERC, and there were questions
 15 later on by intervenor counsel about the profit that
 16 Keystone TransCanada would make off this. Are there
 17 tariffs filed with the FERC for what you can charge
 18 as a pipeline for folks who are going to be using
 19 your services?
 20 **A. Those have not been filed with the FERC**
 21 **yet.**
 22 Q. But they will be?
 23 **A. They will be.**
 24 Q. And as I understand it, those are
 25 subject to challenge; correct? So if a -- if a

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1 shipper felt that what it is being charged by
 2 Keystone is out of line, there would -- the redress
 3 would be to file a rate complaint in front of the
 4 Federal Energy Regulatory Commission; is that
 5 correct?
 6 **A. That is -- that is my understanding.**
 7 Q. Okay. So -- just so I understand it,
 8 the profit that Keystone makes is not off the oil
 9 production itself? It's -- it's a regulated product
 10 as a common carrier so your -- your profit is a
 11 regulated profit by the federal government, U.S.
 12 government, and is -- is made off what you charge
 13 those shippers?
 14 **A. The way that -- the way that we look**
 15 **at -- at -- this is there's -- there's three -- three**
 16 **components to kind of the value chain. That you've**
 17 **got the producers upstream, and you've got the**
 18 **refiners downstream. And really what we are is -- is**
 19 **we're -- we're really just the trucking company**
 20 **between them. So we do not own the -- we do not own**
 21 **the product. We own -- we own the facilities that --**
 22 **we own the trucks. So, no, we do not make profit off**
 23 **per say the oil.**
 24 Q. Okay. There have been some questions
 25 about taps. Does -- does North Dakota crude and the

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1 oil sands crude, does that -- does that mix well? As
 2 I understand, the -- the viscosity of the oil sands
 3 oil is very -- it's almost like cold molasses. Do
 4 you -- how do you -- how would you -- a tap work in
 5 theory?
 6 **A. Well -- well, again it goes back to the**
 7 **operational framework for the pipeline in that**
 8 **actually our -- our design is built around not having**
 9 **them comingle. What we want to do for -- for**
 10 **customers is actually have batches of oil that the**
 11 **customer actually puts into -- into our pipeline, and**
 12 **what that customer gets out was really -- was really**
 13 **their -- their commodities.**
 14 Q. So you run something through that --
 15 that actually differentiates the product in the
 16 pipeline itself?
 17 **A. The way that the hydraulics and system**
 18 **design work, that's -- that's what we've -- that's**
 19 **what we've tried to design.**
 20 Q. Okay. On the bottom of page 4 and the
 21 top of page 5 in your testimony you talked about
 22 taxes that are paid to local governments in North
 23 Dakota, and you had mentioned property taxes of
 24 5.2 million in the first year and thereafter, and
 25 then in addition Keystone will pay ad valorem taxes

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1 to local governments. How would that be different
 2 from the property tax? As I understand -- I mean,
 3 property tax is an ad valorem tax; correct? I'm just
 4 trying to get a sense for what the -- the difference
 5 between that ad valorem tax you reference and
 6 property taxes are.
 7 MR. KELSCH: We can respond to that
 8 in -- in our briefing afterwards.
 9 MR. CLARK: Okay.
 10 **A. I was -- I was advised that they were**
 11 **different.**
 12 Q. (Mr. Clark continuing) Okay.
 13 **A. -- so I can -- I can respond to that.**
 14 Q. And there may be a different forms of
 15 ad valorem tax.
 16 **A. Yeah.**
 17 Q. I think property is just one of them.
 18 I'm curious what the difference is.
 19 **A. Yes.**
 20 Q. Just to -- to clarify, are you -- you
 21 had mentioned that -- the depressed oil prices in
 22 western North Dakota because of the bottleneck. Are
 23 you familiar with that situation in the western part
 24 of our state?
 25 **A. I have read numerous media on that --**

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1 **on that issue and have also had the opportunity to**
 2 **review presentations from folks around North Dakota**
 3 **and -- and some of the folks out -- out west.**
 4 Q. Okay. Just to clarify, the -- the
 5 decreased price that western North Dakota oil
 6 producers receive does not reflect a decreased price
 7 at the pump for North Dakota consumers; does it?
 8 **A. That -- that is correct.**
 9 Q. So somewhere it's being captured in the
 10 middle, but it's not -- well, I guess what I'm -- the
 11 point I'm making is is folks shouldn't be worried
 12 here that an increased price that North Dakotans
 13 receive for their production doesn't equate to an
 14 increased price at the retail pumps?
 15 **A. That is correct. When you take a look**
 16 **at the -- this is really a world market. And -- and**
 17 **pricing is driven by -- as in my testimony, when you**
 18 **take a look at the big oil -- oil producers, it's**
 19 **really a macroeconomics discussion.**
 20 Q. And just two final questions.
 21 TransCanada you mentioned is a public company. It's
 22 traded on which exchange?
 23 **A. TransCanada is traded on -- on both the**
 24 **Toronto Stock Exchange and the New York Stock**
 25 **Exchange.**

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1 Q. And are you familiar with TransCanada's
 2 corporate bond ratings?
 3 **A. I am familiar. However, maybe a little**
 4 **bit dated.**
 5 Q. Okay. Could -- could the applicant
 6 provide the most recent corporate bond ratings?
 7 I'd -- I assume probably the three major firms rate
 8 the company, if those could be provided, and maybe
 9 with a, I don't know, ten-year historical average or
 10 whatever a sample would be.
 11 **A. We will -- we will undertake to provide**
 12 **that information to you actually overnight.**
 13 Q. Okay. Great.
 14 MR. WAHL: For the record, that will be
 15 late-filed Exhibit T6.
 16 Q. (Mr. Clark continuing) Thank you. And
 17 with that trend line so we have a sense for whether
 18 it's been upgraded or downgraded recently.
 19 **A. We -- I'll -- I'll wait and let you see**
 20 **numbers.**
 21 Q. Okay. Thank you. And would -- as part
 22 of this would Keystone be willing to agree to some
 23 sort of progress report on the laborer questions that
 24 Commissioner Wefald had asked so that throughout the
 25 process the commission is kept up to date on North

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1 Dakota hires, things like that, the process that's
 2 being taken to....
 3 **A. Certainly.**
 4 MR. CLARK: Okay. Thank you. That's
 5 all I have.
 6 MR. WAHL: Any follow-up from any
 7 commissioner?
 8 MR. CRAMER: Nothing more for me.
 9 MS. WEFALD: No.
 10 MR. CLARK: Thank you.
 11 MR. WAHL: Mr. Kelsch, follow-up?
 12 MR. KELSCH: Yes. Thank you, your
 13 Honor.
 14 EXAMINATION
 15 BY MR. KELSCH:
 16 Q. Mr. -- Mr. Cowling, in the
 17 cross-examination from the -- Mr. Delaney, he asked
 18 you about your I guess role in preparing the
 19 application, and I think you -- you testified that
 20 you hadn't -- you didn't actually do all the work but
 21 you were more of an oversight role. Could you tell
 22 the commission what basically your oversight role
 23 entailed?
 24 **A. The oversight that I provided in**
 25 **putting the -- the application together was that of**

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1 **policy. I was very much engaged in reviewing the**
 2 **application. And of course at the end of the day I**
 3 **signed my name to the application so I did review the**
 4 **entire filing.**
 5 MR. KELSCH: Just to get -- if I may
 6 ask a procedural question, your Honor. Is the
 7 application -- or can the application be treated as
 8 an exhibit in this action? I think it probably
 9 should because we're -- we're -- a lot of references
 10 to that. Could I offer that as an exhibit?
 11 MR. WAHL: You may. I'm not sure that
 12 it's necessary, Mr. Kelsch, but I -- if -- fine, make
 13 your record.
 14 MR. KELSCH: Okay. I would offer the
 15 application as T7. I apologize. I don't have an
 16 extra copy right here, but we can -- I think it's --
 17 we have a number of them filed with the -- the
 18 commission, and we can get -- get a separate one that
 19 can be marked.
 20 MR. WAHL: I might ask a little
 21 assistance from commission counsel. But I wonder if
 22 we shouldn't for the record mark -- have the -- have
 23 the commission's official application marked as
 24 Exhibit T6, Mr. Binek -- or T7.
 25 MR. BINEK: We can do that.

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1 MR. WAHL: T7.
 2 MR. BINEK: We can do that.
 3 MR. WAHL: Is that satisfactory to the
 4 commission?
 5 MR. BINEK: Yes, that is commonly the
 6 way we do it.
 7 MR. WAHL: All right. For the record
 8 then, the application for the certificate of public
 9 convenience and necessity in case No. PU-07-15 (sic)
 10 will be marked for the record as Exhibit T7.
 11 MR. KELSCH: And I would offer that.
 12 MR. DELANEY: No objection.
 13 MR. WAHL: Mr. Binek?
 14 MR. BINEK: Would -- would you like
 15 that right now?
 16 MR. WAHL: No. You don't need to --
 17 MR. KELSCH: No.
 18 MR. WAHL: We don't need to do that
 19 now. Exhibit T7 is received.
 20 Q. (Mr. Kelsch continuing) Mr. Cowling,
 21 there was some talk about demand and also some --
 22 some talk about shipper contracts that -- that have
 23 already been signed. Does the fact that you have
 24 contracts that are signed, does that indicate that
 25 there's some demand for the product?

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1 **A. Yes, I think -- I think it's important**
 2 **to note that through the testimony filed as well as**
 3 **two of the exhibits that will be filed with the EIA**
 4 **and the CAPP forecasts, that's one piece of -- of --**
 5 **of information. The second piece of information is**
 6 **we do have contracts that underpin the pipeline so**
 7 **that the market and the demand for the crude oil,**
 8 **this is required.**
 9 Q. In those contracts, if I understand it,
 10 the contract would be with the -- the -- I guess the
 11 producer as well as the -- the end user down in the
 12 United States?
 13 **A. Those contracts actually can be with**
 14 **either a producer or a refiner, a lot of companies,**
 15 **big oil companies or both. At this point in time**
 16 **what I can tell you is that it can be producer driven**
 17 **or -- or driven by the market.**
 18 Q. You testified some about the contacts
 19 that you've had in North Dakota concerning Keystone
 20 taking or accepting North Dakota crude in the
 21 pipeline. Could you go into a little more detail as
 22 far as when North Dakota individuals you've dealt
 23 with or had contacts with? Did you have the -- did
 24 you meet with the North Dakota governor concerning
 25 that possibility?

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1 **A. I did not meet with the North Dakota**
 2 **governor, but I am aware that TransCanada Keystone**
 3 **did.**
 4 Q. Okay. And how about the North Dakota
 5 attorney general as well?
 6 **A. I did not meet with those folks, but I**
 7 **do know that TransCanada Keystone did as well.**
 8 Q. Okay. The -- does the same go with
 9 the -- and whether it's you or your company -- the
 10 company I guess that --
 11 **A. Yeah.**
 12 Q. -- you're representing, did they have
 13 meetings with the Industrial Commission?
 14 **A. Yes.**
 15 Q. How about the -- some of the North
 16 Dakota patroller -- petroleum marketers groups or
 17 organizations?
 18 **A. My understanding is, yes.**
 19 Q. The -- in response to a question by the
 20 commission, Commissioner Wefald, she was asking about
 21 the spreads. And correct me if I'm -- are you
 22 basically having two separate operations -- pipeline
 23 operations going on at the same -- roughly the same
 24 time in the state?
 25 **A. That is correct.**

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1 Q. So two separate crews?

2 **A. That's correct. So when you take a**

3 **look at -- at the -- the information filed in my**

4 **testimony, there would probably be in the**

5 **neighborhood of a thousand workers.**

6 MR. KELSCH: I have no further

7 questions.

8 MR. WAHL: Follow-up, Mr. Delaney?

9 MR. DELANEY: Yes. Thank you.

10 EXAMINATION

11 BY MR. DELANEY:

12 Q. I want to flesh out this comingling or

13 your avoidance of comingling in the pipeline. So are

14 you saying you would be able to deliver Canadian oil

15 to Illinois and also deliver North Dakota oil to

16 somewhere else in the country at the same time or

17 would you have to shut -- shut it off for the

18 Canadian oil while you're delivering the North Dakota

19 oil?

20 **A. Operationally there -- there is**

21 **operational steps that you would go through so that**

22 **there -- our goal would be not to have comingled**

23 **crude in that, as an example for the North Dakota**

24 **producers, more than likely there would be**

25 **operational tankage required. And then, for example,**

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1 **to simplify it, a batch of Canadian crude goes by,**

2 **and then you open up a -- a valve or a delivery point**

3 **and the North Dakota oil is then delivered into the**

4 **pipeline system.**

5 Q. Okay. So you would have to close a

6 valve I presume on -- from the oil coming from Canada

7 in order to allow the North Dakota oil to go into the

8 pipeline without intermingling the two?

9 **A. Operationally we'll get into that more**

10 **this afternoon and I'll have folks here to speak**

11 **specifically about operations, but it would not**

12 **impact the upstream customers --**

13 Q. So there would be --

14 **A. -- in my opinion.**

15 Q. So there would be a consistent flow of

16 this 345,000 barrels per day to Illinois while

17 you're -- you know, if hypothetically North Dakota

18 were to connect, you would have that consistent flow

19 of 345,000 barrels per day to Illinois while you're

20 also transporting North Dakota oil?

21 **A. Actually we have 340,000 barrels of**

22 **contracts. And if the North Dakota producers had an**

23 **interconnection or -- we would have more than**

24 **340,000 barrels a day because that would -- any --**

25 **any oil that they would bring on to the system would**

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1 **increase the throughput of the system.**

2 Q. And I understand that. But I

3 understand these contracts that you have currently

4 are for Canadian crude oil from the oil sense;

5 correct?

6 **A. They are contracts for receipt of crude**

7 **oil that meets TransCanada's spec at a receipt point**

8 **called Hardesty, Alberta.**

9 Q. Okay. But the North Dakota oil would

10 be a different type of oil that you would not want

11 intermingled with the Canadian oil; correct?

12 **A. I wouldn't say not want. I think**

13 **operationally and the way that the value that is**

14 **being added by Keystone is that we're trying to batch**

15 **different types of -- of product and -- and ensure**

16 **that there's as minimal amount of comingling as**

17 **possible.**

18 Q. Okay.

19 **A. Typically when you get high-grade**

20 **crude, if you comingle it with something of -- of**

21 **lesser value, your high-grade crude gets discounted**

22 **heavily.**

23 Q. Okay. And so I guess my question very

24 simply is this: You currently have contracts for

25 Canadian oil, the delivery of a certain amount of

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1 Canadian oil. Are you going to be able to maintain

2 consistent delivery of whatever it's for -- I think

3 you said 340,000 barrels a day -- if and when North

4 Dakota wishes to use your pipeline to deliver its

5 oil?

6 **A. I think I answered this question a**

7 **little bit differently early in my testimony --**

8 Q. Okay.

9 **A. -- but what I'm suggesting is is that**

10 **TransCanada, slash, Keystone is open to discussions**

11 **with North Dakota producers. If there is an**

12 **opportunity to actually have North Dakota oil go down**

13 **Keystone, we are fully open to that discussion.**

14 Q. And I understand that, Mr. Cowling. I

15 guess maybe I can better explain it this way. You've

16 testified that you don't want North Dakota oil

17 comingling with your Canadian oil; correct?

18 **A. Actually I'll reword it. We don't --**

19 **actually as it relates to Hardesty, we have different**

20 **customers and different types of oils.**

21 Q. Okay.

22 **A. So it actually -- we've got batches**

23 **going down our pipeline system even from Hardesty.**

24 **So different customers, we've tried to batch their**

25 **oil so this is not a North Dakota phenomenon. It's**

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1 **back to Hardesty, Alberta.**
 2 Q. Okay. So adding oil from North Dakota
 3 or South Dakota or any one of the other states along
 4 the line will not impede in any way your ability to
 5 get the oil that you've currently contracted for to
 6 your customers?
 7 **A. That certainly is our -- is our plan.**
 8 **We've got certain contracts in place right now, and**
 9 **we -- we've got contracts in place and that's -- our**
 10 **plan is not to impede or not to be able to deliver on**
 11 **our contractual commitments.**
 12 Q. And maybe I'll try to articulate my
 13 concern. My concern would be that you currently have
 14 an obligation right now. You've got contracts in
 15 place. And if you are indeed a common carrier and
 16 you have an obligation to North Dakota, South Dakota,
 17 whatever other states you're going through, are you
 18 going to be able to fulfill your obligation to those
 19 you've contracted with yet at the same time add or
 20 allow for that matter these other states or other
 21 suppliers to use your pipeline?
 22 **A. Well, I think I already mentioned that**
 23 **as well. We're -- we're building our pipeline to a**
 24 **nominal capacity of 435,000 barrels initially. The**
 25 **contract's for 340. We're not going to enter --**

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1 **we're not going to -- the contracts that we sign, we**
 2 **will -- we will follow through on so, no.**
 3 Q. Okay. Let's talk about supply. In
 4 North Dakota are you aware of what -- the quantity of
 5 supply North Dakota has and how much -- how much
 6 capacity they would take up if they were to
 7 interconnect?
 8 **A. Generally I think the Williston Basin**
 9 **subject to check I think is 200,000 barrels a day and**
 10 **I think when you take a look at North Dakota, I think**
 11 **about half of that is -- is produced in North Dakota,**
 12 **at least half. Currently today there's a pipeline**
 13 **that actually takes that oil out of North Dakota from**
 14 **the western side of North Dakota moving it east. And**
 15 **there is -- so there is a pipeline today that does**
 16 **that. I believe that pipeline has actually -- has**
 17 **been operating at or very close to -- to capacity,**
 18 **and I believe that pipeline actually has expansion**
 19 **plans, at least if I can recall that I have read**
 20 **in -- in newspapers or -- or other articles that I**
 21 **have read.**
 22 Q. So have you explored how much capacity
 23 North Dakota would need if -- if and when they were
 24 to interconnect?
 25 **A. No. I think that's going to be up to**

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1 **the North Dakota --**
 2 Q. Okay.
 3 **A. -- producers to -- to let us understand**
 4 **what business model they might have and what**
 5 **requirements they might have.**
 6 Q. Now, we've talked a little bit about
 7 the North Dakota common carrier statutes. This
 8 pipeline is going through a number of states. Are
 9 there similar -- you're in charge of permitting and
 10 that sort of thing so I guess if you don't -- if you
 11 don't know, then you don't know. But are there
 12 similar statutes or obligations that you have in
 13 other states where you would have to allow them to
 14 interconnect with your pipeline?
 15 MR. KELSCH: Your Honor, I'm going to
 16 object to this question. I think it's certainly
 17 beyond the scope of any direct and questions from
 18 this commission. It's also probably beyond the scope
 19 of this proceedings talking about other states.
 20 MR. DELANEY: I guess if I could
 21 respond briefly, your Honor.
 22 MR. WAHL: Go ahead.
 23 MR. DELANEY: My concern is -- is their
 24 capacity. And if they have an obligation to North
 25 Dakota and they have similar obligations to other

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1 states, I think that would have a direct impact on
 2 their ability or lack thereof to allow North Dakota
 3 to connect.
 4 MR. WAHL: The objection's overruled.
 5 You may have to restate the question for the witness.
 6 MR. DELANEY: I'll -- I'll try. And
 7 it's confusing, I'll try and rephrase.
 8 Q. (Mr. Delaney continuing) I'm -- we've
 9 talked about the North Dakota common carrier statutes
 10 and your obligation as a pipeline company to allow
 11 North Dakota to connect if -- if they desire to. Are
 12 there similar obligations that you have to suppliers
 13 in other states?
 14 **A. I think --**
 15 MR. KELSCH: Your Honor, he has
 16 testified that he is aware that there's a federal
 17 FERC obligation that controls the operation of the
 18 pipeline, but to expect this witness to -- to know
 19 the state-by-state regulations....
 20 MR. WAHL: Well, but then, Mr. Kelsch,
 21 his answer is he doesn't know. You should try to
 22 answer the question as best you can, Mr. Cowling. If
 23 you don't know, you don't know.
 24 **A. Actually subject to check, the way that**
 25 **I would answer that question is actually each state**

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1 **has different state regulatory requirements, and**
 2 **we're currently working our way through those**
 3 **regulatory requirements, including North Dakota.**
 4 Q. (Mr. Delaney continuing) Have you
 5 looked at or studied the quantity of supply in the
 6 other states that the pipeline is passing through?
 7 **A. The company -- I would suggest to you**
 8 **that we've done preliminary review. I would suggest**
 9 **to you that today as it relates to supply, North**
 10 **Dakota is -- is -- has probably the biggest supply**
 11 **out of -- out of the states that we go through.**
 12 Q. So are you representing to this
 13 commission that regardless of what regulations govern
 14 any other states and regardless of what quantities of
 15 oil they may wish to have you transport, you are
 16 guaranteeing that any oil North Dakota wishes to
 17 transport they will be able to do so through your
 18 pipeline?
 19 **A. No, I'm not. I'm suggesting to you**
 20 **that -- or is that we will have discussions with the**
 21 **North Dakota producers and that we would -- that we**
 22 **would need to sit down and work through their**
 23 **requirements, what the -- what the pipeline**
 24 **requirements are as it relates to pricing and -- and**
 25 **spec, et cetera. What I said in my testimony is**

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1 **TransCanada Keystone is willing and able to start**
 2 **those discussions, and in subsequent testimony**
 3 **we've -- we've actually had some initial**
 4 **conversations.**
 5 Q. Okay. So hypothetically speaking if
 6 North Dakota were to -- a North Dakota supplier were
 7 to approach you and say, "I -- I want to use your
 8 pipeline to transport oil. I have a hundred thousand
 9 barrels per day that I want delivered through your
 10 pipeline," what's the process then? I mean in terms
 11 of figuring out whether you have capacity for that.
 12 **A. Well, it's -- it's a negotiation, and**
 13 **we would run and look at our pipeline system. First**
 14 **of all let me start with, I don't think that's**
 15 **probably realistic.**
 16 Q. Okay. Well, and I'm just throwing out
 17 a number.
 18 **A. What's -- you know, based on what I had**
 19 **suggested earlier, that number is -- is very high.**
 20 **What we would do is we would sit down with the**
 21 **customer, and we would work out a commercial**
 22 **transaction that made sense to both parties. And**
 23 **there's two alternatives. One alternative is you**
 24 **have spare capacity and you complete the facilities**
 25 **required upstream. That would be pipe and other**

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1 **auxiliary equipment, and you would provide the**
 2 **service. As -- as we move forward -- and that's --**
 3 **you know, based on where we're at today, at least my**
 4 **understanding of the -- of the business here in North**
 5 **Dakota, that's -- that's the way that that -- that**
 6 **process would work.**
 7 Q. Okay. You mentioned it's a
 8 negotiation. But my understanding is Keystone would
 9 have an obligation if indeed there is a supplier in
 10 North Dakota that wishes to use the pipeline; am I
 11 right?
 12 **A. Yeah, there's two issues. We -- we**
 13 **have a contract, and we have a tariff so we will**
 14 **utilize that as part of our discussion. Now, when I**
 15 **talk about negotiation, there will be other**
 16 **facilities that would -- that potentially would be**
 17 **required to get the product from to Keystone. So the**
 18 **answer is we've got a -- we've got a contract, we've**
 19 **got a tariff so those would be utilized in those**
 20 **discussions.**
 21 Q. So am I correct in saying that
 22 TransCanada Keystone Pipeline, LP, hasn't not done
 23 any studies to assess the full potential capacity
 24 needed to fulfill obligations to all of the states
 25 along the line to allow them to transport oil?

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1 **A. The answer to that I believe is you're**
 2 **correct.**
 3 Q. Okay.
 4 **A. And, you know, I'd just maybe close off**
 5 **by saying the oil -- and again I believe North Dakota**
 6 **is in actually a very -- very nice position here**
 7 **where North Dakota actually has what I would call a**
 8 **significant amount of oil resource compared to some**
 9 **of your other state companions.**
 10 Q. Would you consider yourself an expert
 11 in economics?
 12 **A. Absolutely not.**
 13 Q. Okay. You spoke -- you spoke of the
 14 world market and that oil prices are dictated by a
 15 world market; is that correct?
 16 **A. Yes. Well, if you take a look at**
 17 **pricing, there's -- there's pricing out of OPEC,**
 18 **there's pricing out of New York City and a bunch of**
 19 **other different exchanges. It -- the pricing**
 20 **typically does not get down into -- at -- from an oil**
 21 **perspective down into the -- the regional and driven**
 22 **by more global indicators.**
 23 Q. Okay. So am I correct in saying that
 24 this pipeline project will not in any way affect the
 25 world market price of oil?

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1 **A. This pipeline project will -- as per my**
 2 **testimony, with the declining production in -- in the**
 3 **U.S. and the increasing production in Canada, will**
 4 **alleviate a portion of that -- of that production**
 5 **shortfall in the U.S. And just give me one second**
 6 **here, and I'll -- I'll pull this out.**
 7 Q. Well, I guess that doesn't really
 8 answer my question. My question is, will the
 9 pipeline project and its delivery of oil to Canada --
 10 from Canada to the U.S. in any way change the price
 11 of oil that's been set by the world market? And I'm
 12 just talking change the price, not alleviate need or,
 13 you know, supply and demand but the price.
 14 **A. I think at the world level, no. I**
 15 **think at the regional level with regards to PADD II**
 16 **there will be -- at least in my opinion there will be**
 17 **benefits.**
 18 Q. Is there a difference in refining costs
 19 with respect to the crude oil coming from Canada
 20 versus the oil that would come from offshore sources?
 21 **A. I think I've already answered that**
 22 **question earlier where at least I'm -- I believe that**
 23 **our delivery points would need to invest in -- or in**
 24 **the delivery points that we'd be delivering to to**
 25 **take our crude.**

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1 Q. They would have to make investments
 2 and --
 3 **A. -- retrofit --**
 4 Q. Okay.
 5 **A. -- the refinery as an example.**
 6 Q. Okay. And so that there could be
 7 increased costs in refining this particular type of
 8 oil that's going to be transported?
 9 **A. In my opinion, no.**
 10 Q. What do you base that opinion on?
 11 **A. That is -- I base that on my experience**
 12 **and knowledge.**
 13 Q. With oil refining, what experience and
 14 knowledge do you have in the refinery process?
 15 **A. I -- based on my experience with**
 16 **regards to the world or the U.S. domestic consumption**
 17 **of oil which I believe is about 20 million barrels a**
 18 **day, I don't think this will have a significant**
 19 **impact.**
 20 Q. Do you consider yourself an expert on
 21 the cost of the oil refinery process?
 22 **A. No.**
 23 Q. Are there any agreements in place with
 24 Conoco with respect to this pipeline?
 25 **A. ConocoPhillips is a shipper on this**

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1 **pipeline.**
 2 Q. Okay. Is there any agreement with
 3 Conoco as to the future purchase of the pipeline?
 4 MR. KELSCH: Your Honor, again I'm
 5 going to object. I know that there's some latitude,
 6 but we have long hearings here this afternoon and
 7 tomorrow and I -- I think that we need to have some
 8 restraint in some of these areas that are totally
 9 beyond any of the direct testimony or questions by
 10 the commission or staff and have really no relation
 11 to the issues set forth by the commission for this
 12 issue of public convenience and necessity.
 13 MR. WAHL: That was actually my
 14 thought, Mr. Delaney. What's the purpose? What's
 15 the relevance of this testimony?
 16 MR. DELANEY: I wanted to follow up on
 17 the testimony regarding the taxes that would be paid
 18 and whether or not that obligation would at all
 19 change in the event that a separate entity were to
 20 purchase the pipeline.
 21 MR. WAHL: Notwithstanding my -- my
 22 advice to counsel for the prehearing conference, I --
 23 the objection is sustained.
 24 MR. DELANEY: Okay.
 25 MR. WAHL: I mean, let's -- let's move

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1 ahead and focus.
 2 MR. DELANEY: I guess I have no further
 3 questions then.
 4 MR. WAHL: All right. Follow-up,
 5 Mr. Binek?
 6 MR. BINEK: No.
 7 MR. WAHL: Anything further from the
 8 commission?
 9 MS. WEFALD: No.
 10 MR. WAHL: Commissioner Clark?
 11 MR. CLARK: Well, just very briefly.
 12 EXAMINATION
 13 BY MR. CLARK:
 14 Q. I mean, there was some discussion about
 15 where the pipeline's going through and other
 16 producing regions of the country. This pipeline is
 17 going through North Dakota, South Dakota. It then
 18 enters --
 19 **A. Nebraska.**
 20 Q. Nebraska. Iowa.
 21 **A. Kansas.**
 22 Q. Okay.
 23 **A. And then turns easterly through Kansas,**
 24 **Missouri and Illinois. And the Cushing extension**
 25 **from Kansas through to Oklahoma.**

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1 Q. Is it safe to say that the only major
 2 other oil-producing region that it's running close to
 3 is the Kansas-Oklahoma region?
 4 **A. Yes.**
 5 MR. CLARK: Okay. Thank you.
 6 MR. WAHL: Anything further from the
 7 commission?
 8 MR. CRAMER: Nothing.
 9 MS. WEFALD: Nothing.
 10 MR. WAHL: Quickly, Counsel, any
 11 follow-up to Commissioner Clark?
 12 MR. KELSCH: No.
 13 MR. WAHL: Mr. Delaney?
 14 MR. DELANEY: No.
 15 MR. WAHL: Mr. Binek?
 16 MR. BINEK: No.
 17 MR. WAHL: All right. Thank you very
 18 much, Mr. Cowling.
 19 MR. COWLING: Thank you.
 20 MR. WAHL: Mr. Kelsch.
 21 MR. KELSCH: I would call Mike Diller
 22 to the stand.
 23 (Whereupon, Exhibit No. T8
 24 was marked for identification by
 25 the court reporter.)
 MR. WAHL: Mr. Diller, as you are well

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1 aware from your experience, your testimony is
 2 required to be under oath, and I am required by law
 3 to advise you regarding perjury before administering
 4 the oath. Perjury is a false statement of material
 5 fact which you do not believe to be true; in other
 6 words, generally speaking a lie. In North Dakota
 7 perjury is a class C felony punishable by a fine up
 8 to \$5,000, imprisonment for a period of up to five
 9 years or both.
 10 Will you raise your right hand, please?
 11 Mr. Diller, do you swear that the testimony which you
 12 are about to give in this matter shall be the truth,
 13 the whole truth and nothing but the truth?
 14 MR. DILLER: I do.
 15 MR. WAHL: Mr. Kelsch.
 16 MR. KELSCH: Thank you, your Honor.
 17 EXAMINATION
 18 BY MR. KELSCH:
 19 Q. Mr. Diller, could you please state your
 20 name for the record?
 21 **A. Mike Diller.**
 22 Q. And what's -- you -- you work with the
 23 Public Service Commission?
 24 **A. I'm the director of accounting.**
 25 Q. Okay. And what are your

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1 responsibilities as -- generally in that position?
 2 **A. Sure. I am responsible for internal
 3 accounting matters as well as analyzing rate cases
 4 and prudency cases and things of that nature.**
 5 Q. What's your educational background?
 6 **A. I have a degree in accounting. I'm
 7 also a certified public accountant. And as far as
 8 experience, I've been working for public utility
 9 commissions for about 25 years.**
 10 Q. How long have you been with the North
 11 Dakota Public Service Commission?
 12 **A. Nineteen.**
 13 Q. Have you had a chance to -- or as part
 14 of your -- your job or -- and position at the North
 15 Dakota Public Service Commission, did you have a
 16 responsibility to review the Keystone -- TransCanada
 17 Keystone pipeline application?
 18 **A. Yes.**
 19 Q. And what did that review entail?
 20 **A. Well, it entailed looking at the
 21 application for one. And attached to the application
 22 of course is the company's last annual report
 23 prepared by their external auditors. And so looking
 24 at the financial information that is in there. I
 25 mean, normally I also go out on the Internet and --**

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1 **and look at some financial Web sites just to get
 2 some -- some feeling of security I guess in making a
 3 recommendation.**
 4 Q. So as part of your position for the
 5 commission, you make a recommendation to the
 6 commission concerning the, what, fitness of the
 7 company or financial ability of the company?
 8 **A. Financial viability, yes.**
 9 Q. Okay. And did you make a
 10 recommendation concerning TransCanada Keystone to the
 11 commission?
 12 **A. I did. I -- for purposes of this
 13 hearing, I think TransCanada has plenty of equity to
 14 make this investment.**
 15 Q. Okay. Did -- did you prepare a written
 16 memorandum for the commission?
 17 **A. I did. That's dated June 5, 2007.**
 18 Q. And I think in front of you or just off
 19 to the side of you is one that's marked Exhibit -- I
 20 believe it's T8. Is that the memo -- or a copy of
 21 the memo that you prepared?
 22 **A. Looks -- it looks like the same one.**
 23 Q. Okay. In -- in looking at the
 24 viability of Keystone, you also looked at the -- the
 25 I guess financial viability of the -- their parent --

113	<p>1 its parent company TransCanada? 2 A. Well, I -- yeah, let me make myself 3 clear here. I look at the parent company. I'm not 4 looking at -- at a subsidiary or Keystone 5 specifically. 6 Q. Okay. So that -- so when you make -- 7 made your recommendation, you're looking at -- at 8 TransCanada's? 9 A. That's correct. 10 Q. And did -- did you in this case go out 11 on the Internet and do other checking concerning 12 TransCanada's financial status? 13 A. A little bit. 14 Q. Okay. What -- what type of things did 15 you look at? 16 A. Well, one thing that I like to look 17 at -- there's a number of things, but -- but one you 18 get off the Internet, you get up-to-date information, 19 and I like to -- to see what the -- the market places 20 a value on TransCanada as opposed to, you know, what 21 the company has acquired over time what the value 22 of the -- of the property might be, book value if you 23 want to use that word. But -- so the -- you know, I 24 found out that the market capitalization is around 25 20 billion as opposed to stockholder equity reported</p>	115	<p>1 ability of TransCanada Keystone, do you see any 2 reason for that to recommend -- to deny the -- the 3 public -- 4 A. The reason I asked for a restatement, I 5 just wanted to make sure you understand I'm just here 6 as a witness as far as financial viability, and 7 that's -- I think I concluded in my memo that there's 8 no reason to deny TransCanada a PC & N as far as 9 financial viability is concerned. 10 MR. KELSCH: Okay. Thank you. No 11 further questions. 12 MR. WAHL: Mr. Delaney. 13 MR. DELANEY: Very briefly, your Honor. 14 EXAMINATION 15 BY MR. DELANEY: 16 Q. So you just did an assessment on 17 financial viability; is that correct? 18 A. That's correct. 19 Q. So in that memorandum where you're 20 stating you see no reason why their application 21 should be denied, you're basing that only upon your 22 review of their financial viability; correct? 23 A. That's correct. 24 Q. You're not touching at all on the issue 25 of public necessity or economic benefit to North</p>
114	<p>1 in the 2006 annual report of 7 billion. So basically 2 what that tells me is the market values the company 3 at about three times what it has paid for its assets, 4 the net assets. 5 Q. Is that a sign of a good company or a 6 good investment or.... 7 A. It's something you want, yes. 8 MR. KELSCH: Okay. I would offer 9 Exhibit T8. 10 MR. WAHL: Mr. Delaney? 11 MR. DELANEY: I have no objection. 12 MR. WAHL: Mr. Binek? 13 MR. BINEK: No obligation. 14 MR. WAHL: Exhibit T8 is received. 15 Q. (Mr. Kelsch continuing) Mr. Diller, is 16 it your opinion that TransCanada has sufficient 17 capital to service and provide service for a pipeline 18 in North Dakota? 19 A. That's my recommendation to the 20 commission. 21 Q. Do you -- did you see any financial 22 reason for the commission to deny the -- this request 23 for a public convenience and necessity? 24 A. Could you restate that question? 25 Q. Did -- I guess looking at the financial</p>	116	<p>1 Dakota? 2 A. No. 3 MR. DELANEY: Okay. That's all I have. 4 MR. WAHL: Mr. Binek. 5 MR. BINEK: No questions. 6 MR. WAHL: Does any commissioner have 7 any question of the witness? Commissioner Cramer? 8 MR. CRAMER: I don't because I think we 9 have a late-filed exhibit that's going to address it 10 so I don't have any. 11 MR. WAHL: Anything further -- 12 MS. WEFALD: No. 13 MR. WAHL: -- from the commission? 14 All right. Thank you very much, 15 Mr. Diller. 16 MR. DILLER: Thank you. 17 MR. WAHL: Mr. Kelsch. 18 MR. KELSCH: I would call Mark Makelky 19 to the stand. 20 MR. WAHL: Mr. Makelky, as you have 21 heard me advise previous witnesses, your testimony is 22 required to be under oath, and I am required by law 23 to advise you regarding perjury before administering 24 the oath. Perjury is a false statement of material 25 fact which you do not believe to be true; in other</p>

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1 words, generally speaking a lie. In North Dakota
 2 perjury is a class C felony punishable by a fine up
 3 to \$5,000, imprisonment for a period of up to five
 4 years or both.
 5 Will you raise your right hand, please?
 6 Being advised regarding perjury, Mr. Makelky, do you
 7 swear that the testimony which you are about to give
 8 in this matter shall be the truth, the whole truth
 9 and nothing but the truth?
 10 MR. MAKELKY: I do, your Honor.
 11 MR. WAHL: Mr. Kelsch.
 12 MR. KELSCH: Thank you, your Honor.
 13 EXAMINATION
 14 BY MR. KELSCH:
 15 Q. Mr. Makelky, could you please state
 16 your name for the record?
 17 **A. My name is Mark Makelky. I'm the**
 18 **director of the North Dakota Pipeline Authority.**
 19 Q. Okay. And how long have you been in
 20 that position?
 21 **A. About a month and a half.**
 22 Q. What were you doing before that time
 23 just generally?
 24 **A. Prior to that time I spent**
 25 **approximately 30 plus years working for MDU Resources**

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1 **Group mostly in their pipeline entity, Williston**
 2 **Basin Interstate Pipeline Company.**
 3 Q. What's your educational background
 4 generally?
 5 **A. I have a bachelor of science degree in**
 6 **civil engineering from the University of North**
 7 **Dakota. I'm a registered professional engineer in**
 8 **North Dakota and three other states.**
 9 Q. And -- and this is a new position; is
 10 that -- that's been established; is that correct?
 11 **A. That's correct. Actually I brought a**
 12 **new statement to read into the record, and I have**
 13 **some of this intro stuff at the beginning, if I could**
 14 **be allowed to read my statement into the record.**
 15 Q. I have no objection.
 16 **A. And I have copies for whoever....**
 17 MR. WAHL: Mr. Delaney.
 18 MR. DELANEY: I have not seen the
 19 statement.
 20 MR. WAHL: Yeah. Why don't -- and,
 21 Mr. Delaney, in the interest of time, why don't
 22 you -- may I have one too, please? Let's see what it
 23 looks like.
 24 Mr. Delaney, if you'd just scan this
 25 quickly, let's see whether that might not be more

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1 productive.
 2 MR. CLARK: Can I -- is this -- is this
 3 intended to replace the previous testimony or just
 4 supplement?
 5 MR. WAHL: Well, I think -- Mr. Kelsch.
 6 MR. KELSCH: Well, the other one's
 7 already an exhibit so I guess this would be a --
 8 MR. WAHL: No. What's an exhibit?
 9 MR. KELSCH: The previous letter from
 10 Mr. Makelky was Exhibit --
 11 MR. WAHL: Oh, I'm sorry.
 12 MR. KELSCH: -- admitted --
 13 MR. WAHL: All right.
 14 MR. KELSCH: -- as an Exhibit T2.
 15 MR. WAHL: Well, then I suggest -- I'm
 16 sorry. I misunderstood that. Then I suggest,
 17 Mr. Kelsch, that you consider offering this as an
 18 exhibit to supplement T2.
 19 On second thought, that's not a good
 20 idea. If this -- Mr. Kelsch, just looking at this
 21 now, if Keystone -- if TransCanada Keystone would
 22 offer this as Mr. Makelky's testimony, then he will
 23 have to read it into the record.
 24 MR. KELSCH: He will have to read it
 25 into the record?

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1 MR. WAHL: Yes. Now, I'm not
 2 suggesting, I'm not implying that it -- that it has
 3 to be offered. But if it will be offered, then it
 4 has to be read for the benefit of the public
 5 attendees.
 6 MR. KELSCH: Yes, we would offer it,
 7 and I would request this witness read it in as --
 8 MR. WAHL: It's T8.
 9 MR. KELSCH: -- as T9.
 10 MR. WAHL: Or T9. T9. I'm sorry.
 11 (Whereupon, Exhibit No. T9
 12 was marked for identification by
 13 the court reporter.)
 14 MR. WAHL: Mr. Delaney?
 15 MR. DELANEY: I have no objection.
 16 MR. WAHL: Mr. Binek?
 17 MR. BINEK: No objection.
 18 MR. WAHL: Mr. Kelsch. I'm sorry. T9
 19 is received. You may proceed, Mr. Kelsch.
 20 Q. (Mr. Kelsch continuing) Okay. Then,
 21 Mr. Makelky, I guess you're authorized to read your
 22 statement into the record.
 23 **A. I guess to restate: My name is Mark**
 24 **Makelky. I am the director of the North Dakota**
 25 **Pipeline Authority. During the 2007 legislative**
session, the North Dakota Pipeline Authority was

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1 created for the purpose of diversifying and expanding
 2 the North Dakota economy by facilitating development
 3 of pipeline facilities to support the production,
 4 transportation and utilization of North Dakota
 5 energy-related commodities thereby increasing
 6 employment, stimulating economic activity, augmenting
 7 sources of tax revenue, fostering economic stability,
 8 and improving the state's economy.

9 The North Dakota Industrial Commission,
 10 Governor John Hoeven, Attorney General Wayne
 11 Stenehjem and Agricultural Commissioner Roger
 12 Johnson, acting as the North Dakota Pipeline
 13 Authority has previously submitted a letter
 14 indicating their support of the TransCanada Keystone
 15 Pipeline project.

16 Canada is the largest exporter of crude
 17 oil to the United States comprising over 11 percent
 18 of our imports. Growing oil production in Canada has
 19 the potential to decrease our dependence on crude oil
 20 from more unstable parts of the world. Pipeline
 21 projects such as Keystone are essential in order to
 22 move that crude oil into the United States to ensure
 23 secure future supplies of energy.

24 The Keystone pipeline could provide a
 25 direct benefit to North Dakota if its producers or

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1 pipeline companies are able to connect their
 2 facilities to it. That would provide another
 3 delivery path for North Dakota-produced crude oil to
 4 access Midwest markets that pay premium prices for
 5 light sweet crude oil. Capacity bottlenecks on
 6 present pipeline infrastructure have created a
 7 situation where North Dakota crude oil has suffered
 8 price penalties of 5 to \$30 per barrel. We are aware
 9 of at least one company -- North Dakota company that
 10 has expressed an interest in connecting its
 11 facilities to the Keystone system.

12 In addition, Keystone provides the
 13 indirect benefit of relieving some capacity problems
 14 on other parts of the crude oil pipeline system. The
 15 majority of North Dakota crude oil is shipped through
 16 the Montana-Wyoming-Colorado-Nebraska pipeline
 17 infrastructure referred to as Guernsey Hub which is
 18 filled to capacity with oil supplies from Canada.
 19 Construction of the Keystone pipeline is expected to
 20 relieve some strain on the Guernsey Hub. This would
 21 allow more North Dakota production and -- excuse me,
 22 more production and thereby increase mineral
 23 royalties paid to North Dakota citizens and increase
 24 state tax revenues to help fund schools and other
 25 government functions across the state.

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1 According to the U.S. Transportation --
 2 U.S. Department of Transportation statistics,
 3 pipelines are the safest method of transporting
 4 petroleum products. Pipelines are the most efficient
 5 and economical method of shipping large quantities
 6 needed by this country on a daily basis.

7 If due care is provided during
 8 construction to prevent damage to the pipe and its
 9 coating system and adequate cathodic protection
 10 methods are applied to the pipe with regular
 11 monitoring to ensure its effectiveness, a pipeline
 12 system can last for decades without significant
 13 deterioration of the pipe itself. And with proper
 14 pipeline patrol and inspection programs to minimize
 15 chances of third-party mechanical damage to
 16 facilities, the risk of failure is reduced even
 17 further. Finally, appropriate emergency response,
 18 spill prevention and containment programs can
 19 minimize the effects of any leak and prevent
 20 significant environmental damage on the remote chance
 21 that something does happen to that pipe. Keystone
 22 has gone on record as planning to meet or exceed
 23 industry standards in all these regards.

24 I am not here to comment on routing
 25 issues. The physical location of the pipeline is a

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1 matter best resolved by the company representatives,
 2 the affected landowners and the Public Service
 3 Commission.

4 Thank you for this opportunity to
 5 appear before the Public Service Commission and
 6 express the position of the North Dakota Industrial
 7 Commission acting in its capacity as the North Dakota
 8 Pipeline Authority.

9 Q. I -- just have I think one further
 10 question, Mr. Makelky. As this letter indicates,
 11 that the Industrial Commission has -- and in the
 12 previous letter that is Exhibit -- Exhibit T2 that
 13 you had sent in on June 27th of '07, the Industrial
 14 Commission did support the TransCanada Keystone
 15 Pipeline project and it still supports it currently;
 16 is that right.

17 A. Yes, sir, that's correct.

18 MR. KELSCH: Okay. I have no further
 19 questions, your Honor.

20 MR. WAHL: Mr. Delaney?
 21 MR. DELANEY: Yes.

22 EXAMINATION

23 BY MR. DELANEY:

24 Q. Mr. Makelky, you've -- you stated
 25 you've been the director of the North Dakota Pipeline

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1 Authority for a month and a half; is that right?
 2 **A. Correct.**
 3 Q. Perfect timing. I guess I want to
 4 touch on a few things in your testimony here. First
 5 and foremost, you noted that these capacity
 6 bottlenecks have caused some of the North Dakota oil
 7 producers to suffer price penalties of \$5 to \$30 per
 8 barrel. Where are those figures derived from?
 9 **A. That comes from North Dakota Oil and
 10 Gas Commission.**
 11 Q. Okay. And who is the North Dakota
 12 company that's expressed interest in connecting its
 13 facilities with Keystone?
 14 **A. I'm not familiar with their name. We
 15 just know that there have been conversations between
 16 one company and Keystone. Certain of those --**
 17 Q. How did you -- oh, I'm sorry. Go
 18 ahead.
 19 **A. Through the Oil and Gas Commission I
 20 was aware of conversations.**
 21 Q. Are you at all aware of how the North
 22 Dakota Oil and Gas became aware of these
 23 conversations?
 24 **A. No, sir, I'm not.**
 25 Q. Okay. So you don't have any direct

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1 knowledge of any negotiations or conversations that
 2 Keystone's had with a North Dakota oil supplier?
 3 **A. No personal knowledge, that's correct.**
 4 Q. Okay. You also note that the
 5 construction of the Keystone pipeline is expected to
 6 relieve some strain on the Guernsey Hub. So am I
 7 correct in saying that some of the oil that's now
 8 shipped through this other pipeline would potentially
 9 go through the Keystone pipeline if indeed there was
 10 a connection?
 11 **A. That's possible.**
 12 Q. Well, then what's the basis for the
 13 statement that it would relieve some of the strain on
 14 the Guernsey Hub?
 15 **A. If the Keystone pipeline is not
 16 constructed, this supply would have to come to the
 17 United States some way, possibly placing further
 18 pressure on the existing facilities that are in the
 19 western part of the state and in Montana that come
 20 from Canada now.**
 21 Q. Okay. So you're saying if this
 22 pipeline isn't constructed, the crude oil from Canada
 23 that they intended to -- to ship through the Keystone
 24 pipeline would have to potentially go through the
 25 Guernsey Hub?

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1 **A. Or at least compete with other
 2 suppliers there.**
 3 Q. Okay. I -- I presume there's other
 4 alternatives such as putting a pipe -- putting in a
 5 new pipeline in some other states? I mean, would
 6 that be an alternative?
 7 **A. There aren't very many present
 8 alternatives in North Dakota.**
 9 Q. Okay.
 10 **A. You know, and as I mentioned, the
 11 majority of the pipelines are full to capacity now.**
 12 Q. Now, are you aware of any contract that
 13 Keystone has with any North Dakota oil supplier?
 14 **A. No, sir, I'm not.**
 15 Q. Okay. You also -- you touched on a
 16 number of safety measures that can be taken, and I'm
 17 curious to know what your experience has been with
 18 other Keystone pipelines.
 19 **A. I have no experience with Keystone
 20 pipelines. My information comes from the public
 21 record, the things they've gone on record as saying,
 22 their Web site, their filings with the Public Service
 23 Commission, other public documents.**
 24 Q. Okay. So your testimony here is based
 25 on what Keystone is saying they will do, not

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1 necessarily based upon their record in the past in
 2 what they have done?
 3 **A. That's correct.**
 4 MR. DELANEY: Okay. I have no further
 5 questions.
 6 MR. WAHL: Mr. Binek?
 7 MR. BINEK: I have no questions for
 8 this witness.
 9 MR. WAHL: Any questions from the
 10 commission? Commissioner Cramer?
 11 MR. CRAMER: I have one or two.
 12 EXAMINATION
 13 BY MR. CRAMER:
 14 Q. Are the three elected members of the
 15 Industrial Commission aware that you're here
 16 testifying today?
 17 **A. Yes, sir, they are.**
 18 Q. Was the vote to support this and to
 19 write this letter? Realizing all three signed it,
 20 was that a unanimous vote by all three members of the
 21 commission; do you know?
 22 **A. I do not.**
 23 Q. Okay. With regard to the company that
 24 is unnamed that has had -- you know of has had
 25 negotiation or at least has begun contact with

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1 Keystone, are -- are any or all of them, elected
 2 members of the commission, aware of who that company
 3 is; do you know?
 4 **A. I am not certain, but I believe they**
 5 **have the same knowledge I have.**
 6 Q. All right.
 7 **A. Maybe more so. Probably so.**
 8 MR. CRAMER: I have nothing else.
 9 MR. WAHL: Anything -- any further
 10 questions from the commissioners?
 11 Mr. Kelsch, follow-up to Commissioner
 12 Cramer's question?
 13 EXAMINATION
 14 BY MR. KELSCH:
 15 Q. Would -- Mr. Makelky, would this
 16 Keystone pipeline have any adverse effect on any
 17 existing pipelines in North Dakota that you're aware
 18 of, if you know?
 19 MR. DELANEY: Objection. Foundation.
 20 MR. WAHL: Overruled.
 21 **A. Please explain negative effect. I'm**
 22 **not sure I understand the question.**
 23 Q. (Mr. Kelsch continuing) Is this
 24 competing with any other producer that would be -- I
 25 mean, are there any other pipelines in this area of

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1 the state?
 2 **A. What's your question? Is there any**
 3 **other pipelines in this area of the state?**
 4 Q. Yes. Yeah. As proposed.
 5 **A. Very few crude oil pipelines. Two**
 6 **east-west ones that I'm aware of.**
 7 Q. No north-south pipeline?
 8 **A. No, sir.**
 9 Q. As -- in your position would your
 10 agency be an entity that may help the North Dakota
 11 producers put together an organization or a group to
 12 get the crude over to this pipeline?
 13 **A. I believe it's the Pipeline Authority's**
 14 **charge to assist all groups whether it be production**
 15 **pipeline, anything that could be augmented by the**
 16 **capacity of pipelines, energy-related pipelines.**
 17 MR. KELSCH: No further questions.
 18 MR. WAHL: Follow-up, Mr. Delaney.
 19 MR. DELANEY: Very briefly.
 20 EXAMINATION
 21 BY MR. DELANEY:
 22 Q. As -- as to North Dakota oil suppliers,
 23 are you aware of the closest North Dakota oil
 24 supplier to the current proposed route by the
 25 pipeline company?

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1 **A. Not real specific, but I think I can**
 2 **answer your question generally. Most of North Dakota**
 3 **production is in the western part of the state.**
 4 MR. DELANEY: Okay. Thank you.
 5 MR. WAHL: Mr. Binek?
 6 MR. BINEK: Nothing further.
 7 MR. WAHL: Anything further,
 8 Commissioner Cramer?
 9 MR. CRAMER: I do.
 10 EXAMINATION
 11 BY MR. CRAMER:
 12 Q. First of all, the Enbridge pipeline
 13 that's been referred to from time to time that runs
 14 west to east on the -- across the northern tier which
 15 is expanding I think you -- you had mentioned or some
 16 witness earlier had, is it obvious that that pipeline
 17 will in fact either cross over or -- or under the
 18 Keystone pipeline?
 19 **A. I believe that the route will cross the**
 20 **Enbridge pipeline.**
 21 Q. So is it possible that western North
 22 Dakota sweet crude could be transported on that
 23 pipeline and rather than going on to a bottleneck,
 24 say, in Clearbrook, Minnesota, it could be -- there
 25 could be a potential for a tap there into the

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1 Keystone pipeline?
 2 **A. I believe that's possible, yes, sir.**
 3 Q. And then --
 4 MR. CRAMER: Well, I have nothing else.
 5 MR. WAHL: Commissioner Clark?
 6 EXAMINATION
 7 BY MR. CLARK:
 8 Q. Would it be -- would it be possible for
 9 you to submit something perhaps late filed just
 10 following up on Commissioner Cramer's question
 11 regarding whether it was a unanimous vote of the
 12 Industrial Commission or whether the individual
 13 members of that have differences of opinion, whether
 14 it's a split decision?
 15 MR. CRAMER: Perhaps the minutes of the
 16 meeting.
 17 MR. CLARK: Or maybe, yeah, just the
 18 minutes.
 19 **A. I cannot say what those gentlemen want.**
 20 **The statement that you have that I read into the**
 21 **record today, they have reviewed it, and they**
 22 **understood that I was headed here to prepare -- or**
 23 **to -- to read it into testimony and they gave their**
 24 **approval.**
 25 Q. (Mr. Clark continuing) So individually

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1 each -- each of the members gave their approval of
 2 the....
 3 **A. They did not object to what I wrote**
 4 **with the intention to present here today.**
 5 Q. Okay. Thank you. But there wouldn't
 6 be a vote?
 7 **A. I don't believe there was a formal --**
 8 **it was not a formal agenda item at any Industrial**
 9 **Commission meeting, my presence here today. The**
 10 **prior letter to Keystone in support of the project**
 11 **was a topic at an Industrial Commission meeting where**
 12 **it was formally approved.**
 13 Q. And that was unanimous?
 14 **A. I believe it was unanimous --**
 15 Q. Okay.
 16 **A. -- at that time, yes, sir.**
 17 MR. CLARK: Thank you.
 18 MR. WAHL: Commissioner Cramer?
 19 EXAMINATION
 20 BY MR. CRAMER:
 21 Q. Well, I -- is -- has there been any
 22 discussion about the possibility that -- that
 23 Canadian crude coming down the Keystone pipeline
 24 could displace North Dakota sweet crude in any way in
 25 any market?

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1 **A. No, sir, I'm not aware of any**
 2 **displacement conversations.**
 3 MR. CRAMER: All right. That's all I
 4 have.
 5 MR. WAHL: Anything further from the
 6 commission?
 7 All right. Quickly, Counsel.
 8 Mr. Kelsch?
 9 MR. KELSCH: Nothing further.
 10 MR. WAHL: Mr. Delaney?
 11 MR. DELANEY: Nothing further.
 12 MR. WAHL: Mr. Binek?
 13 MR. BINEK: Nothing further.
 14 MR. WAHL: All right. Thank you very
 15 much, Mr. Makelky. Commissioner -- or Mr. Kelsch.
 16 MR. KELSCH: That concludes our
 17 witnesses here, your Honor.
 18 MR. WAHL: All right. As you can see,
 19 we're -- it's -- we're on the noon hour, and we have
 20 just finished a portion of the -- of the hearing. We
 21 are not obviously going to finish this hearing this
 22 morning, and we are required to commence the hearing
 23 on the siting application at its scheduled time at
 24 1:00 this afternoon.
 25 Now, there really -- there are no good

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1 choices, but the best choice in my judgment is that I
 2 will recess and continue this hearing to this
 3 afternoon. And I -- I regret very much that that is
 4 an inconvenience for you, but I really have no other
 5 choice and provide a means for you to offer your
 6 testimony.
 7 Now, I also point out to you that I
 8 suspect that anybody here who had evidence to offer
 9 on the question of the certificate of public
 10 convenience and necessity this morning also has
 11 testimony to offer on the siting I rather expect.
 12 And if that's the case, what we will do, what I will
 13 do this afternoon is we will hear all of the
 14 testimony regardless whether it relates to the
 15 certificate of public convenience and necessity or
 16 whether it relates to the siting.
 17 But we -- I must convene the scheduled
 18 hearing this afternoon according to the notice that
 19 was given, and I will do that promptly at 1:00. We
 20 will hear that -- we will hear that evidence or that
 21 presentation. We'll see where we are with the
 22 lawyers, I'll talk to them over the noon hour, and
 23 then just as quickly as we're able to do that we will
 24 hear the public testimony.
 25 We will be in recess until 1:00. I

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1 wish to talk to the lawyers, please, before you
 2 leave. This hearing is recessed and continued until
 3 a time later this afternoon.
 4 (A recess was taken from 12:07 p.m. to
 5 1:01 p.m.)
 6 (Whereupon, Exhibit Nos. RS1-RS3
 7 were marked for identification
 8 by the court reporter.)
 9 MR. WAHL: Good afternoon. Those of
 10 you who were not here this morning, if anybody, I am
 11 Al Wahl, the administrative law judge designated by
 12 the Office of Administrative Hearings pursuant to the
 13 request of the Public Service Commission to act as
 14 the hearing officer for the hearing of an application
 15 for a waiver of procedures and time schedules and
 16 consolidated applications for a certificate of
 17 corridor compatibility and route permit authority
 18 authorizing construction of approximately 218 miles
 19 of 30-inch crude oil pipeline and associated
 20 facilities in Cavalier, Pembina, Walsh, Nelson,
 21 Steele, Barnes, Ransom and Sargent Counties, North
 22 Dakota.
 23 This is Public Service Commission case
 24 No. PU-06-421. Before proceeding with this hearing,
 25 I will ask the commissioners for their comments and
 any directions for the hearing. Commission President

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1 Susan Wefald.
 2 MS. WEFELD: Good afternoon once again.
 3 We started out this morning at 9:00. I don't want to
 4 take a lot of your time now with opening comments,
 5 but this is now the siting portion of this meeting
 6 and we're taking up a different case than we did this
 7 morning. The siting involves many, many different
 8 characteristics of a route as you're going to learn
 9 in the near future by hearing the presentation by the
 10 company. What I want to assure you is we did not get
 11 to -- an opportunity to hear testimony this morning
 12 in -- in the case preceding this on the public
 13 convenience and necessity.
 14 We are very interested in -- in
 15 testimony from folks who have chosen to attend today.
 16 So it's my understanding that at 2:00 this afternoon
 17 after a one-hour presentation on the siting by the
 18 applicant that we will have a chance to hear
 19 testimony from people in the public who wish to
 20 testify both on the public convenience and necessity
 21 case that we heard this morning and/or the siting
 22 application which is before the -- the commission
 23 this afternoon. The hearing officer will give you
 24 further direction about that as we come closer to
 25 that time. Thank you very much for your patience.

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1 MR. WAHL: Commissioner Clark.
 2 MR. CLARK: I too would just welcome
 3 everyone again. I suspect that this may be the part
 4 of the hearing that people have maybe a more specific
 5 interest in because we -- we're moving from perhaps
 6 the more general need for the pipeline to really the
 7 site -- the site specific issues that I think a lot
 8 of folks are probably interested in.
 9 It's -- it's through this record that
 10 we're going to look at the impact of the proposed
 11 corridor, the proposed pipeline itself on North
 12 Dakota's historic, cultural, environmental resources
 13 and all of those agencies along the line that
 14 permit -- permit the -- those -- those particular
 15 activities with regard to the pipeline. So we
 16 especially look forward to the testimony that you're
 17 going to be providing, and I certainly individually
 18 look forward to hearing your questions, your concerns
 19 as we go through this process. Thank you.
 20 MR. WAHL: Commissioner Kevin Cramer.
 21 MR. CRAMER: Thank you, Judge Wahl. I
 22 too just want to welcome you all back and welcome
 23 those of you who are here for the first time today.
 24 Your presence serves as tremendous testimony in and
 25 of itself of the importance and the magnitude of this

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1 project, and I appreciate it very much.
 2 One of the things I often say is that
 3 no one really knows what the Public Service
 4 Commission does unless we do it poorly. And one
 5 thing that this case has done, it has highlighted our
 6 jobs, and we appreciate at least a little bit of
 7 attention to -- to the important work that we have to
 8 do here today.
 9 This is a different hearing. Although
 10 I assure you that anybody that has testimony that is
 11 relevant to the PC & N as well as and maybe in
 12 addition to or separate from the route permit, we
 13 want to hear it all, and it is important and we will
 14 not neglect any testimony on the PC & N that is
 15 provided this afternoon.
 16 We live in extraordinary times in an
 17 energy-hungry society and world and nation with lots
 18 of new technologies, new discoveries every day, and
 19 it's our job to -- to look at it all in the context
 20 of the whole. We will certainly be doing that, but
 21 ultimately it is our job not so much to say yes or no
 22 to the project as it is to make sure that if a
 23 project is sited that it is sited properly with
 24 minimal adverse effect on the economy and on people
 25 and on the environment and on important cultural

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1 resources. Those are things that we value in North
 2 Dakota. Those are things that each of us as
 3 individuals value and that we as a culture value.
 4 So we look forward to a very thorough
 5 record this afternoon and of course continuing on
 6 tomorrow afternoon in Park River. Thank you for your
 7 attention.
 8 MR. WAHL: The record will show that it
 9 is a little after 1:00 p.m., July 23, 2007, the time
 10 and the date noticed for a hearing of the application
 11 of TransCanada Keystone Pipeline, LLC, for a waiver
 12 of procedures and time schedules and consolidated
 13 applications for a certificate of corridor
 14 compatibility and a route permit authorizing
 15 construction of approximately 218 miles of 30-inch
 16 crude oil pipeline and associated facilities referred
 17 to as the Keystone pipeline in Cavalier, Pembina,
 18 Walsh, Nelson, Steele, Barnes, Ransom and Sargent
 19 Counties, North Dakota, as shown by the map which
 20 is -- was -- is part of the notice of filing and the
 21 notice of hearing.
 22 The commission's notice of hearing
 23 specified the following issues to be considered and
 24 determined upon this hearing: First, will the
 25 location, construction and operation of the proposed

141	<p>1 pipeline produce minimal adverse effects on the 2 environment, natural resources and upon the welfare 3 of the citizens of North Dakota? 4 Second, is the proposed pipeline 5 compatible with the environmental preservation and 6 the efficient use of the resources? 7 Third, will the proposed pipeline 8 corridor and route minimize adverse human and 9 environmental impact while ensuring continuing system 10 reliability and integrity and ensuring that energy 11 needs are met and fulfilled in an orderly and timely 12 fashion? 13 And, fourth, is it appropriate for the 14 commission to waive the procedures as requested in 15 the application, including the request for a single 16 consolidated application for corridor certificate and 17 route permit? 18 Counsel, please state your appearance 19 for the record. Mr. Kelsch. 20 MR. KELSCH: Thomas D. Kelsch for 21 TransCanada Keystone, and with me is Jim White and 22 Todd Kranda. 23 MR. WAHL: Mr. Delaney. 24 MR. DELANEY: Nicholas R. Delaney here 25 on behalf of the intervenors, the Dakota Resource</p>	143	<p>1 the requirements, the reasons for a certificate of 2 public convenience and necessity, and we were unable 3 to hear the public testimony then. We will hear that 4 testimony immediately after the presentation by 5 TransCanada Keystone. 6 That testimony will include both 7 testimony regarding the certificate of public 8 convenience and necessity. Those of you who want to 9 offer testimony on that question which you would have 10 had things moved a little quicker been able to do 11 this morning may do that this afternoon at the 12 completion of the presentation. If you also have 13 evidence that you wish to offer about the siting of 14 the pipeline, you may also do that. 15 Now, I understand some of you will be 16 in Park River tomorrow. Those of you who are going 17 to be in Park River and it would -- and are willing 18 to postpone your testimony tomorrow -- until tomorrow 19 in Park River, that would be very helpful. If you 20 decide to postpone your testimony to -- until Park 21 River tomorrow, you may offer testimony both on the 22 question of the certificate of public convenience and 23 necessity and the siting. 24 Now, those of you who were not here 25 this morning, your testimony is required to be under</p>
142	<p>1 Council, Ramona Klein, Merle and Linette Kratochvill, 2 Janie and John Capp and Mark Novak. 3 MR. KELSCH: And, Mr. Binek, will you 4 also please identify commission staff who will 5 participate in the hearing? 6 MR. BINEK: My name is William Binek. 7 I'm chief counsel for the Public Service Commission. 8 To my left is Patrick Fahn, a public utility analyst. 9 To my right is Mike Diller, chief accountant. 10 Actually Mr. Diller will not be participating in -- 11 in this hearing, but he came with us so he's got to 12 stay. 13 MR. WAHL: Is there anybody here this 14 afternoon who was not here this morning and who 15 thinks -- who expects, who plans to testify this 16 afternoon or who may testify? 17 Okay. Let me tell you just -- there's 18 some people. All right. We -- we have changed our 19 plan just a little bit for everybody. We will 20 proceed this afternoon with the presentation by 21 TransCanada which will be a slide, PowerPoint 22 presentation that will I think give everyone here a 23 pretty good overview of the siting of the pipeline 24 location. 25 This morning we also heard evidence of</p>	144	<p>1 oath, and I am required by law to advise you 2 regarding perjury before administering the oath. 3 Each of you must take the oath individually, but let 4 me tell you just quickly what perjury is and provide 5 you the advice regarding perjury. 6 Perjury is a false statement of 7 material fact which you do not believe to be true; in 8 other words, generally speaking a lie. In North 9 Dakota perjury is a class C felony punishable by a 10 fine up to \$5,000, imprisonment for a period of up to 11 five years or both. When you testify this afternoon, 12 I will simply ask you if you were here and if you 13 heard the advice regarding perjury. All you need do 14 is to say yes, I will administer the oath and you can 15 proceed with your testimony. 16 I will ask you please to sign at the 17 lectern. We'll get the lectern moved back here. 18 There will a sheet on the lectern for you to -- to 19 print your name -- print your name and address for 20 the record. I will then for the record simply ask 21 you to state your name and your address, and you may 22 then proceed with your testimony. I say again you 23 may testify both about the certificate of public 24 convenience and necessity if you have testimony 25 specific to that, and of course you may also testify</p>

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1 about the siting if you wish.
 2 Does anyone have any questions about
 3 their testimony for the -- for the hearing?
 4 All right. Then we'll proceed.
 5 Mr. Kelsch, when you're ready.
 6 MR. KELSCH: Thank you -- thank you,
 7 your Honor. I would call Dean Cowling to the stand
 8 to be sworn in.
 9 MR. WAHL: Mr. Cowling, I have personal
 10 knowledge that you are informed and advised regarding
 11 perjury. Accordingly will you raise your right hand,
 12 please? Do you swear, Mr. Cowling, that the
 13 testimony which you are about forgive in this matter
 14 shall be the truth, the whole truth and nothing but
 15 the truth?
 16 MR. COWLING: I do.
 17 MR. WAHL: Mr. Kelsch.
 18 EXAMINATION
 19 BY MR. KELSCH:
 20 Q. Mr. Cowling, I guess for the record,
 21 could you state your name?
 22 A. **Dean Cowling.**
 23 Q. And your position with TransCanada
 24 Keystone?
 25 A. **I am the project director for the**

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1 **Keystone pipeline project.**
 2 Q. And as part of your testimony here have
 3 you and some other Keystone members prepared a
 4 PowerPoint presentation that goes through the
 5 overview of the application for the siting?
 6 A. **Yes, we have.**
 7 Q. Okay. And do you think that will be
 8 helpful for the commission and the public to
 9 understand the process?
 10 A. **I certainly do.**
 11 Q. Okay. Then I would request you start
 12 the presentation.
 13 A. **Thank you. Can -- is that good? First**
 14 **of all, I would like to take the opportunity to thank**
 15 **everybody for coming out today, and thank you for the**
 16 **opportunity to present our project. The first slide**
 17 **that we're going to go through -- and I should say**
 18 **what we have tried to do with this slide presentation**
 19 **is provide an overview of the application that we**
 20 **have filed before the North Dakota -- North Dakota**
 21 **Public Service Commission.**
 22 **The first slide, what we wanted to do**
 23 **is give everybody more of an understanding of who**
 24 **TransCanada is. TransCanada is one of the -- is one**
 25 **of North America's leading energy infrastructure**

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1 **companies with more than \$24 billion in assets, and**
 2 **also with that we have more than 50 years' worth of**
 3 **construction and operating experience as it relates**
 4 **to pipelines.**
 5 **TransCanada as can be seen on the slide**
 6 **has more than 36,000 miles of pipeline in North**
 7 **America, and we have relationships with over 40,000**
 8 **landowners across North America. We believe we are**
 9 **ideally positioned to supply markets, in this case**
 10 **with crude oil, from the Western Canadian Sedimentary**
 11 **Basin, and we'll talk about that in a little bit more**
 12 **detail in an upcoming slide.**
 13 **As indicated on -- on this slide,**
 14 **Canadian supply is second only to Saudi Arabia with**
 15 **approximately 175 billion barrels of proven oil**
 16 **reserves. You will notice on the slide five of the**
 17 **top six countries with large reserves are in the**
 18 **Middle East.**
 19 **A couple of other points of interest of**
 20 **which for those that weren't involved in the -- in**
 21 **the morning session, the U.S. economy consumes I**
 22 **believe approximately 20 million barrels of oil every**
 23 **day, and the U.S. demand for petroleum products**
 24 **continue to increase. Canada today produces over**
 25 **2.6 million barrels of crude oil per day. We**

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1 **currently export approximately 1.6 million barrels**
 2 **per day of crude oil to the United States primarily**
 3 **to refineries in central -- in the central United**
 4 **States and western United States.**
 5 **What this equates to -- and I heard a**
 6 **number this morning -- this equates to about**
 7 **11 percent of the U.S. requirements for crude oil.**
 8 **Just a point of interest as well just for -- for some**
 9 **more background, the market for crude oil is**
 10 **refineries. Refineries process crude oil into**
 11 **products that we use every day. These products**
 12 **include gasoline, diesel, lube oils, aviation fuel,**
 13 **fertilizer, asphalt to name a few.**
 14 **This slide here depicts work that we**
 15 **completed through a number of our regulatory**
 16 **processes that we have gone through. We actually**
 17 **completed a system alternatives review as it relates**
 18 **to transporting crude oil into the markets that**
 19 **Keystone is actually going to be delivering into.**
 20 **During that review we reviewed potential system**
 21 **alternatives to serve the need that Keystone was**
 22 **proposed for.**
 23 **All -- the conclusion that we came to**
 24 **is all identified alternatives involved construction**
 25 **of new pipeline facilities. And I think what we**

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1 heard this morning is in our opinion capacity for
 2 pipelines is very tight today, and this -- and this
 3 goes hand in hand with that. The conclusion that we
 4 came to was Keystone is the only alternative in a
 5 position to meet increased demand for crude oil
 6 within the time frame required for the contracts
 7 that -- that -- that Keystone has, and we'll go into
 8 that in a little bit more detail.

9 Keystone has received very strong
 10 support from shippers which is demonstrated through
 11 the binding contracts that we've been -- that we've
 12 attained. TransCanada has now secured a total of
 13 495,000 million (sic) barrels of firm long-term
 14 contracts with an average duration of 18 years to
 15 support the Keystone pipeline project. We did this
 16 through two separate open seasons. In late 2005 and
 17 early 2006, our first commercial open -- open season,
 18 we secured 340,000 barrels of contracts. And just
 19 last month we announced that we had secured an
 20 additional 155,000 barrels of additional contracts.
 21 And I just want to point out, the first -- the
 22 340,000 barrels of contracts was to Illinois, and the
 23 additional 155,000 barrels of contracts is an
 24 expansion into Kansas and Oklahoma.

25 These long-term binding contracts

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1 clearly demonstrate the Keystone pipeline is required
 2 to serve U.S. energy needs. And I do want to point
 3 out and I -- and we have pointed out previously just
 4 so that everybody understand who TransCanada is,
 5 there are really three components to the -- to the
 6 value chain. You've got producers, oil producers,
 7 which we do not produce any oil. And you've got
 8 refiners at the -- at the -- at the delivery point
 9 which we have no business in refineries. What we are
 10 is we are the pipeline transporter, and those
 11 different customers would come to us to actually just
 12 ship their crude oil. We don't own the crude oil as
 13 well. So we are just the trucker in -- in this
 14 scenario.

15 This is a picture of the Keystone
 16 pipeline project. Keystone is approximately an
 17 1,800-mile pipeline in total, and for the initial
 18 phase of Keystone about 1,100 miles in the United
 19 States. What you'll notice up on -- on the chart is
 20 our receipt point is an area called Hardesty,
 21 Alberta, and that's a storage hub in -- in central
 22 Alberta. The pipeline -- it's important to note as
 23 it relates to a siting and routing, you will notice
 24 the blue line in Canada. And I'll point to there.

25 That blue line was part of our thought

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1 process as it relates to siting the project into the
 2 United States. That blue line is a conversion
 3 section of a -- of a current asset that TransCanada
 4 owns, and from an environmental perspective and from
 5 a cost perspective trying to balance the two of them,
 6 that was an approach that we thought was very, very
 7 innovative and was worthwhile for the project.

8 Once you get into -- once you move into
 9 the United States, the first phase of the project
 10 is -- which would be in service in November 2009
 11 traverses North Dakota, South Dakota, Nebraska and
 12 then actually turns east in through Kansas, Missouri
 13 and Illinois, and that delivers product into the
 14 Illinois area. Okay.

15 The second phase of the project that we
 16 just announced binding commitments for here within
 17 the last month is what we call the Cushing extension,
 18 and that is the extension down into Cushing,
 19 Oklahoma, that runs through Kansas and Oklahoma, and
 20 that goes into a delivery hub in Cushing, Oklahoma.

21 It's also important to note that there
 22 are numerous regulatory bodies that we will be
 23 working with, including the North Dakota Public
 24 Service Commission. The Keystone pipeline is
 25 regulated and reviewed by numerous federal and state

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1 agencies. In order to construct pipeline facilities
 2 across the international border between Canada and
 3 the United States, Keystone is required to obtain a
 4 presidential permit from the United States Department
 5 of State.

6 The Department of State is also
 7 responsible for preparing an environmental impact
 8 statement for the entire project. This environmental
 9 impact statement is a requirement through the
 10 National Environmental Policy Act, and we are
 11 currently working through that process today.

12 Also the project will be reviewed by
 13 other federal agencies including the Corps of
 14 Engineers, Fish & Wildlife Service and the Department
 15 of Transportation. And then more specifically in
 16 North Dakota by the North Dakota Public Service
 17 Commission, which as we went through this morning and
 18 discussed the certificate of public convenience and
 19 necessity and a certificate of corridor compatibility
 20 and route permit that we will be moving towards here
 21 later on this afternoon. Others that will be
 22 involved with regards to reviewing the Keystone
 23 pipeline project would include the North Dakota
 24 Department of Health, the North Dakota Department of
 25 Transportation and other authorities that would be

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1 **involved in the review process.**
 2 **During construction there will be**
 3 **short-term benefits resulting from a number of**
 4 **different parts of the Keystone project. These would**
 5 **include food, lodging during construction which we --**
 6 **we did touch base this morning somewhat. Is**
 7 **estimated at about \$3.25 million in North Dakota.**
 8 **Construction materials and other supplies, we**
 9 **estimate a benefit to North Dakota at approximately**
 10 **\$750,000. And, lastly, we forecast that we will**
 11 **require -- between 10 and 15 percent of our total**
 12 **construction workforce would be hired locally in the**
 13 **state of North Dakota in the counties and the**
 14 **community -- and in the communities that we all live**
 15 **in.**
 16 **Long-term benefits, just to go over**
 17 **them very quickly before we move into more detailed**
 18 **information. Long-term operational benefits we**
 19 **calculate approximately \$5.2 million in property tax**
 20 **revenues in the first year, first full year of**
 21 **operations, and that would continue on for the life**
 22 **of the project. We also anticipate that once we move**
 23 **into operations that we will -- there will be**
 24 **employment opportunities in the operations either by**
 25 **direct hire and/or contract services as we move in to**

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1 **operating pipeline. Okay.**
 2 **Now, with that, what -- the approach**
 3 **that we're taking here is we have three individuals,**
 4 **including myself, that will be presenting. So with**
 5 **that I would ask that Mike Koski....**
 6 MR. KELSCH: I would call Mike Koski to
 7 the stand to be sworn in.
 8 MR. WAHL: Mr. Koski, I think if you're
 9 going to wind up at the lectern, you can be there.
 10 MR. KOSKI: Okay.
 11 MR. WAHL: That's fine.
 12 MR. KOSKI: Thank you.
 13 MR. WAHL: Mr. Koski, as you have heard
 14 me advise previous witnesses, your testimony is
 15 required to be under oath, and I'm required by law to
 16 advise you regarding perjury before administering the
 17 oath. Perjury is a false statement of material fact
 18 which you do not believe to be true; in other words,
 19 generally speaking a lie. In North Dakota perjury is
 20 a class C felony punishable by a fine up to \$5,000,
 21 imprisonment for a period of up to five years or
 22 both.
 23 Will you raise your right hand, please,
 24 Mr. Koski? Do you swear that the testimony which you
 25 are about to give in this matter shall be the truth,

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1 the whole truth and nothing but the truth?
 2 MR. KOSKI: Yes, I do.
 3 MR. WAHL: Mr. Kelsch.
 4 MR. KELSCH: Thank you.
 5 EXAMINATION
 6 BY MR. KELSCH:
 7 Q. Mr. Koski, could you state your name
 8 for the record?
 9 **A. Michael Koski.**
 10 Q. And what's your title or position?
 11 **A. I am the project director of the**
 12 **consulting team assigned to the Keystone project**
 13 **responsible for environment, engineering and land**
 14 **activities.**
 15 Q. And -- and what company do you work
 16 for?
 17 **A. I'm with a company called Trow**
 18 **Engineering.**
 19 Q. And just briefly, what's your
 20 background?
 21 **A. Yes. I'm vice president of energy**
 22 **services for Trow Engineering. I have 18 years of**
 23 **experience in the routing, siting, permitting and**
 24 **design of long-distance, large-diameter crude oil and**
 25 **natural gas pipelines.**

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1 Q. And that's what you're going to address
 2 here today?
 3 **A. Yes, it is.**
 4 Q. Okay. Thank you. You can go on.
 5 **A. Thank you. Well, I would like to thank**
 6 **everybody for being here today and for having this**
 7 **opportunity. Just a snapshot of the facilities**
 8 **proposed by the Keystone project in the state of**
 9 **North Dakota. We're proposing 218 -- approximately**
 10 **218 miles of 30-inch pipeline, crude oil pipeline,**
 11 **five pumping stations, a total of 13 main line valves**
 12 **and four check valves, and the system will be**
 13 **designed with a maximum allowable operating pressure**
 14 **of 1,440 psi.**
 15 **Now, the route selection process that**
 16 **we follow for projects of this nature is an ongoing,**
 17 **recurring process involving numerous iterations.**
 18 **The first step in the process is to identify the**
 19 **project objectives; that is, what it is the project**
 20 **is to accomplish. And in this case it is to move**
 21 **crude oil from a major supply source in -- in**
 22 **Alberta, Canada, to delivery points in the states of**
 23 **Illinois and Oklahoma. That's -- that's where we**
 24 **start.**
 25 **The next step is to identify what we**

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1 refer to as control points. These are points through
 2 which the project must pass for various reasons.
 3 Obviously the source of the oil is -- or the product
 4 is a control point. It must start there. Obviously
 5 deliveries are control points. The pipeline must end
 6 there. But along the way there are other factors
 7 that define very specifically where the project will
 8 go.

9 Mr. Cowling described earlier the use
 10 of an existing natural gas line in Canada which would
 11 be converted to crude oil service. This -- the use
 12 of this -- this facility defines to a large part
 13 where the project enters the U.S. in North Dakota.
 14 That serves as a control point. Other control points
 15 tend to be associated with physical features such as
 16 major river crossings or narrow areas between
 17 national parks or things of that nature.

18 Another critical control point that --
 19 that influences a route on Keystone is the Missouri
 20 River crossing at Yankton, South Dakota. The
 21 Missouri River is a large -- large river with a
 22 limited number of locations that are suitable for
 23 crossing for various reasons, and a crossing at that
 24 point served as a control point defining much of the
 25 route.

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1 Now, with these control points we
 2 then -- and the project objectives, we established a
 3 study area which starts with the general region
 4 within which all of these points are located. Having
 5 that study area established, we begin a data
 6 collection process. And that involves collecting a
 7 lot of environmental and physical data such as
 8 wetland data, species data, soils information, and
 9 that is collected through the process of
 10 identifying -- of literature searches, Internet
 11 searches and most importantly through coordination
 12 with -- with responsible agencies to obtain their
 13 databases of information that's relevant to the
 14 siting of a -- of a project.

15 Based on all of that information and
 16 input from the agencies at the early stage, we
 17 establish what we refer to as constraints and
 18 opportunities. Constraints are areas that we prefer
 19 to avoid or certainly minimize, and that could be a
 20 sensitive environmental feature such as wetlands,
 21 poor soils. Then we also identify opportunities
 22 which are areas we prefer to go to, and that's
 23 typically flat upland areas with a minimum -- minimum
 24 amount of terrain or poor soil conditions.

25 Now, based on all of these data, the

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1 constraints and opportunities, control points and
 2 objectives, we develop a series of alternatives. And
 3 this is a group of -- of professionals representing
 4 various disciplines come up with a number of ways to
 5 minimize constraints, maximize opportunities and meet
 6 the project objectives and control points. These
 7 alternatives then go through our own iterative
 8 assessment of -- of features relevant to each of
 9 those alternatives, and we come up with a preferred
 10 alternative.

11 We then take that preferred alternative
 12 and seek additional input. We hold open houses where
 13 we invite public comment. We circle back through all
 14 of the agencies and invite their comment on our
 15 preferred alternative. We then refine that, and
 16 through the recurring process of continually refining
 17 that route option, we eventually end up with the
 18 alternative that we file as part of our regulatory
 19 obligations. And then through those processes the
 20 alternative is further evaluated in forums such as
 21 this.

22 Now, unique to North Dakota, the North
 23 Dakota PSC has defined exclusion areas relevant to
 24 the routing of a transmission facility such as
 25 Keystone. Exclusion areas are defined by the PSC as

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1 areas that should be excluded from consideration for
 2 routing the facility. The proposed route of Keystone
 3 does not cross any exclusion areas in North Dakota.
 4 There is one exclusion area which is located within
 5 the one-mile PSC corridor associated with the route,
 6 but the route does not cross or impact that exclusion
 7 area, and that's the Fort Ransom State Park.

8 Now, the PSC also specifies avoidance
 9 areas. These are defined by the PSC as areas not to
 10 be considered in routing a transition facility unless
 11 there is no reasonable alternative. Now, the
 12 Keystone project as proposed involves a couple of --
 13 of avoidance areas. One is a state forest associated
 14 with the Pembina River crossing. The route does
 15 cross that state forest. However, in working with
 16 the -- the forest service, the state forest service,
 17 we have developed construction techniques and
 18 mitigation procedures to avoid the forested areas of
 19 the -- of that forest, that state forest. We are in
 20 essence using horizontal directional drilling to
 21 drill underneath the forest and the associated water
 22 crossing.

23 Now, another criteria is avoidance of
 24 areas within 500 feet of residences. The Keystone
 25 project involves 23 throughout the state residences

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1 that are potentially within 500 feet of the line.
 2 **Keystone has obtained waivers from the landowners**
 3 **associated with 18 of those residences. Reroutes and**
 4 **route refinement of the project has resulted in the**
 5 **movement of the line to a point greater than 500 feet**
 6 **away from four of those residences. And we have one**
 7 **residence remaining where there is no reasonable**
 8 **alternative to be greater than 500 feet away from**
 9 **that residence. We're over 400, but we're not at**
 10 **500. And I will provide more information associated**
 11 **with that in my formal testimony later in this**
 12 **proceeding.**
 13 **Now, as Mr. Cowling mentioned, the**
 14 **project has been the subject of extensive and**
 15 **intensive regulatory review. The project is**
 16 **undergoing review under NEPA, the National**
 17 **Environmental Policy Act, with the Department of**
 18 **State as the lead federal agency. And to initiate**
 19 **that process, Keystone has filed extensive**
 20 **environmental information, including detailed**
 21 **biological, wetland, cultural, resource surveys in**
 22 **support of its application obtained from actual field**
 23 **work conducted throughout the state of North Dakota**
 24 **and throughout the project for that matter.**
 25 **And that information has also been**

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1 filed in support of Keystone's application to the
 2 **North Dakota PSC. That application to the North**
 3 **Dakota PSC includes a summary of impacts associated**
 4 **with the project which covers all major environmental**
 5 **resource areas, and that is included in Table 3 of**
 6 **the North Dakota PSC corridor application.**
 7 **Now, key to our work today too is the**
 8 **development of environmental mitigation strategies**
 9 **which Keystone can and has committed to as part of**
 10 **its regulatory processes. Keystone has prepared what**
 11 **we call a construction mitigation and reclamation**
 12 **plan. This is a detailed document consisting of all**
 13 **the specifications by which we construct the pipeline**
 14 **as it relates to various land uses encountered by the**
 15 **project. This includes very detailed procedures for**
 16 **crossing agricultural, cultivated lands, wetlands,**
 17 **streams and the procedures for restoring or**
 18 **reclaiming and monitoring those types of features**
 19 **crossed by the project.**
 20 **That plan has been submitted as part of**
 21 **all of our major applications to the Department of**
 22 **State, to the North Dakota PSC and to many other**
 23 **federal and state applications. It is a summary of**
 24 **commitments that the project has made for**
 25 **environmental mitigation, restoration and**

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1 **postmonitoring compliance, and the adoption of these**
 2 **procedures minimizes the impact associated with the**
 3 **project.**
 4 **With that, I would like to turn this**
 5 **over to Buster Gray for discussion on land**
 6 **requirements and construction associated with the**
 7 **project.**
 8 MR. KELSCH: I would call Buster Gray
 9 to the stand for -- to be sworn in.
 10 MR. WAHL: Mr. Gray, as you know, your
 11 testimony is required to be under oath, and I am
 12 required by law to advise you regarding perjury
 13 before administering the oath.
 14 Perjury is a false statement of
 15 material fact which you do not believe to be true; in
 16 other words, generally speaking a lie. In North
 17 Dakota perjury is a class C felony punishable by a
 18 fine up to \$5,000, imprisonment for a period of up to
 19 five years or both.
 20 Will you raise your right hand, please?
 21 Being advised regarding perjury, Mr. Gray, do you
 22 swear that the testimony which you are about to give
 23 in this matter shall be the truth, the whole truth
 24 and nothing but the truth?
 25 MR. GRAY: Yes.

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1 MR. WAHL: Mr. Kelsch.
 2 EXAMINATION
 3 BY MR. KELSCH:
 4 Q. Mr. Gray, could you state your name for
 5 the record?
 6 **A. My name is Loys Gray. That's L-o-y-s.**
 7 **Nickname Buster.**
 8 Q. Mr. -- Mr. Gray, what's your position
 9 with respect to the TransCanada Keystone pipeline?
 10 **A. I'm the engineering and construction**
 11 **manager for the U.S. portion of the pipeline, just**
 12 **the United States portion.**
 13 Q. And what generally is your
 14 experience -- experience in this type of business?
 15 **A. I -- I am now entering my 30th year**
 16 **of -- of being in the pipeline industry working on**
 17 **large-diameter cross-country pipelines.**
 18 Q. Do you need that raised there a little
 19 bit?
 20 **A. Please. It would make it a little more**
 21 **comfortable.**
 22 MR. KELSCH: Could we raise the...
 23 Thank you.
 24 Q. (Mr. Kelsch continuing) Okay. You can
 25 proceed with your presentation.

165	<p>1 A. All right. And -- and as mentioned, my 2 role and responsibility on engineering and 3 construction, I'll also describe land and the land 4 use that we'll take on the project. 5 This particular slide represents a 6 typical construction right-of-way. It's comprised of 7 110 feet with -- that is up -- is made up of two 8 components. One is a 50-foot-wide permanent easement 9 or right-of-way that will stay with the life -- for 10 the life of the pipeline, and a 60-foot-wide 11 temporary work space that we will use during the 12 course of construction. But once construction is 13 completed, that will revert back to the landowner. 14 We also use other work space or 15 additional work space in the areas primarily where 16 there are large excavations, river and stream 17 crossings, highways, railroads, those types of areas 18 where we have to move a large amount of dirt and we 19 need a place to place it. 20 The last item on the slide is pipe 21 yards and contractor yards. We have to stockpile the 22 pipe along the pipeline route for our use. We will 23 locate pipe yards about every 30 miles along the 24 pipeline route, and these pipe yards will typically 25 be in the range of 20 to 30 acres. We typically try</p>	167	<p>1 pasture and actually, although it's pretty minimal 2 along our pipeline, is where we -- where we would 3 construct near residences or commercial and 4 industrial areas. Some of the things that are -- are 5 covered by this plan are noise control during 6 construction, dust control during construction and -- 7 and control of noxious weeds which is an issue in the 8 Midwest. Spill prevention and containment for our 9 construction equipment, hydraulic hoses that may 10 break or you have a leak of construction equipment 11 fluids. 12 Topsoil removal, storage and 13 replacement. Erosion and sediment control during the 14 course of construction if we have large rainfall 15 events to -- to contain work within the land that we 16 have acquired for -- for construction. And a big 17 part of the plan is reclamation, of how we restore 18 the land to the best of our ability to its original 19 productivity. 20 This graphic -- and I know it will be 21 difficult for some of you to see. And it is -- is a 22 graphic or an artist's rendition of a construction 23 spread. A construction spread is a construction 24 contract where there are a multitude of crews that 25 work beneath this -- this contract. And I use the --</p>
166	<p>1 and look for some land that's been previously used 2 for some type of commercial use. If we cannot find 3 it, we will certainly work towards using farmland or 4 other land. 5 The contractor yards for the state of 6 North Dakota, my estimate at this point we'll 7 probably have two to three. Those are typically 8 about 20 acres of use. Again we -- we tend to try 9 and find something that's been used as a warehousing 10 complex, a trucking company, something that's already 11 got a surface facility that we can use, and those 12 would be located strategically relative to where our 13 pipeline contractors would -- would resource or 14 warehouse. 15 Mr. Koski mentioned the construction 16 mitigation and reclamation plan, and that's a 17 document that's been filed with the -- with not only 18 the Department of State, but the Public Service 19 Commission here in North Dakota. It's -- it's a plan 20 that's been developed over -- through experience and 21 history of how we can construct pipelines to -- to 22 mitigate effects to the -- to land in particular but 23 also other issues. 24 The -- the plan actually covers all 25 lands. It covers forested, wetlands, range and</p>	168	<p>1 the terminology of an assembly line. Ford Motor 2 Company builds automobiles on an assembly line, and 3 pipeline construction is an assembly line. The 4 opposite for us is is that at Ford Motor Company the 5 worker stays stationary and the assembly line passes 6 the worker inside a large facility or warehouse. 7 For us the pipeline or the line pipe 8 stays stationary once it's located on the 9 right-of-way, and our construction crews or workers 10 progress along the right-of-way as an assembly line. 11 This particular graphic, from the front-end crews, I 12 call it the clearing, thus the hauling and stringing 13 of pipe, is made up of some -- some 12 to 15 crews 14 all the way back to what we call backfill and tying 15 in and cleanup. These crews are typically spaced a 16 few days to a week apart therefore from the front end 17 to the back end of this assembly line is -- is -- for 18 a 30-inch pipeline, 50, 60, maybe 70 miles from the 19 front end to the back end. 20 The -- another component we get 21 questions about is it will progress we're estimating 22 in North Dakota with decent weather conditions around 23 one and a half miles per day all of these crews will 24 move. It's a very fast operation actually. The -- 25 another thing landowners tend to ask us is how long</p>

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1 will you be impacted on your land. Typically for
 2 this operation about 8 to 12 weeks. Certainly
 3 dependent upon weather, but somewhere in that range
 4 is pretty normal for this type of operation. There
 5 are isolated operations like road crossings or a
 6 stream crossing that may fall outside of that window,
 7 but this assembly line is typically about that length
 8 of time.

9 Mr. Cowling had mentioned earlier, oh,
 10 with construction supervision, quality, environmental
 11 and safety inspectors and all the supporting team
 12 around 500 construction workers would be a -- a
 13 reasonable estimate. There will be two of these
 14 construction spreads working in North Dakota. We
 15 anticipate one starting at the Canadian border
 16 working southerly about 130 miles. The second one
 17 would start northeast of Valley City I believe in
 18 Barnes County working southerly towards the South
 19 Dakota border.

20 The next series of -- of slides and
 21 photographs I'm going to show you is -- is really
 22 some of the crews or tasks that you see are along the
 23 assembly line that I described, and one of the key
 24 items particularly in the Midwest is -- is mitigation
 25 of impacts to agricultural land where -- where we do

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1 our best to minimize that damage to -- to preserve
 2 topsoil and return it after construction.

3 I would point out to you this -- this
 4 particular slide represents what we would call trench
 5 and spoil site topsoil stripping. There are various
 6 methods of topsoil stripping, and there's actually
 7 difference in opinions about which is the best in it.
 8 But my comments being is we -- we will work with the
 9 landowner to whichever method you determine you want
 10 done on your land, and we will construct according to
 11 what you believe is best on your land.

12 This slide represents -- I mentioned
 13 the pipe storage yards. We have to haul the pipe
 14 from these yards to the construction right-of-way.
 15 We have a term called stringing, and that's literally
 16 where you're placing the pipe along the trench line
 17 with the trucks that would travel down the
 18 right-of-way.

19 The other photograph that you see here
 20 -- and even for large-diameter pipe, we have to bend
 21 the pipe to fit the topography of the earth. We also
 22 have to bend the pipe to make horizontal turns in the
 23 pipeline route. This is done with very large
 24 hydraulic machines on the construction right-of-way.
 25 This photograph represents the

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1 trenching operation excavating for placement of the
 2 pipe. We typically do it by two methods, one of two
 3 methods, using large-wheel trenching machines or --
 4 or backhoes. And soil conditions, the water table,
 5 various things will dictate what's the best method.
 6 From your -- from previous work in North Dakota and
 7 ground water in North Dakota, I believe most of North
 8 Dakota would probably be excavated with backhoes.

9 The next operations represented are
 10 welding. This particular pipeline may either be
 11 welded by use of manual welding much like you use
 12 in -- in local communities, and on farms we call it
 13 stick welding. Also we may automatic weld, and
 14 that's where literally men drive machines that
 15 install or make the weld. Regardless of the method
 16 utilized, all welds will be reinspected for defects.
 17 That's done by either radiography for manual welding
 18 or ultrasonic inspection for automatic welding. When
 19 we talk of x-ray or radiography and we talk of
 20 ultrasonics, that technology is very similar to
 21 what's used in local medical facilities.

22 Once the welding is completed, the pipe
 23 is brought to the construction right-of-way with a
 24 really tough, heavy-duty pipeline coating that's
 25 actually fused to the pipe. And with vehicles and

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1 equipment the technology on coatings over the past
 2 ten years has greatly advanced. You don't have near
 3 the issues with rusting on automobiles and farm
 4 equipment that you used to have 15 and 20 years ago.
 5 This technology is also greatly advanced in our
 6 industry.

7 But where we make our construction weld
 8 the pipe's bare. This coating has to be applied in
 9 the field. It's typically done with a spray or a
 10 brush coating application. Once the coating is
 11 completed, we have an electronic device that's called
 12 a holiday detector or jeep, and it's -- it's
 13 traversed along the pipe. Where there's an anomaly
 14 or a defect in the coating, it will make a spark or
 15 jeeping sound that would be identified by the
 16 operator. He will locate the nick or damage in the
 17 coating and repair it prior to the pipeline being
 18 picked up and lowered and placed into the trench.

19 Our next operation is called
 20 backfilling. And we typically replace the soils
 21 within the trench line with the soil that -- that
 22 came out of it. And in North Dakota and some areas
 23 with glacial till or cobble in accordance with its
 24 size and angular geometry, we might elect to pad the
 25 pipeline, and we do that with a machine here that's a

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1 padding machine that is used like a sifter to sift
 2 the fines out of the spoil material, and we'll place
 3 it around the pipe to -- to 6 to 8 inches above the
 4 pipeline prior to replacing the rest of the spoil.
 5 This is just another photograph
 6 indicating the topsoil replacement that I mentioned
 7 earlier, and I think the key item that's here, a
 8 couple things are is there -- this photograph is
 9 actually in Minnesota. There's -- central Minnesota.
 10 There's a great distinction in the topsoil and
 11 subsoil in central Minnesota. And we placed the
 12 topsoil back with -- with heavy equipment and large
 13 equipment, but we do place it back to the best of our
 14 ability to the depths that existed prior to
 15 construction.
 16 A few other things we've had a lot of
 17 interest in are utility crossings and road crossings.
 18 And with utility crossings, any time you build a
 19 facility that's a thousand miles in length, you cross
 20 literally hundreds, if not thousands, of existing
 21 utilities. That can be as other existing pipelines,
 22 it can be water lines and water systems, fiberoptic
 23 cables, sewer lines, a multitude of utilities that we
 24 deal with. We go through a very formal process of
 25 contacting One Call systems in the local areas to

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1 identify all utilities existing. We work with them
 2 towards an agreement, if they desire one, about the
 3 methods and the inspections by which we work under
 4 when we cross those utilities.
 5 Additionally as the photograph in the
 6 top left-hand corner shows, for safety reasons we
 7 excavate and expose all existing utilities prior to
 8 the main construction operation so that you can
 9 literally see them with your eyes prior to the start
 10 of construction. The photograph in the right-hand
 11 corner is a -- is a road crossing by which we cross
 12 by a boring method and do not excavate or disturb the
 13 surface of the road.
 14 In North Dakota any paved,
 15 well-traveled, well-maintained road in North Dakota
 16 will be bored. The -- from prior work in North
 17 Dakota for me, you have a lot of section lines with
 18 what I call two tracts that are not necessarily
 19 maintained that we may seek from the regulatory
 20 authority, be it the county or the township, we may
 21 seek permission to open cut that type of road. But
 22 any well-maintained and well-used road we will
 23 unequivocally bore.
 24 This photograph represents -- at the
 25 completion of construction under our codes we have to

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1 fill the pipeline with water and hydrostatically test
 2 it for leaks and for the integrity of the pipeline as
 3 constructed. This water is typically taken from
 4 rivers or streams along the pipeline route with
 5 proper permitting from the -- from the responsible
 6 agencies. Once it's filled, it is pressured to
 7 125 percent of its maximum operating pressure.
 8 Mr. Koski mentioned earlier 1,440 pounds per square
 9 inch is the maximum operating pressure. 125 percent
 10 of that is 1,800 pounds per square inch. The
 11 pipeline will be tested to that, it will be
 12 documented, and those records are required by federal
 13 law to be kept for the life of the pipeline.
 14 In the upper right-hand corner you see
 15 a yellow device. We call it a caliper pig, and
 16 that's a geometry device, electronic, that we -- at
 17 completion of construction we send it along the
 18 length of the pipeline. It can detect things like
 19 dents, ovality, buckles, wrinkles, things we have may
 20 have done during construction to damage the integrity
 21 of the pipe. If this device finds such defects,
 22 those defects will be removed prior to the pipeline
 23 being put in service.
 24 Oh, reclamation, this is just a few
 25 slides with the many things that we do. And one of

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1 the largest issues we have because of the heavy
 2 equipment we move along the construction right-of-way
 3 is compaction. And compaction, relieving that to
 4 return agricultural fields to their productivity. We
 5 rip the right-of-way with ripping tools or para-plows
 6 very similar to what you do maybe on some periodic
 7 basis. We -- we test the right-of-way for the
 8 compaction relative to the adjacent land next to the
 9 right-of-way to achieve an adjacent level of -- of
 10 decompaction before this operation is completed.
 11 In the lower left-hand corner, rock
 12 picking or removal is certainly in our projects. We
 13 bring rock to the surface. We typically remove that
 14 rock to a density less than the adjacent right-of-way
 15 and a diameter of stone or rock that's less than the
 16 adjacent right-of-way. That's either done with
 17 mechanical pickers or it's literally done by crews by
 18 hand walking along the construction right-of-way.
 19 Lastly, seeding, a key item in non --
 20 nonagricultural cultivated areas is for us to get
 21 some growth back to the construction right-of-way as
 22 rapidly as possible, and working with local soil
 23 conservation services or landowners seed mixes to be
 24 put in place to get ground cover back as soon as
 25 possible.

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1 **This photograph is a -- is a**
 2 **during-construction and after-construction**
 3 **photograph. And the key reason for putting this**
 4 **slide in is that we -- we work very diligently and we**
 5 **have proven over time in our history that we can do**
 6 **very well to restoring the land to its original**
 7 **functionality, its original productivity. Maybe not**
 8 **the first year, but over a short period of time that**
 9 **we can return the land to its productivity.**
 10 **But the comment here is we cannot**
 11 **return it to its original appearance. And we don't**
 12 **want to mislead people when we talk about restoring**
 13 **the land that and we can restore it to its original**
 14 **appearance.**
 15 **The last comment that I would make and**
 16 **in conclusion, at the start of my presentation I**
 17 **talked about the construction mitigation and**
 18 **reclamation plan. It's attached to the various**
 19 **filings. It's available to the public. It goes into**
 20 **intimate detail about the mitigation techniques that**
 21 **are available to us that we utilize to minimize**
 22 **impact to the landowner and the environment.**
 23 **My responsibility in this particular**
 24 **project is, one, to see that that plan is followed as**
 25 **well as any other permit conditions that come along**

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1 **through our regulatory processes. In over 30 years,**
 2 **and -- and it's certainly working with construction**
 3 **contractors, we -- we are professionals, we are**
 4 **experienced at doing this and we are confident that**
 5 **we can return this land to its productivity. And**
 6 **with that I'll turn it back to Mr. Cowling.**
 7 MR. KELSCH: Mr. Cowling can come back
 8 to the stand and complete....
 9 MR. WAHL: No, you can be at the
 10 lectern, Mr. Cowling.
 11 Mr. Cowling, you understand of course
 12 that your testimony continues under oath and subject
 13 to penalties of perjury?
 14 MR. KELSCH: You already swore him in.
 15 MR. WAHL: I did. But I -- the
 16 question is whether he understands that his testimony
 17 continues --
 18 MR. KELSCH: I'm sorry.
 19 MR. WAHL: -- subject to the penalties
 20 of perjury and under oath.
 21 MR. COWLING: Yes, I do. I understand.
 22 MR. WAHL: YOu may proceed.
 23 MR. COWLING: I'm a little bit shorter
 24 than Buster, Mr Gray.
 25 I want to talk briefly about pipeline

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1 safety and integrity. The first thing, just to
 2 highlight, is that Keystone is subject to compliance
 3 with both federal regulations and national codes.
 4 These regulations and national codes are intended to
 5 ensure protection of the public and -- and prevent
 6 pipeline failures.
 7 And what you have seen listed up there
 8 are a number of different codes that Keystone will
 9 meet or exceed. Just want to highlight a couple
 10 things for you. First is, to minimize the risk of
 11 damage, Keystone will construct and actually bury the
 12 pipeline 4 feet underground. I believe a typical
 13 pipeline construction, at least in my experience, is
 14 a lot of pipeline construction is -- is 3 feet. But
 15 Keystone in its construction mitigation plan, we will
 16 be burying it 4 feet.
 17 I would also like to note that Keystone
 18 will use high-strength steel pipe. From a corrosion
 19 mitigation perspective, we will implement design
 20 features as it relates to fusion-bond coating as well
 21 as cathodic protection systems that will ensure
 22 and -- and manage pipeline integrity and corrosion on
 23 the pipeline.
 24 Last, I would just like to highlight,
 25 isolation valves will be engineered into the system

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1 to ensure in the unlikely event of a leak that we're
 2 able to manage the environment, and that will be
 3 engineered into the system as well.
 4 I just want to highlight a couple
 5 things. First of all, the entire pipeline
 6 transmission system as -- as we mentioned earlier
 7 will be monitored 24 hours a day, 365 days a year by
 8 highly trained professionals. We will also have a
 9 state -- computer system that will detect changes in
 10 pressure along the pipeline and ensure that all of
 11 the facilities are operating properly, and this
 12 information will be spent back through to -- through
 13 our operations and control center.
 14 We will also have a dedicated leak
 15 detention system which detects volume imbalances on a
 16 realtime basis. I believe the number subject to
 17 tech -- check is -- is every four to six seconds.
 18 And we can -- and we can check the output to what was
 19 actually put into the pipeline system to understand
 20 if there's any changes as it relates to what was put
 21 into the pipeline and what was delivered.
 22 I want to also highlight that
 23 TransCanada has an extensive pipeline maintenance
 24 program to monitor, inspect and repair our
 25 pipeline -- our current pipeline facilities, and we

181	<p>1 would expect we would use the same pipeline 2 maintenance on Keystone.</p> <p>3 Inline inspection, some of these key 4 maintenance activities would include inline 5 inspection, also referred -- referred to as pigging 6 when -- when Buster was speaking earlier with regards 7 to construction. And prior to operations we would 8 use a pigging device to try to identify any anomalies 9 or features that we would need to fix.</p> <p>10 Three years after -- I believe it's 11 three years after we are placed into operation, we 12 will actually do an inline inspection to do something 13 similar to that to ensure that the integrity of the 14 pipeline is managed. Keystone will investigate any 15 repair anomalies reported by this inline inspection 16 tool as per federal regulations.</p> <p>17 We talked earlier about oil spill 18 response. The emergency response program that we 19 intend to implement for Keystone will protect the 20 health and safety of the public and avoid damage to 21 property and any company operations and/or the 22 environment. Keystone will submit a detailed oil 23 spill response plan to PHMSA in the first quarter of 24 2009 prior to -- prior to operations. Spill response 25 and cleanup equipment will be part of this plan and</p>	183	<p>1 MR. KELSCH: Yes. And I would I guess 2 request that a printed copy of this be marked and 3 admitted into the record.</p> <p>4 (Whereupon, Exhibit No. TI 5 was marked for identification by 6 the court reporter.)</p> <p>7 MR. WAHL: All right. Let's -- let's 8 stand up and take a break for about five minutes. 9 We'll move the lectern back in its place, and then 10 we'll reconvene the public convenience and necessity 11 hearing and proceed with public testimony. 12 (A recess was taken from 2:09 p.m. to 13 2:18 p.m.)</p> <p>14 MR. WAHL: I'm going to reconvene the 15 hearing that was done this morning for the 16 certificate of public convenience and necessity. 17 That's commission case No. PU-O7-152. That hearing 18 is reconvened for the purpose of hearing public 19 testimony. We're also going to continue with the -- 20 with the hearing for the siting application.</p> <p>21 That hearing continues, and so that 22 those of you who wish to offer public testimony may 23 do now whether you wish to offer testimony on the 24 certificate of public convenience and necessity or on 25 the siting application. Those of you who will be in Park River tomorrow, it may be helpful if you will</p>
182	<p>1 will -- it will be highlighted in this plan and 2 prepositioned at locations identified by the spill 3 analysis and based on a worst-case discharge.</p> <p>4 So what we've done with the United 5 States Department of State is we've done a detailed 6 spill analysis, and we're utilizing that analysis and 7 the output of that analysis to put together our 8 emergency response plan to ensure that we have the 9 proper equipment and the proper people situated 10 where -- where they need to be. In the event of a 11 leak, Keystone will remediate the area in 12 coordination with federal regulators and state 13 agencies.</p> <p>14 I think in closing -- and I think we're 15 just -- we're right on an hour here. In closing, I 16 would just like to say TransCanada has worked hard to 17 be a good neighbor in each of the communities that we 18 are currently involved in. We take health, safety 19 and environment very seriously, and we look forward 20 to being part of the community here in North Dakota. 21 Thank you for your time, and that will end the 22 presentation.</p> <p>23 MR. KELSCH: Thank you very much. 24 MR. WAHL: Mr. Kelsch, I understand 25 this concludes your presentation at this time?</p>	184	<p>1 postpone your testimony until tomorrow, and 2 additional evidence will be heard for both cases 3 tomorrow. The additional witnesses -- or the 4 additional testimony and additional witnesses on 5 behalf of TransCanada, cross-examination of those 6 witnesses and so on.</p> <p>7 But so that those of you who came today 8 to offer public testimony would be able to do that, 9 we will do that now. I'm going to begin with two 10 people. Mr. Starke here who may have to leave, and I 11 understand Mr. Novak may have to leave. We'll begin 12 with those people.</p> <p>13 But let me ask you first. How many 14 people will plan on testifying this afternoon? Can I 15 have a show of hands?</p> <p>16 So I've got one, two, three, four, 17 five. Does that include Mr. Novak?</p> <p>18 Six. And Mr. Starke is seven. All 19 right. So recall now that it will be helpful if you 20 could divide your testimony between the public and -- 21 the certificate of public convenience and necessity, 22 you know, whether it's necessary and convenient for 23 the pipeline to be constructed at all and whether 24 TransCanada is willing and able to construct that. 25 If you have testimony specifically on those</p>

185	<p>1 questions, it would be good to address that first.</p> <p>2 If you then have testimony on the question of the</p> <p>3 location of the pipeline, to deal with that second</p> <p>4 and separately.</p> <p>5 Remember that your testimony has to be</p> <p>6 under oath. Remember to try and avoid repeating</p> <p>7 testimony, but by all means the commission is</p> <p>8 interested in what you have to say. And if you have</p> <p>9 information that's specifically related to you and</p> <p>10 that you think the commission should know, even</p> <p>11 though that may have been addressed by someone else</p> <p>12 you should feel free to do that. Remember also that</p> <p>13 the lawyers and the commissioners may ask you</p> <p>14 questions.</p> <p>15 Those of you who were here this</p> <p>16 morning, I said this is not cross-examination. You</p> <p>17 won't be cross-examined. Forget about whatever you</p> <p>18 have seen on television, but the commissioners and</p> <p>19 the lawyers may have some question to clarify some</p> <p>20 information you provided or want to ask you about</p> <p>21 some -- something related to your testimony.</p> <p>22 Finally, this only works one way. The</p> <p>23 lawyers and the commissioners get to ask you</p> <p>24 questions, but you don't get to ask them questions.</p> <p>25 This is -- this is testimony so you will need to</p>	187	<p>1 testimony in support of the application and then</p> <p>2 we'll proceed for testimony opposing the</p> <p>3 applications. All right.</p> <p>4 MR. STARKE: Your Honor, members of the</p> <p>5 Public Service Commission --</p> <p>6 MR. WAHL: Mr. Starke, let me begin by</p> <p>7 asking you to state your name and your address for</p> <p>8 the record, please.</p> <p>9 MR. STARKE: My name is Richard Starke.</p> <p>10 My address is 5 Elm Street; Burlington, North Dakota</p> <p>11 58722.</p> <p>12 MR. WAHL: And, Mr. Starke, did you</p> <p>13 hear my advice this morning about -- well, and this</p> <p>14 afternoon regarding perjury?</p> <p>15 MR. STARKE: Yes, sir, I did.</p> <p>16 MR. WAHL: Mr. Starke, being advised</p> <p>17 regarding perjury, do you swear that the testimony</p> <p>18 which you are about to give in this matter shall be</p> <p>19 the truth, the whole truth and nothing but the truth?</p> <p>20 MR. STARKE: Yes, sir, I do.</p> <p>21 MR. WAHL: You may proceed.</p> <p>22 MR. STARKE: Your Honor, members of the</p> <p>23 Public Service Commission, the Keystone pipeline</p> <p>24 delegation and most importantly of all landowners,</p> <p>25 thank you for the -- for the opportunity to come here</p>
186	<p>1 present your statements and answer any questions that</p> <p>2 may be offered, and that will then conclude your</p> <p>3 testimony.</p> <p>4 There's a sign-in sheet on the lectern.</p> <p>5 When you use it, please print your name and address.</p> <p>6 I will in effect introduce you by asking -- for the</p> <p>7 record asking you for your name and address and</p> <p>8 then -- and I will administer the oath and you may</p> <p>9 then proceed with your testimony. Mr. Starke, I have</p> <p>10 your name so we're in business.</p> <p>11 MR. DELANEY: Your Honor, one</p> <p>12 clarification. You had mentioned at the beginning of</p> <p>13 the proceeding this morning that the first public</p> <p>14 comment was going to be limited to those in favor of</p> <p>15 the pipeline. Are we changing that process now?</p> <p>16 MR. WAHL: We are changing that</p> <p>17 process --</p> <p>18 MR. DELANEY: Okay.</p> <p>19 MR. WAHL: -- so that I can accommodate</p> <p>20 Mr. Starke and Mr. Novak.</p> <p>21 Is there -- is there anyone here who is</p> <p>22 testifying in support of the application this</p> <p>23 afternoon?</p> <p>24 All right. Well, let me deal with</p> <p>25 Mr. Starke and Mr. Novak, and then I will call for</p>	188	<p>1 and express my opinion concerning this matter. This</p> <p>2 statement, I will read it if you don't mind.</p> <p>3 This statement concerns meetings and</p> <p>4 telephone calls that I have had with the employees of</p> <p>5 Keystone Oil Company in 2006 and 2007.</p> <p>6 On August 20, 2006, I purchased a</p> <p>7 quarter of land described as the northeast quarter,</p> <p>8 Section 30, Township 140, Range 57 in Barnes County,</p> <p>9 North Dakota, with the intention of some day in the</p> <p>10 future dividing it into 20-acre plots, Attachment 1.</p> <p>11 MR. WAHL: Mr. Starke, that -- I</p> <p>12 understand you have an exhibit, and -- and I marked</p> <p>13 that for you.</p> <p>14 MR. STARKE: Here's 1.</p> <p>15 MR. WAHL: All right. Counsel, that's</p> <p>16 marked as Exhibit RS1. Mr. Fahn, would you give that</p> <p>17 to the lawyers, please?</p> <p>18 Mr. Kelsch, I think that's a photocopy</p> <p>19 of a plat maybe as I recall. If -- Mr. Delaney --</p> <p>20 give it to Mr. Delaney next, please.</p> <p>21 I'm sorry. Mr. Kelsch, did you --</p> <p>22 MR. KELSCH: No objection.</p> <p>23 MR. WAHL: No objection.</p> <p>24 MR. DELANEY: I have -- I have no</p> <p>25 objection.</p>

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1 MR. WAHL: All right. Mr. Binek?
 2 MR. BINEK: No objection.
 3 MR. WAHL: Exhibit RS1 is received.
 4 Then you also have additional exhibits, Mr. Starke?
 5 Oh, those -- oh, I see what you've got.
 6 That's fine. All right. You may proceed,
 7 Mr. Starke.
 8 MR. STARKE: Thank you, Judge. Because
 9 it was in a -- it's 3 miles east of Valley City at
 10 the -- at the Peak interchange, was a full
 11 interchange, and that's why -- for that reason I
 12 thought it might be a good place to have a housing
 13 development.
 14 So I did -- I had an artist develop the
 15 illustration you have seen, and so I'll just continue
 16 on.
 17 Neither the seller or his lawyer
 18 informed me prior to the sale of the impending oil
 19 line to be built through the land from north to
 20 south. The two men from Keystone, Mr. Gray and
 21 Mr. Reagan, were my sole contacts.
 22 When Mr. Reagan called me, the first
 23 contact I had with Keystone, he was very brusque,
 24 hurried, impatient and hung up the phone while I was
 25 still talking. So my introduction to Keystone was

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1 not very kind. I had no problem with Mr. Gray. He's
 2 a -- a little different. He's slow talking, he's a
 3 gentleman and we got along very well together.
 4 However, I -- Mr. Gray gave me a little bit of
 5 information that was not quite accurate because he
 6 said there would be no deviation necessary in -- in
 7 going past my land. So that brings us to Attachment
 8 No. 2.
 9 MR. WAHL: All right. That's an
 10 exhibit that I marked as RS2 for this hearing.
 11 Mr. Kelsch?
 12 MR. KELSCH: No objection.
 13 MR. WAHL: Mr. Delaney?
 14 MR. DELANEY: No objection.
 15 MR. WAHL: Mr. Binek?
 16 MR. BINEK: No objection.
 17 MR. WAHL: Exhibit RS2 is received.
 18 Mr. Fahn, give that to the commissioners.
 19 MR. KELSCH: There's some writing on
 20 the back that really isn't relevant and I think --
 21 so --
 22 MR. WAHL: Oh, I wasn't aware of that.
 23 May I....
 24 MR. KELSCH: I think it's just they
 25 used a different piece of paper as a -- as a

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1 photocopy. As long as it's just the front part of it
 2 is -- and the front part of it is part of the
 3 exhibit.
 4 MR. WAHL: Let me see that again.
 5 Oh. The information on the back,
 6 Counsel, is obviously irrelevant. Mr. Starke, I'm
 7 just going to kind of draw a line through that
 8 printed information on the back and that will just
 9 be --
 10 MR. STARKE: I didn't know there was
 11 anything on the back.
 12 MR. WAHL: You didn't even know it was
 13 there. That's right. All right. Exhibit RS2 is
 14 received. Go ahead, Mr. Starke.
 15 MR. STARKE: In my conversations with
 16 other landowners I've been told of threats of
 17 condemnation if they refused to sign the easement
 18 contract and -- and they were treated not very well.
 19 And, "We are the oil company, and we get -- that's
 20 what we want." That's what they said, "We are the
 21 oil company. We get what we want."
 22 This land is where I grew up. I have
 23 traveled each foot of it in 21 years since I was born
 24 until I graduated from Valley City State in 1952. I
 25 cherish the land, for my days growing up in a family

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1 where honesty, responsibility, respect and love were
 2 normal parts of such a wonderful place to grow up. I
 3 learned to love and respect each one of my family
 4 since there was no smoking, drinking, loud talking or
 5 any other event other than perfect harmony.
 6 We never had a babysitter until we all
 7 went to -- went to all events together. When my
 8 father and mother worked in the fields, there was no
 9 reason -- we didn't fight and we behaved ourselves.
 10 For those reasons underlined an
 11 attachment for the land I have -- sorry.
 12 For those reasons I developed an
 13 attachment for the land, and it is difficult to
 14 explain to a nonfarming person. I still go back here
 15 to Valley City to hunt and fish -- to hunt rather and
 16 just to get away from city people who are so
 17 sheltered and poorly educated and ignorant of the
 18 values of duty, honor and country.
 19 My older brother and I were highly
 20 decorated Air Force officers. My younger brother and
 21 sister are successful in business.
 22 Since in about ten years the United
 23 States will be self-sufficient in petroleum and be an
 24 exporter of gasoline, the pipeline will lose its
 25 customers and be empty and abandoned. There is no

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1 valid reason for this construction.
 2 Richard A. Starke, Senior, BSEd, BSIE,
 3 major U.S. Air Force, retired. Thank you very much.
 4 MR. WAHL: Mr. Starke, did you have one
 5 more exhibit do I understand?
 6 MR. STARKE: Pardon me?
 7 MR. WAHL: Did you have one more
 8 exhibit?
 9 MR. STARKE: No.
 10 MR. WAHL: Just the two is all the
 11 exhibits that you have?
 12 MR. STARKE: Oh, here's 3, sir.
 13 MR. WAHL: Oh, all right. Mr. Kelsch?
 14 MR. KELSCH: Where -- where is this --
 15 if I may ask where the picture is taken. I didn't
 16 hear him describe it. Mr. Starke, where --
 17 MR. WAHL: Mr. Starke --
 18 MR. STARKE: Yes, sir.
 19 MR. WAHL: -- can you describe the
 20 photograph that's Exhibit 3?
 21 MR. STARKE: The -- this photo I have
 22 taken personally is of the interchange that is
 23 3 miles east of Valley City on Interstate 94. Is
 24 that understandable?
 25 MR. KELSCH: So it's your land?

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1 MR. STARKE: Yeah.
 2 MR. KELSCH: Yeah, I have no objection.
 3 MR. WAHL: Mr. Delaney?
 4 MR. DELANEY: I have no objection.
 5 MR. WAHL: Mr. Binek?
 6 MR. BINEK: No objection.
 7 MR. WAHL: Exhibit RS3 is received.
 8 Thank you very much, Mr. Starke.
 9 MR. STARKE: Thank you.
 10 MR. WAHL: That completes your
 11 presentation?
 12 MR. STARKE: Thank you. Yes, sir.
 13 Thank you very much.
 14 MR. WAHL: All right. We'll change the
 15 tape.
 16 All right. Next, please. Mr. Novak,
 17 would you go to the lectern, please?
 18 MS. WEFELD: What about questions?
 19 MR. WAHL: Oh, I'm sorry. I'm sorry.
 20 Just a minute. Mr. Novak, I'm getting ahead of
 21 myself. We have some questions for Mr. Starke.
 22 Mr. Kelsch, questions for Mr. Starke?
 23 MR. KELSCH: No, no questions, your
 24 Honor.
 25 MR. WAHL: Mr. Delaney?

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1 MR. DELANEY: I have none.
 2 MR. WAHL: Mr. Binek?
 3 MR. BINEK: I have none.
 4 MR. WAHL: Commissioners?
 5 EXAMINATION
 6 BY MR. CRAMER:
 7 Q. Well, I have one, Mr. Starke. I
 8 appreciate your taking the time to be here, and I
 9 know that it is -- I know that you live up in
 10 Burlington near Minot and this is -- land is quite a
 11 ways from there so I know that you went to
 12 extraordinary means probably to be here and we
 13 appreciate it. And I'm glad you're able to stick
 14 around this afternoon.
 15 But one of the statements you made I
 16 just want a little clarification on was something
 17 about energy independent in ten years. Just could
 18 you elaborate a little bit on that and where you --
 19 **A. Yes, I could.**
 20 Q. -- and how you conclude that?
 21 **A. I have the clippings here. They're**
 22 **from the Minot Daily News, and I have them -- I**
 23 **didn't have time to reproduce them but they're here.**
 24 **If -- if you want them for -- for looking at or if**
 25 **you want to file them, that's fine with me because I**

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1 **have no more use for them but they're here.**
 2 MR. WAHL: All right.
 3 **A. All -- yes, I'm an -- I'm an industrial**
 4 **engineer and efficiency in economy are words that I**
 5 **use most often. As an Air Force officer I have**
 6 **served my country for 20 years. I still serve it in**
 7 **whatever way I can. So that's -- again I want to**
 8 **thank you for -- it's nice to live in a country like**
 9 **this where this is possible. Because what I have**
 10 **seen -- I have traveled all around the world. This**
 11 **is wonderful. Thank you again.**
 12 MR. WAHL: I'm -- I'm sorry,
 13 Mr. Starke. You say that the information you had
 14 on the United States being energy independent was in
 15 some clippings that you have?
 16 MR. STARKE: The Minot Daily News.
 17 MR. WAHL: And you have those with you?
 18 MR. STARKE: Yes, sir, I have them
 19 right here.
 20 MR. WAHL: And these are all of -- this
 21 together are all of the exhibits -- the clippings you
 22 were referring to?
 23 MR. STARKE: Yes, sir, that's it.
 24 MR. WAHL: Would you -- would you like
 25 to offer them as -- as exhibits for the -- for the

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1 commission?
 2 MR. STARKE: Yes, sir, I would.
 3 MR. WAHL: I'm -- we're going to mark
 4 these for the record as RS3 -- 4. 4.
 5 (Whereupon, Exhibit No. RS4
 6 was marked for identification
 7 by the court reporter.)
 8 MR. KELSCH: No objection.
 9 MR. DELANEY: I have no objection.
 10 MR. BINEK: No objection.
 11 MR. WAHL: Exhibit RS4 is received.
 12 MR. CRAMER: Thank you. Then my only
 13 other -- I would just make one statement again and
 14 say thank you for taking the time to not only care so
 15 much but to be here and also for acknowledgement that
 16 we live a country where we're free to do this. Thank
 17 you for your service ensuring that we have that
 18 freedom.
 19 MR. WAHL: Commissioner Wefald?
 20 EXAMINATION
 21 BY MS. WEFALD:
 22 Q. I want to make sure I understand
 23 exactly where your land is. It is just north of
 24 Highway 94 on -- and 3 miles east of Valley City?
 25 **A. Ma'am, it starts at the Soo Line
 interchange. My land starts at the Soo Line inter --**

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1 **overpass which is on Interstate 94. It starts there
 2 and it goes for 2 miles along Interstate 94 to the
 3 Peak interchange.**
 4 Q. Okay. And it's just to the north of
 5 that?
 6 **A. To the north of Interstate 94.**
 7 Q. And you're to the south of that?
 8 **A. Yes. It's along the southern edge --
 9 southern -- along the southern edge of 94.**
 10 Q. And you -- and you indicate a cemetery
 11 along the road, and is that the Memory Gardens
 12 Cemetery?
 13 **A. That's the cemetery -- no, it's just a
 14 public cemetery, but my father, my mother, my brother
 15 and my son are buried there.**
 16 Q. Okay. And it's my understanding from
 17 what your testimony was that you had intended to make
 18 this into a subdivision, your property; is that
 19 correct?
 20 **A. Well, it might be up to my -- to my
 21 son, but that's why I bought it, because of the
 22 location.**
 23 Q. Okay. And your concern is that once a
 24 pipeline goes through your land that you will no
 25 longer be able to make this into a subdivision?

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1 **A. Well, it will take up -- there are 73
 2 2-acre plots I've -- on your drawing there.**
 3 Q. Yes.
 4 **A. And the pipeline running through the
 5 center of it from north to south takes up 30 2-acre
 6 plots. At 20,000 apiece that is \$600,000.**
 7 Q. So \$600,000 you would not be able to
 8 sell of that property; that's your understanding?
 9 **A. Well, if I -- if it's developed, ma'am,
 10 I won't be able to.**
 11 Q. Right. And you -- how did you come up
 12 with the property value --
 13 **A. I called a realtor --**
 14 Q. -- the \$600,000?
 15 **A. I called a realtor in Valley City, and
 16 he said that he -- that it might be a county law, but
 17 in developing like that the plots had to be 2 acres
 18 in size.**
 19 Q. I see.
 20 **A. And he told me that they're going for
 21 \$10,000 an acre.**
 22 Q. And -- and did you request the pipeline
 23 to go around your property?
 24 **A. I asked them to, but they wouldn't.**
 25 Q. Okay. And when did you receive that

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1 information, approximately when?
 2 **A. I'm sorry. What was that?**
 3 Q. When approximately did they tell you
 4 that they couldn't make an adjustment to go around
 5 your property?
 6 **A. Oh, it was about six months ago.**
 7 Q. About six months ago?
 8 **A. Yeah. I asked them to go around to
 9 the -- to the east to avoid the cemetery and
 10 everything, but they wouldn't do it.**
 11 MS. WEFELD: Okay. All right. Thank
 12 you very much.
 13 MR. STARKE: Thank you, ma'am.
 14 MR. WAHL: Commissioner Clark?
 15 MR. CLARK: Just a couple of -- of
 16 quick questions.
 17 EXAMINATION
 18 BY MR. CLARK:
 19 Q. And first, Major Starke, let me be
 20 amongst those who thank you for your service to our
 21 country. I know I speak for all of us when -- when I
 22 say that. Could you tell me again the -- the
 23 purchase date of the property? I think you had
 24 mentioned it, but I failed to get that down.
 25 **A. It was the 20th of -- of August, 2006.**

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1 Q. So fairly recently, within the year?

2 **A. Pardon me?**

3 Q. Within the year it was?

4 **A. Yes. I'm sorry. I left my hearing**

5 **aids at home.**

6 Q. No, that's fine. And you said that

7 this was -- nothing about this was disclosed to you

8 during the process of that -- of that negotiation?

9 **A. That's correct. It was -- the first**

10 **indication I had was when I got a packet of -- of**

11 **data from Mr. Reagan, and I didn't know what it was.**

12 **I called my cousin who has the land across the**

13 **interstate on the north side. She's here. But**

14 **that's the way I found out about it.**

15 Q. So it was after you purchased it that

16 you started receiving information from the Keystone

17 pipeline folks?

18 **A. Yes. That's when I found out. I**

19 **understand that the company's been working on it**

20 **since 2005.**

21 Q. Right.

22 **A. But the attorney nor his client told me**

23 **about it.**

24 Q. When you say the attorney -- the

25 attorney or the client, who are you referring to?

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1 **A. Well, the -- the client's name is Roman**

2 **Ertelt, E-r-t-e-l-t, and he has a firm of attorneys**

3 **here in Minot that represent him. I'm sorry. I**

4 **can't remember the name.**

5 Q. No, that's fine. I was just curious

6 if -- who did you purchase the property from? Was it

7 another family member or --

8 **A. I purchased it from Mr. Ertelt.**

9 Q. Okay. Thank you. That's --

10 **A. His great-grandfather homesteaded it so**

11 **I'm the second owner of it.**

12 Q. Okay. Okay. So Mr. Ertelt and -- the

13 attorneys and clients that you're referring to were

14 the previous owners of that property?

15 **A. Yes. Yes.**

16 Q. Okay.

17 **A. They have quite a bit of property here.**

18 MR. CLARK: Okay. Thank you.

19 MR. WAHL: Follow-up, Mr. Kelsch?

20 MR. KELSCH: Nothing.

21 MR. WAHL: Mr. Delaney?

22 MR. DELANEY: I have nothing.

23 MR. WAHL: Mr. Binek?

24 MR. BINEK: Nothing.

25 MR. WAHL: All right. Nothing further

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1 from the commission?

2 MR. CRAMER: Nothing. Thank you again.

3 MR. WAHL: All right. Now, thank you

4 very much, Mr. Starke.

5 Next, Mr. Novak, please. If you would

6 use the lectern, please.

7 MR. NOVAK: Hi. My name is Mark Novak,

8 and my address is 12557 County Road 15; Lankin, North

9 Dakota.

10 MR. WAHL: Mr. Novak, would you take a

11 moment to write your name and address on the sheet

12 there, please?

13 Mr. Novak, did you hear my advice this

14 afternoon or this morning regarding perjury?

15 MR. NOVAK: Yes.

16 MR. WAHL: Will you raise your right

17 hand, please? Being advised regarding perjury,

18 Mr. Novak, do you swear that the testimony which

19 you're about to give in this matter shall be the

20 truth, the whole truth and nothing but the truth?

21 MR. NOVAK: Yes, your Honor.

22 MR. WAHL: You may proceed.

23 MR. NOVAK: First of all, I would like

24 to thank everybody for the opportunity I have, and I

25 would also like to thank them for future generations

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1 which I think this is so important. And I'm going to

2 speak on a little different thoughts that I have and

3 along with the group thoughts also.

4 First of all, my initial contact with a

5 Keystone representative was I got a card sent to me

6 in the mail to attend a meeting in Michigan, North

7 Dakota, a while back, and that was the first meeting

8 I attended too. And I believe it was one of

9 their first meetings in the area.

10 There was an older gentleman there

11 representing the Keystone pipeline company, and his

12 capacity was in PR work. And I asked him -- I go,

13 "What are you going to do if somebody opposes this

14 pipeline?" And he looked at me and he says, "Hey,

15 we're the pipeline. We do what we want and we go

16 where we -- where we want to." So that was my first

17 consultation or my first visit with the pipeline.

18 First of all, I was going to say is

19 some of the issues are hard for me deviate what

20 categories they fall in, should it have been

21 presented in the morning meeting or the afternoon

22 meeting. So if they're a little blurred together,

23 forgive me. I'm just a -- a farmer.

24 First of all, we came here last night

25 because our concern was -- there was heavy fog in the

205	<p>1 Valley area, and we drove up last night. We're from 2 a distance away. We wanted to be here on time. When 3 we have all these different environmental issues, our 4 weather is changing greatly, we don't have no decent 5 road systems in the rural area in North Dakota up 6 there to try and shuttle of heavy equipment and all 7 the different things that could arise in case there 8 is a leak. 9 I'd -- I'd like to know when they have 10 this in the center of fields and if you have 5 inches 11 of rains, if you have foggy conditions, so on and so 12 on, too much snow, how they're going to move this 13 equipment out there when they're just not facilitated 14 for any of this. 15 I'll just move -- try and move on along 16 as quickly as I can. We believe that the water is 17 the staff of life, meaning clean water that is free 18 from oil. I believe as well as the group that water 19 is some of our greatest resources. Not petroleum. 20 Water is our greatest resources. Ensuring the future 21 of our next generations and their generations to 22 come. If we lose the source of clean drinking water, 23 we will lose way more than if we will lose any -- I 24 can't think of a benefit to be honest from this 25 pipeline, but we will lose way more than any</p>	207	<p>1 some of the largest aquifers in the state of North 2 Dakota. The pipeline runs parallel to these aquifers 3 upstream by the way of these aquifers. Not 4 downstream. Upstream of these aquifers. 5 We know that the water companies have 6 met with Keystone, and they told them that they don't 7 want the pipeline over their aquifers. 'Cause 8 through a little bit of jogging around and very small 9 minute movings Keystone moved the pipeline a small -- 10 very, very small amount. It is not enough away from 11 these aquifers. They simply do not have enough 12 distance away from their aquifers. There's no way 13 that they have. They're running parallel 2 to 14 3 miles away on a -- over a 200- to 300-foot drop. 15 There is no one that is going to contain this type of 16 oil spill. There isn't. There isn't. 17 I mean, and not only that, they don't 18 have no -- no spill plans in place as we speak, but 19 they said somewhere along the line that they have 20 been operating for decades. The NRCS, meaning the 21 old soil conservation -- they have a new name now. 22 The NRCS watches and regulates over these aquifers 23 and close by these aquifers in soils that have high 24 potential capabilities of leeching chemicals, 25 fertilizers into the ground water.</p>
206	<p>1 commercialized benefit that the pipeline is trying to 2 solicit here. 3 So I have quite a few things to touch 4 on, but some of them is that a topographic map I 5 bought -- brought along with me, it shows the 6 elevation drop. They are proposing this pipeline 7 within a half mile or less of the city of Lankin. 8 That's where I'm from. In 2 to 3 miles to the east 9 there is over a 200- to 300-foot drop. So either if 10 there is an oil leak, which we all know there will 11 be, either it will get there underground or 12 overground, and it will get to our aquifers. 13 And if that isn't scary enough, the 14 city of Lankin has a lagoon system so this potential 15 oil leak, which we know is going to happen somewhere 16 along the line, will get picked up by the lagoon 17 system, accelerate the speed and pumped into the 18 river system. 19 This isn't the only corridor that 20 Keystone has to choose from. I mean, North Dakota is 21 a wide state; isn't it? There is a lot of miles that 22 they can choose from. There is no retention dams, 23 meaning if there is a leak, there is no pool that 24 this oil can go to. There isn't. It goes into the 25 Red River, and it goes above our aquifers. We have</p>	208	<p>1 Some of these soils are very close by 2 where the Keystone pipeline is proposing their 3 pipeline. Soil conservation deems this land fragile, 4 and they are trying to make the necessary corrections 5 and end uses for the land that are best for the 6 United States citizens or should we say North Dakota 7 citizens. This is what soil conservation is doing. 8 They also have a category of soils that 9 are very good classified for perfect irrigating 10 soils, meaning that the permeability of the soils 11 can -- the water is very acceptable and readily 12 leeches down into the -- into the soil. These are 13 parallel to where this oil pipeline is proposing to 14 put the pipeline. 15 Okay. Then we go to some of the facts 16 that Keystone released on the volume that cannot be 17 detected quickly. And I'm not sure on their 18 terminology. I seen documents that show 1 and a half 19 percent volume. Earlier the gentleman, that guy in 20 the white shirt over there, said 2 percent volume in 21 90 days and so on and so on. 22 They're pumping 435,000 barrels of oil. 23 If they have an oil leak and who knows how long, that 24 will accelerate and get into our ground water so 25 quickly. Isn't it a good assumption to say that</p>

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1 everyone is excited about the Exxon Valdez in Alaska,
 2 the oil tanker that ran aground for whatever reason
 3 and spilled some oil in Alaska?
 4 In my math and in the math of the
 5 representatives from this group, it would seem very
 6 likely that the oil leak from Keystone would be
 7 greater than the Exxon Valdez in our oil -- in our
 8 water aquifers. So if we have a couple of these
 9 leaks up and down eastern North Dakota, wouldn't that
 10 put a majority of the drinking water in jeopardy for
 11 the state of North Dakota?
 12 And then I touched earlier -- and on
 13 top of this -- I'm reading from my notes. On top of
 14 this, Keystone is putting the line -- I want to
 15 emphasize this -- in the middle of a section of
 16 fields. And for people that don't understand what a
 17 section is, it's a square block of land. So Keystone
 18 is running right down the middle basically.
 19 The gentleman said earlier they want to
 20 choose where the digging is easiest or best. The
 21 topography of the map -- of the land and so on and so
 22 on accommodates the pipeline company. So they have
 23 ease of digging, less costs, et cetera, et cetera.
 24 But shouldn't this be addressed that
 25 there's environmental issues and concerns? I mean,

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1 just because it's easy digging, does that want to put
 2 the jeopardy of drinking water in the state of North
 3 Dakota and to the taxpayers and the residents in
 4 jeopardy?
 5 It's clear in -- in the comments that I
 6 heard so far that Keystone is clearly a money
 7 company. The facts show it, how well they've been
 8 doing, so on and so on. That's great for that.
 9 Then anyway addressing some of the
 10 foreign -- this is still a foreign oil by the way.
 11 It isn't that the United States is, you know, coming
 12 up with -- I don't know what to say. This is foreign
 13 oil that's coming into the United States so we're
 14 still supposedly reliant on foreign oil.
 15 Isn't the president pushing for
 16 domestic self-sufficiency? Isn't that what he
 17 mandated by law in the ethanol industries? Nothing
 18 was ever mentioned about ethanol in here. I -- I
 19 can't understand that. I don't think the group can
 20 understand that neither. I mean, here we have a
 21 renewable resource that's helping the rural economy,
 22 the state of North Dakota's economy, the U.S.
 23 agricultural economy by an ethanol industry. The
 24 president mandated by law that ethanol is supposed to
 25 expand in its production and consumption.

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1 Okay. The next question is is that --
 2 I would like to state is, is the PSC going handcuff
 3 us all and future generations to the liability that
 4 is attached to this pipeline? Keystone speculators
 5 are for only 18-month benefit. We are residents of
 6 North Dakota and taxpayers of North Dakota. We have
 7 been all our life, most of the people I know.
 8 We have quite a few questions about the
 9 permit process. I touched on this earlier. Keystone
 10 is trying to narrow this down under my assumption of
 11 to a 1-mile corridor, you know, across the state of
 12 North Dakota. Shouldn't this be viewed different?
 13 Shouldn't the state meet and say: Well, you know,
 14 what good will it do for the state and these are the
 15 places you can cross and should cross. I guess that
 16 would be some of the thoughts that we have.
 17 And when you're referring to this
 18 necessity of a permit and that they have to come
 19 under this broad topic of -- is a common carrier,
 20 well, doesn't a common carrier across the state of
 21 North Dakota have to readily and immediately include
 22 North Dakota oil to address this? I mean, not
 23 this -- we have one unknown name that nobody knew of.
 24 I mean, even the -- what was it? The newly elected
 25 oil commissioner couldn't recall the name of the

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1 company or the identity of the people who might be
 2 talking putting in North Dakota oil. I mean, this is
 3 bizarre in -- in our mind.
 4 I mean, to be a common carrier you
 5 should have to -- in the state you're applying for
 6 the permit, shouldn't you have to take and show some
 7 significant benefit of moving North Dakota oil along?
 8 There doesn't seem to be much benefit to North Dakota
 9 at all in this. I touched on some of the topics that
 10 I was saying earlier. If there is a promise from
 11 Keystone for North Dakota entering this specific
 12 pipeline, that is a clear guess and a good judgment
 13 to put it in western North Dakota if that's their --
 14 if that's what they're thinking about.
 15 There is a one-hour movie that was out.
 16 It was called Refugees from the Blue Planet. I
 17 caught it late. It was on satellite. It's made by a
 18 Canadian film production company. It's very, very
 19 interesting. In this movie it states: The voice of
 20 one can make a big difference; the voice of many can
 21 make a bigger difference.
 22 But the voice of a government agency
 23 telling a pipeline no would send a clear message.
 24 Aren't residents the most important, not endangered
 25 species, nesting grounds, et cetera? The pipeline

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1 moved around this in the movie. They state
 2 endangered species and so on and so on. The movie
 3 that I'm referring to is made solely in Alberta,
 4 Canada. It's very, very interesting. I brought one
 5 copy with me. That's all I had. I had a few other
 6 copies, and they've passed them out.
 7 They state: A crime occurs when one
 8 party takes something from another. What is the
 9 difference here? The movie clearly states that
 10 Alberta has the highest disease rates linked to gas
 11 and oil, and they specifically outline the health
 12 risks associated with this. They have doctors on
 13 there talking. It's a very well-done movie. Most,
 14 if not all, oil, gas and petroleum is owned by the
 15 Crown in Alberta. This is their biggest source of
 16 income.
 17 You know, it sounds like Alberta has
 18 very big supporters of exporting its petroleum
 19 products clearly for economic gains. I guess the
 20 gentleman earlier was saying that -- how Alberta is
 21 going to accommodate the U.S. and how they're readily
 22 willing and able to stand by and pipe these enormous
 23 sums of oil in there. And they never said, well, gee
 24 on September, for example, of '08, we are going to --
 25 and I'm just throwing out a date for example -- we

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1 are going to incorporate 20 percent of the oil coming
 2 from western North Dakota. They never did that.
 3 They made a strong sales pitch to say
 4 Alberta has all these billions and billions barrels
 5 of oil reserves. What are they, the second largest
 6 to Saudi Arabia supposedly in their own words? I
 7 find it hard to believe as the group does that
 8 they're going to allow North Dakota oil to be somehow
 9 put in this. I guess a name that's unknown is no
 10 comfort to any of us in this group.
 11 In this movie that I'm referring to
 12 they state that there's more environmental refugees
 13 than war refugees in the history of the world. They
 14 talk about global warming. They say how hard
 15 petroleum products is on the environment and how much
 16 pollution they spew into the atmosphere.
 17 Some of the direct costs that we suffer
 18 as farmers, the new John Deere tractors have all
 19 these pollution and emission control standards put on
 20 them as a result of burning fossil fuels so isn't
 21 that a direct cost to the farmer? If you would go
 22 out to buy a semi, you would incur the same -- the
 23 same costs.
 24 I guess I would like to ask the comment
 25 to PSC, you know, this meeting was somewhere along

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1 the words of necessity and needs. Well, for -- for
 2 what? That's -- that's what I would like to ask, for
 3 what? Isn't the first thing or thought should be the
 4 environment of North Dakota and the residents of
 5 North Dakota? Shouldn't it focus on that, and
 6 shouldn't we be the one saying that, hey, back off,
 7 you're too close to an aquifer, you're too close to
 8 small cities, et cetera, et cetera? They're
 9 diminishing our land value.
 10 I touched on our ethanol industries
 11 that seem to be just willing to start thriving. We
 12 have a renewable, every-year resource readily
 13 available to us. The country of Brazil, is the way
 14 it sounds, solely ethanol efficient and cuts down a
 15 lot on global greenhouse.
 16 The other thing is when TransCanada
 17 states or Keystone, when they state that they're
 18 going to have 5 to 600 workers in a two-operation
 19 show in North Dakota and that 10 to 15 percent of
 20 this volume are going to come from North Dakota
 21 labor, well, let's be honest here. North Dakota has
 22 the lowest rate of unemployment here across the
 23 United States I believe. Most of us guys are
 24 farmers. We have a hard time finding one good
 25 tractor/combine/truck operator. I mean, we just have

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1 that problem. And we come from an agricultural state
 2 meaning that the people should be familiar with us.
 3 It's not an oil pipeline state. So how are they
 4 going to get, I don't know, 50 to a hundred plus
 5 workers that will be ready to roll up their hands
 6 going to work on this pipeline that's moving at such
 7 a fast pace?
 8 And then earlier the gentleman says
 9 gravel companies, that, you know, they might solicit
 10 some gravel business. Try buying a load of gravel
 11 now. I'm building a building and try buying -- try
 12 getting some gravel. They're all backed up because
 13 it's a seasonal occupation for these people. And
 14 they have so much business on now, where are they
 15 going to facilitate these extra trucks, extra gravel,
 16 so on and so on? I don't see it happening.
 17 They made a statement that said 40,000
 18 landowners -- they currently have easements on 40,000
 19 landowners. I believe that was the figure or
 20 approximately. We would like to know how many
 21 landowners gave their land up willingly or had it
 22 condemned, taken away from them just like now.
 23 Keystone states they have a detailed
 24 plan for leaks coming down sometime -- coming down in
 25 the future. I guess I would really like to see that

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1 one as long as -- as well as the group would. The
 2 other thing is when they're doing all this planning,
 3 how can they plan to get out to rural areas? The
 4 gentleman stated that most of the digging and
 5 everything, construction is going to be happening in
 6 rural areas. How can they simply get out to rural
 7 areas when we don't have the road facilities to
 8 handle heavy equipment, all this stuff and we're just
 9 not set up for it?
 10 They're stating how much money that
 11 they have, that they have enormous amounts of money.
 12 Their cash flow is just second to none. That they're
 13 the only ones who have the wherewithal to put in
 14 these big pipelines, that they're the best choice.
 15 But they're offering the landowner only a one-time
 16 payment for -- for his land, for crossing his land.
 17 They're only offering him a one-time payment, but
 18 they're stating that they can trade stock on the New
 19 York Stock Exchange, Toronto Stock Exchange and that
 20 they -- they actively do business there and their
 21 company is so well thought of.
 22 Well, and then on top of it, the
 23 easement language in the easement, it's not only for
 24 one pipeline. It's my understanding that it's -- and
 25 the group's understanding that it's for multiple

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1 pipelines, that this could cover multiple pipelines
 2 and even go to gas pipeline as well as an oil. Also
 3 it states in there that they can resell the easement.
 4 That they can resell this easement. I don't know how
 5 this could put them as a common carrier in North
 6 Dakota.
 7 If they truly want to take and do
 8 something for the state of North Dakota, what about
 9 going along the interstate system? And I'm not
 10 trying to push this on nobody. But, I mean, there
 11 they state that they have response teams that be
 12 operating 365 days out of the year ready to go just
 13 like firemen out the door and that's it. Our point
 14 is these are rural communities. How are they going
 15 to get them there? Let's say they have 5 inches of
 16 rain. Let's say there's fog. Let's say there's
 17 snowstorms, so on and so on. Wouldn't the
 18 interstates be a clear route for them, easy sailing
 19 and just buzz right down there and go on to do their
 20 business?
 21 It seems like North Dakota has a law
 22 for condemnation. It protects landowners and U.S.
 23 citizens. It would be really nice to see that law
 24 enacted and not some short-circuit process happening
 25 here. This is devaluing our land, but yet our taxes

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1 are not going down. North Dakota has a push on for
 2 small towns' revitalization. This is not sending out
 3 any positive messages. Who would want to move to a
 4 town with an oil pipeline within a half mile or less
 5 uphill of that town?
 6 Water is the staff of life. What is
 7 the cost to North Dakota residents when they lose
 8 their clean water? So far the only thoughts that I
 9 had or the only knowledge that I gained from Keystone
 10 was is they employed a couple North Dakota lawyers.
 11 That was their testimony that that's the revenue that
 12 they gave to North Dakota. That's what he stated.
 13 The other thing I would like to ask is
 14 is that the state and counties are supposed to
 15 receive some money, revenue from Keystone, reduction
 16 in property taxes, some type of tax revenue. I don't
 17 understand this. And what I'm asking is is what
 18 liabilities are subject to the counties or the state
 19 for getting this money? It would seem that they
 20 would have some liabilities because who gets money
 21 for nothing now days? I mean, Santa Claus, I
 22 couldn't find him lately.
 23 I don't know how this is going to work
 24 exactly. These are some of my thoughts as well as
 25 the group's thoughts. When they talk about

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1 mechanical safeguards in place, it all sounds good.
 2 We've been around mechanical things all of our life
 3 as far as on the farm. Whenever you rely on
 4 mechanical measures, you will have failures. That's
 5 just the way things work. When they're putting it
 6 close to a water aquifer, it's just too much to ask.
 7 There is way more better avenues and approaches to
 8 doing this.
 9 I hope that the Public Service
 10 Commission will -- not only for the people who are
 11 present here today but for the future generations
 12 will take a good look at this and will realize what
 13 is valuable to the citizens of North Dakota. When I
 14 came up last night, I stayed at the AmericInn Motel.
 15 They had a thing that -- however you want to call it
 16 that was attached to the doorknob on the motel room
 17 that we stayed in. It says: Save and conserve
 18 water. It says: Take -- and if you're going to stay
 19 here more than one night, we won't clean your sheets,
 20 we won't wash your towels. If you want your towels
 21 washed, throw them on the floor, otherwise we are
 22 going to conserve water. It's that important.
 23 Angie Dickinson, an old movie star from
 24 North Dakota, we realize her involvement in clean
 25 water. I think clean water is a way more bigger

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<p>1 asset to the state of North Dakota than oil. And 2 above all, we are not getting no North Dakota oil put 3 in this pipeline. They are simply entertaining the 4 thoughts. 5 Thank you, everyone, for your time, and 6 I hope our voices get heard. 7 Do you want this movie left and this 8 topographic map? 9 MR. WAHL: Do you want the 10 commissioners to see that, Mr. Novak? 11 MR. NOVAK: It's an hour-long video. 12 It doesn't matter to me. It would be great if they 13 would. 14 MR. WAHL: Are you asking to have those 15 marked as exhibits, Mr. Novak? 16 MR. NOVAK: Yes. 17 (Whereupon, Exhibit Nos. MN1 & 18 MN2 were marked for identifi- 19 cation by the court reporter.) 20 MR. WAHL: Mr. Novak, marked for 21 identification is a VHS recording MN1. This is the 22 video that you described earlier in your testimony? 23 MR. NOVAK: Correct. 24 MR. WAHL: And marked as Exhibit MN2 is 25 a typographical map of what generally, please? MR. NOVAK: It's from the area of</p>	<p>1 pipeline? 2 MR. NOVAK: The dangers associated with 3 oil and gas lines and what is happening to the people 4 in Alberta, how they're getting sick, how they're 5 getting chased off their land, et cetera, et cetera. 6 MR. WAHL: All right. Exhibit -- let's 7 do one at a time. Mr. Delaney? 8 MR. DELANEY: I have no objection to 9 the video. 10 MR. WAHL: Mr. Binek, Exhibit MN1? 11 MR. BINEK: I have no objection. 12 MR. WAHL: Exhibit MN1 is received. 13 MR. KELSCH: No objection to 2. 14 MR. DELANEY: I have no objection to 15 the map. 16 MR. BINEK: No objection. 17 MR. WAHL: Exhibit MN2 is received. 18 Anything further at this time, 19 Mr. Novak, that you wish to say? 20 MR. NOVAK: One more thought I had 21 is -- and I think it's the group's thought too, is is 22 these are happening -- supposedly the construction is 23 happening to the rural areas, the rural areas meaning 24 towns 50 a hundred, 150 populations. Basically they 25 don't have no motels. They don't have no cafes.</p>
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<p>1 Lankin going west approximately a mile and a half to 2 2 miles. I couldn't get the next map because I ran 3 out of time that goes another mile to show a very 4 significant drop. I mean, we have -- it shows on 5 this map over a hundred- to 200-foot drop in just 6 2 miles. The next map should show even greater drop. 7 MR. WAHL: Let's do Exhibit MN1, 8 Mr. Kelsch. 9 MR. KELSCH: What's the name of the 10 title of the movie again and -- 11 MR. NOVAK: Refugees of the Blue 12 Planet. 13 MR. KELSCH: And that's a movie that 14 you videotaped off of the television; is that it? 15 MR. NOVAK: Yes, correct. It was on 16 satellite. 17 MR. KELSCH: Well, I would object to 18 the -- formal objection to the video, particularly 19 not having seen it and not knowing anything about it 20 and what relevance it would have here but.... 21 MR. NOVAK: It highlights Alberta, 22 Canada. 23 MR. WAHL: Can you -- can you be more 24 specific, Mr. Novak? It highlights what? What 25 does -- what does this movie have to do with the</p>	<p>1 They have a gas station with a fuel tank of maybe a 2 thousand-gallon fuel tank. They maybe pump a hundred 3 gallons of fuel a week. Nobody's facilitated to 4 handle this big influx of so-called gobs of money 5 coming into North Dakota economy. If they want to do 6 it somewhere, do it along big cities that are 7 facilitated for them, I mean, instead of shuttling 8 them around all the time and so on and so on. I 9 mean, what are these -- I mean, it just didn't make 10 sense. It's a good commercial, but in reality 11 doesn't make sense. It doesn't. 12 MR. WAHL: Mr. Kelsch, questions of 13 Mr. Novak? 14 MR. KELSCH: No questions, your Honor. 15 MR. WAHL: Mr. Delaney? 16 MR. DELANEY: I have no questions. 17 MR. WAHL: Mr. Binek? 18 MR. BINEK: No questions. 19 MR. WAHL: Questions by the commission? 20 Commissioner Cramer? 21 MR. CRAMER: Well, I have -- I have at 22 least one. I just want some clarification on 23 Mr. Novak. 24 25</p>

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1 EXAMINATION

2 BY MR. CRAMER:

3 Q. Early in your testimony a couple of

4 times you stated emphatically that you know there

5 will be leaks. Do you have a -- what do you base

6 that knowledge on?

7 **A. Their past record. Every pipeline**

8 **leaks; doesn't it?**

9 Q. Well, I'm asking the question but...

10 But that's what it's based on, is just that every

11 pipeline leaks? You know that for a fact?

12 **A. Keystone themselves in the documents that**

13 **they gave to us or the paperwork that they gave to us**

14 **admitted there will be leaks. I'm not the one who**

15 **dreamt this up.**

16 Q. Well, I just to want make sure that the

17 record is clear but....

18 **A. And so do I. And so do I. The**

19 **information that I'm going by is what Keystone**

20 **submitted to the group.**

21 Q. All right. When you referred to an

22 18-month benefit, were you talking about the

23 construction? That was the construction time; is

24 that what you were referring to?

25 **A. I'm talking about the benefits that**

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1 **this gentleman over here in the white shirt stated.**

2 **He says there will be an 18-month benefit meaning**

3 **housing, lodging, food --**

4 Q. Okay.

5 **A. -- things like that constructionwise.**

6 Q. All right. I just wanted to make sure

7 that that was what you were talking about.

8 MR. CRAMER: That's all I have. Thank

9 you.

10 MR. WAHL: Commissioner Clark?

11 EXAMINATION

12 BY MR. CLARK:

13 Q. I just wanted to clarify. You said

14 you're from Lankin.

15 **A. Correct.**

16 Q. Do you own land that is -- is going to

17 be crossed?

18 **A. It's very close to my land. I don't**

19 **know if it actually will go across it, but it's**

20 **close.**

21 Q. Okay. But you haven't signed a --

22 haven't been required to sign an easement or anything

23 like that up to this point?

24 **A. I have been asked to sign an easement.**

25 Q. Okay.

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1 **A. I have been threatened that if I don't**

2 **sign an easement condemnation will take place so....**

3 Q. So it's -- it's your understanding it's

4 close enough to require an easement from you, but

5 you're not sure that -- that the actual site itself

6 will cross your land; is that accurate?

7 **A. I guess I'll put it this way. I'm very**

8 **concerned about the actions that are developing. I**

9 **think everything's on a fast course, and I would urge**

10 **the PSC to slow the process down. I mean, there are**

11 **easements gotten out there. There is no EIS report**

12 **out. There is no permit from the -- from these**

13 **people, the PSC, and yet they're gathering easements**

14 **like if they're going out of style. And you heard it**

15 **yourself. They are contracting oil down the line for**

16 **moving this oil that they have contracted, and yet**

17 **the paperwork isn't nowhere to be found.**

18 Q. I'm just trying to establish where your

19 land is relative to the line, that's all, so I have a

20 better idea of that.

21 MR. CLARK: I -- I guess I -- I don't

22 have any more questions for Mr. Novak. I did have a

23 question for the -- for Judge Wahl. The -- the

24 videotape was -- I'm not sure that I heard the answer

25 to Mr. Kelsch's motion. I just want to clarify for

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1 myself what -- if the commission is allowed to --

2 MR. WAHL: Yes.

3 MR. CLARK: -- take that into account?

4 MR. WAHL: The answer, Commissioner, is

5 yes. I received the tape, and I've got a little bit

6 more to say about that in a moment.

7 MR. CLARK: Okay. Thank you.

8 MR. WAHL: Commissioner Wefald?

9 EXAMINATION

10 BY MS. WEFALD:

11 Q. I need to know specifically where the

12 land is that you're concerned about. Your -- your

13 own piece of property, where is your own piece of

14 property located?

15 **A. I guess my biggest concern is for the**

16 **next generation and the welfare of North Dakota**

17 **residents for clean water. I guess the fact that my**

18 **land is close to this is a secondary issue.**

19 Q. All right. I understand that. But can

20 you just still tell me where your land is located?

21 **A. My land is located west of Lankin right**

22 **adjacent to Lankin, the city of Lankin itself. So**

23 **that's why I made the comment when I says North**

24 **Dakota has a push on for small-town development.**

25 Q. All right. And that's west of Langdon,

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1 L-a-n-g-d-o-n?

2 **A. No. It's L-a-n-k-i-n.**

3 Q. Lankin. Okay.

4 MR. CRAMER: I might just follow-up

5 with Commissioner Wefald.

6 EXAMINATION

7 BY MR. CRAMER:

8 Q. Is that -- so is your land between the

9 city of Lankin and the pipeline? The pipeline is

10 about you said half a mile west of Lankin; right?

11 **A. Approximately. But they moved it a**

12 **small footage so I don't know the exact square foot.**

13 **Another fellow just handed me the map here that --**

14 **I'm assuming it to be on the western portion of my**

15 **land. May be. May be.**

16 MS. WEFELD: All right. Now I --

17 **A. It may be west of there. They're**

18 **applying for this mile corridor so....**

19 EXAMINATION

20 BY MS. WEFELD:

21 Q. I need -- I need still some more help.

22 I'm so sorry. I'm not quite sure where Lankin is

23 located.

24 **A. It's in --**

25 Q. It's on map 3. Map 3 of 10. Okay.

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1 Thank you. Then.... All right. Okay. Thank you

2 very much. I've got it now. Uh-huh. I've got it.

3 Now, on -- we have a -- are you -- I have also a map

4 that shows an aquifer just to the east of Lankin. Is

5 that the particular aquifer that you're concerned

6 about, and what is the name of that aquifer?

7 **A. There's -- there are several smaller**

8 **aquifers, and the larger aquifer is called the**

9 **Fordville aquifer.**

10 Q. The Fordville aquifer. Okay. Thank

11 you.

12 **A. I believe that is the correct name,**

13 **Fordville.**

14 Q. All right. Thank you. That helps me

15 to understand which aquifer. I mean, I know you're

16 concerned about all aquifers --

17 **A. Uh-huh.**

18 Q. -- along the pipeline, but the one that

19 is closest to your property is the Fordville. Okay.

20 And on our maps that is identified as a shallow --

21 shallow aquifer and a surficial aquifer just for your

22 information. Okay.

23 **A. And wouldn't that be one that would be**

24 **easily contaminated?**

25 Q. I'm going to need to get more

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1 information about that. I'm sorry. I can't answer

2 that question.

3 **A. Okay.**

4 Q. Okay. Then on -- you said that there

5 is no spill plan in place. Is it just that you're

6 not aware of a spill plan or it's your understanding

7 from attending --

8 **A. I believe on the presentation today the**

9 **gentleman over there stated that they were going to**

10 **have this plan in place in 2009. And to get back to**

11 **the other gentleman's question, after you're done**

12 **I -- I have some data that I think he would find**

13 **quite interesting.**

14 MS. WEFELD: Thank you. All right.

15 And then -- I think that's everything right now that

16 I need to clarify. Thank you so much.

17 MR. WAHL: Commissioner Clark?

18 EXAMINATION

19 BY MR. CLARK:

20 Q. Just briefly to orient myself. The --

21 the ravine or the dropoff that you had mentioned

22 relative to Lankin, is that directly north? Is that

23 maybe 2 miles, something like that? Is that the

24 dropoff?

25 **A. The land around the Lankin area slopes**

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1 **generally to the east, in an easterly direction going**

2 **to the Red River Valley.**

3 Q. Okay.

4 **A. We are on top of a -- I don't know what**

5 **you want to call it -- plateau or whatever it is.**

6 **But it slopes from you could say the Lankin area to**

7 **3 miles east of the Lankin area.**

8 Q. Okay.

9 **A. Over 300-foot drop, 2- to 300-foot**

10 **drop. And that's what I keep on referring to, that**

11 **either the oil will get there above ground or below**

12 **ground. It's going to get there.**

13 Q. Okay. It looks like there's -- I can't

14 tell from this map. There's a river. I don't know

15 if it's the Pembina River or -- there's a river

16 that's just north of Lankin. Is that --

17 **A. Yeah, and there's one that's right east**

18 **of Lankin too. I don't --**

19 Q. Which river is that that's just north?

20 **A. I don't know.**

21 MR. NOVAK: Maybe Merle, do you know?

22 MR. WAHL: I'm sorry, Mr. Novak. If

23 you don't know, you don't know.

24 MR. NOVAK: Okay. Okay. Sorry. I

25 don't know.

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1 MR. WAHL: Okay. That's all right.
 2 Q. (Mr. Clark continuing) Okay. So just
 3 so I understand. And we do have the topographical
 4 map here, but generally you're saying that the land
 5 tends to slope towards the east --
 6 **A. Correct.**
 7 Q. -- toward the aquifer that you're
 8 concerned about?
 9 MR. CLARK: Okay. Thank you.
 10 MR. NOVAK: And could I add in this at
 11 some point in time, this just highlights -- I found
 12 in my notes from TransCanada Keystone crude oil
 13 pipeline prepared by Water Development Association,
 14 WEBA (sic), and they state that oil spills that --
 15 they have up to 576 in the past six years and have an
 16 average of 96 spills per year. And I can enter this
 17 into some type of exhibit if you want this or
 18 however.
 19 MR. WAHL: That's really your request.
 20 MR. NOVAK: Yes, I guess that would be
 21 great.
 22 MR. WAHL: Mr. Novak, will you tell the
 23 commission, please, what this -- what this booklet
 24 is?
 25 MR. NOVAK: It's from the WEB Water

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1 Development Association in Aberdeen, South Dakota.
 2 MR. WAHL: Can you tell me -- can you
 3 tell the commission anything about this publication?
 4 What is the WEB Water Development Association; do you
 5 know?
 6 MR. NOVAK: I'm sorry, your Honor. I'm
 7 not clear on that.
 8 (Whereupon, Exhibit No. MN3
 9 was marked for identification
 10 by the court reporter.)
 11 MR. WAHL: I have marked for
 12 identification Exhibit MN3 which is the booklet and
 13 the page 9 containing the information on oil spill
 14 impact on farmland and soils containing information
 15 with regard to a TransCanada pipeline spill.
 16 MR. KELSCH: Your Honor, I'm going to
 17 object to -- to this document. This -- the
 18 witness -- it's not the witness's document. He
 19 didn't -- didn't know who the WEB Water Development
 20 Association was. He doesn't have any knowledge
 21 concerning the information in it, and -- and it's
 22 just -- clearly it's an inflammatory document from --
 23 it looks like prepared in South Dakota that really
 24 has no relevance or material basis here in North
 25 Dakota and no foundation for it at all. And we have
 no way of cross-examining the people who prepared it

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1 or questioning where the information came from or in
 2 any way to determine the veracity of the document.
 3 It -- it really puts us at a disadvantage if it's --
 4 if it's admitted.
 5 MR. STARKE: I think you'll find that
 6 the reference there --
 7 MR. WAHL: Just -- I'm sorry. I'm
 8 sorry, Mr. Starke.
 9 Mr. Delaney?
 10 MR. DELANEY: I have no objection to
 11 the document, and I would just offer -- I -- I am
 12 generally familiar with the WEB Water Development
 13 group down in South Dakota. They're responsible
 14 generally for rural water -- rural water supply down
 15 in North (sic) Dakota, responsible for routing water
 16 through PVC pipes to rural water -- rural areas. And
 17 I believe that document was prepared by Curtis Hohn
 18 who is with that organization. And that is really
 19 all I have to offer.
 20 MR. KELSCH: And I would object to
 21 testimony by the counsel for the intervenor. That
 22 should not be used to justify the -- or -- or give
 23 any credence to the document or provide a foundation
 24 for the document.
 25 MR. NOVAK: This was information that

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1 was given to the group, and I just didn't have time
 2 to read all of the information. I mean, it's simply
 3 that. We're farmers. It's our busy time. Just
 4 'cause one person or many people read it in the group
 5 and I didn't shouldn't exclude it in my mind. Isn't
 6 this a public meeting?
 7 MR. WAHL: Mr. Delaney, is this WEB
 8 Water Development Association, Inc., a -- what, a
 9 private corporation? Do you know what it is?
 10 MR. DELANEY: I don't know if they're a
 11 private or a for-profit corporation.
 12 MR. WAHL: And what are their purposes,
 13 if you know?
 14 MR. DELANEY: Rural water supply in
 15 South Dakota.
 16 MR. WAHL: Well, let me -- let me say
 17 this. As I discussed with counsel prior to the --
 18 prior to the hearing, I think that the purpose of an
 19 administrative hearing, especially the purpose of an
 20 administrative hearing that includes public
 21 testimony, is to gather up as much relevant evidence
 22 as is available for the consideration of the
 23 commission.
 24 And as I pointed out, the commissioners
 25 are each expert in your own right not only by

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1 experience but by training and education. Plus the
 2 commission is assisted by a professional expert
 3 staff. So many of the concerns that you have
 4 ordinarily for the rules of evidence are not really
 5 applicable to an administrative hearing, and I say
 6 again especially an administrative hearing which
 7 provides for public testimony.
 8 The legislature has recognized this,
 9 and accordingly in accordance with the provisions of
 10 Section 28-32-24 sub 1, I will waive the rules of
 11 evidence for these proceedings upon a finding that
 12 the waiver is necessary to ascertain the substantial
 13 rights of a party to the proceeding. And I think the
 14 evidence is relevant. Specifically, Mr. Kelsch, I --
 15 I frankly think that if there's a fact stated, a
 16 discrete fact, in fact, and it's -- if it's -- if the
 17 fact is false, TransCanada is well in a -- in a
 18 position to demonstrate that it's false. And I -- at
 19 that point the evidence has very little credibility
 20 left. So Exhibit MN3 is received. Mr. Kelsch, you
 21 may make your record.
 22 MR. KELSCH: Thank you, your Honor. I
 23 would just like to point out that 28-32-24 subsection
 24 5 where it indicates that all testimony must be made
 25 under oath or affirmation. "Relevant statements

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1 presented by nonparties --" which this apparently is
 2 although it's not even a statement by Mr. Novak
 3 "-- may be received as evidence if all parties are
 4 given an opportunity to cross-examine the nonparty
 5 witness or to otherwise challenge or rebut the
 6 statements."
 7 And -- and we certainly -- because this
 8 Mr. Hohn or whoever prepared this document is not
 9 here, if this was important he -- I assume he could
 10 have come here. He is not here. We're not able to
 11 cross-examine him as to the statements or to
 12 challenge where they're coming from. And so I --
 13 again I would renew my objection to the document.
 14 MR. WAHL: And I don't think the
 15 subsection is applicable. Essentially this is a
 16 document that's hearsay which Mr. Novak is offering.
 17 And as I say, I -- I waive the rules of evidence for
 18 these proceedings upon a finding that the waiver is
 19 necessary to ascertain the substantial rights of a
 20 party. Now, I am -- I should have -- I may be ahead
 21 of myself just a bit, Mr. Novak, but I understood
 22 that you were -- are one of the intervenors under the
 23 order of the commission.
 24 MR. NOVAK: Yes. And I'm also a member
 25 of the DOC group.

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1 MR. WAHL: All right. But specifically
 2 I notice in the order -- in the commission's order
 3 there's a Mark Novak named. Apparently that's a
 4 typographical error.
 5 MR. NOVAK: No. That's -- I think
 6 there's only one Mark Novak.
 7 MR. WAHL: Oh, I'm sorry. I -- I had
 8 your name, Mr. Novak, as Martin. Am I wrong about
 9 that?
 10 MR. NOVAK: No, my name is Mark Novak.
 11 MR. WAHL: Mart?
 12 MR. NOVAK: Mark, M-a-r-k.
 13 MR. WAHL: All right. I'm sorry.
 14 Well, then you are -- you are a party under the
 15 commission's order for intervention. Accordingly,
 16 Mr. Kelsch, I -- I think it's appropriate.
 17 MR. KELSCH: Your Honor, could I at
 18 least have -- or make a request to get a copy of that
 19 today so we at least have a little time to look it
 20 over and have a chance to put some sort of rebuttal
 21 response to it tomorrow given this late date of
 22 receiving it?
 23 MR. WAHL: Certainly. All right.
 24 Mr. Kelsch, follow-up to the commissioners'
 25 questions?

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1 MR. KELSCH: No, your Honor.
 2 MR. WAHL: Mr. Delaney?
 3 MR. DELANEY: No, your Honor.
 4 MR. WAHL: Mr. Binek?
 5 MR. BINEK: No.
 6 MR. WAHL: Anything further?
 7 MR. CRAMER: I --
 8 MR. WAHL: Commissioner Cramer.
 9 MR. CRAMER: Thank you.
 10 EXAMINATION
 11 BY MR. CRAMER:
 12 Q. I want -- I want to -- since I have a
 13 local here -- and I just found another pipeline map.
 14 I'm trying to familiarize myself with -- the Enbridge
 15 pipeline, are you familiar at all with that, the one
 16 that runs from western North Dakota into Minot and
 17 then directly across to Clearbrook, Minnesota? Are
 18 you familiar with that pipeline?
 19 A. Not really.
 20 Q. Okay. I was -- I wanted, if I could,
 21 to get some geographical bearings on how close that
 22 might run to Lankin as well. I suspect in the
 23 vicinity but maybe not real close but....
 24 A. I don't believe it's in the vicinity.
 25 MR. CRAMER: All right. Thank you.

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1 MR. WAHL: Thank you very much,
 2 Mr. Novak.
 3 MR. NOVAK: Thank you, everyone, and
 4 thank you, your Honor.
 5 MR. WAHL: I think it's a good time for
 6 about a five-minute recess.
 7 (A recess was taken from 3:40 p.m. to
 8 3:47 p.m.)
 9 MR. WAHL: All right. Let's be in
 10 order, please. All right. Let's be in order. I'm
 11 missing Mr. Kelsch. Mr. White, you know, I've got
 12 just a little preliminary business. If you would
 13 just sit in for TransCanada, please.
 14 MR. WHITE: Okay.
 15 MR. WAHL: Let's be on the record.
 16 Mr. Starke.
 17 MR. STARKE: Yes, sir.
 18 MR. WAHL: I'm told that I overlooked
 19 actually administering the oath to you, and I may
 20 well have done that. If I did indeed overlook
 21 administering the oath to you, we're going to fix
 22 that up right now. As I recall, you've been here all
 23 day. You heard my advice regarding perjury?
 24 MR. STARKE: (Indicating yes.)
 25 MR. WAHL: Your answer is yes?

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1 MR. STARKE: Yes, sir, I have.
 2 MR. WAHL: And would you raise your
 3 right hand please, Mr. Starke? Mr. Starke, do you
 4 swear that the testimony which you gave for this
 5 hearing was the truth, the whole truth and nothing
 6 but the truth?
 7 MR. STARKE: Yes, sir, I do.
 8 MR. WAHL: And do you, Mr. Starke,
 9 ratify and confirm all of the testimony which you
 10 previously gave?
 11 MR. STARKE: Yes, sir, it is. And I
 12 have proof of every statement I made.
 13 MR. WAHL: Thank you very much,
 14 Mr. Starke.
 15 MR. STARKE: Yes, sir.
 16 MR. WAHL: All right. Next -- next,
 17 please. As I recall, there is a person here who
 18 wishes to give testimony in support of the --
 19 TransCanada's applications. Will you come forward,
 20 please?
 21 What is your name, sir?
 22 MR. PTACEK: My name is Paul Ptacek,
 23 spelled P-t-a-c-e-k.
 24 MR. WAHL: Mr. Ptacek, would you print
 25 your name and your address on the sheet on the

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1 lectern, please?
 2 MR. PTACEK: Yes, your Honor.
 3 MR. WAHL: Mr. Ptacek, did you hear my
 4 advice regarding perjury?
 5 MR. PTACEK: Yes, your Honor.
 6 MR. WAHL: Would you raise your right
 7 hand, please? Being advised regarding perjury,
 8 Mr. Ptacek, do you swear that the testimony which you
 9 are about to give in this matter shall be the truth,
 10 the whole truth and nothing but the truth?
 11 MR. PTACEK: Yes.
 12 MR. WAHL: Will you please state your
 13 name and address for the record?
 14 MR. PTACEK: My name is Paul Ptacek.
 15 My address is 7540, Highway 18; Wyndmere, North
 16 Dakota 58081.
 17 MR. WAHL: You may proceed, Mr. Ptacek,
 18 with your testimony.
 19 MR. PTACEK: Thank you, your Honor. I
 20 would rise in support of the application for the
 21 Keystone pipeline, and I'll limit my -- my comments
 22 to three specific concerns that were raised in the
 23 earlier meeting conducted this morning.
 24 Being a lifelong resident of North
 25 Dakota, except for the period of time which I spent

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1 in the Marine Corps, I spent my entire life in North
 2 Dakota. One of the issues that was raised was
 3 economics, and I can speak personally about my
 4 personal situation as it relates to the pipeline
 5 industry.
 6 In 1999 when the Alliance pipeline came
 7 through North Dakota, I was working as a diesel
 8 mechanic in heavy trucks down in the southeast part
 9 of the state, and I had an opportunity -- through
 10 other incidents there I had an opportunity to be
 11 employed on constructing that pipeline.
 12 One of the issues that was raised was:
 13 How are these contractors going to draw potential
 14 employees to work on these projects? And I can say
 15 specifically in my instance I had an opportunity to
 16 almost double my annual income by leaving my
 17 profession as a diesel mechanic and becoming an
 18 equipment operator working construction on that
 19 pipeline itself. I worked for -- consistently for --
 20 for the two-year period which that construction took
 21 place, and from there I -- I have continued in the
 22 craft as a heavy equipment operator since that time
 23 greatly improving my ability to provide for my family
 24 far exceeding the income that I would have maintained
 25 as a -- as a diesel mechanic.

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<p>1 Looking at the national pipeline 2 agreement that is drawn by International unions with 3 the pipeline contractors in the industry, looking at 4 entry level wages in the projected years to come, 5 recently more or less here in the next two years, you 6 could expect that an entry-level operator would start 7 out somewhere in the -- in the area of 20 to \$25 an 8 hour total package wages and benefits. 9 That's -- that's considerable incentive 10 to go to work there either as a college student -- I 11 remember -- I can cite a number of instances. 12 Workings on the Alliance line down in the southeast 13 part of the state where local farmers would be 14 employed as laborers working on the line, college 15 students, endless number of individuals from North 16 Dakota local to that construction being employed on 17 that line working in that craft. 18 The industry actually covers a number 19 of trades being it operator, welders, laborers, so on 20 and so forth. So some trades are specific in their 21 ability to perform certain construction aspects 22 whether it be the pipeline welders. There are 23 certain certifications and qualifications that are 24 basically going to eliminate your average Joe from 25 just walking on and -- and saying they can weld.</p>	<p>1 line that -- that a great amount of parts and 2 equipment were purchased from local dealers along the 3 right-of-way whether it be heavy construction 4 equipment parts or agricultural parts and equipment 5 for reclamation. 6 Housing, lodging, those issues, if 7 people from Valley City here can remember back into 8 1999, 2000, they can probably remember the great 9 influx of individuals who came to the community as 10 the pipeline passed by looking for housing, so on and 11 so forth. And -- and the lodging characteristics 12 stretched over a great distance whether it be from 13 Fargo to Jamestown or -- or you had people pulling up 14 campers in -- in -- in local farmers' yards paying 15 them a certain amount every month to hook up to their 16 electrical pole and -- and sewage facilities. But 17 housing wasn't necessarily a big issue there. I 18 believe every room was full that was available. But 19 on a project that size would be similar to this 20 project in size, lodging was accomplished. And a 21 great deal of money was spent in local communities in 22 providing for those services. 23 One of the other aspects that was 24 raised was safety. And as many individuals have 25 stated already, there's a -- there's a process in</p>
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<p>1 There's -- there's a great deal of training that goes 2 into the actual welding and construction of -- of the 3 pipe. 4 In the heavy equipment aspect where I'm 5 from, you -- you could employ someone with -- with 6 limited abilities and skills to do certain aspects 7 whether it be in the reclamation, driving a farm 8 tractor, a tow Cat, certain other pieces of 9 equipment, but then there's other pieces of equipment 10 such as your side boom tractors where the lowering of 11 the pipe is involved where you're going to need a 12 highly skilled individual so that people don't get 13 hurt. There's a great amount of knowledge and -- and 14 skill that goes with operating some of those pieces 15 of equipment. 16 And I can honestly say through great 17 efforts taken by the International union of operating 18 engineers that much training is done throughout the 19 year, year after year in training productive, 20 skilled, safe equipment operators in the pipeline 21 industry. So being a lack of -- of individuals that 22 are going to be able to perform, I would -- I would 23 doubt there's going to be a lack of individuals who 24 would be able to work on such a project. 25 Also I remember working on the Alliance</p>	<p>1 place by which a pipeline is monitored for corrosion 2 or -- or leaks, those sort of safety issues. As a 3 matter of fact, when I -- when I finish with this 4 meeting here today, I'm going to a -- a site just 5 outside of town where there's actual construction 6 taking place on an existing line for safety 7 precautions. There's some what they call dig-ups 8 where they're -- they're -- they're fixing problems 9 before they become problems. And those are -- 10 problems are identified through the measures that -- 11 that pipelines put in place to measure corrosion or 12 defects or whatever. 13 So this idea of there being a 14 catastrophic event where -- where this thing is just 15 going to explode unknowingly, I have a hard time 16 believing that that's a possibility provided the 17 information that I have through personal experience 18 with pipelines and the way they conduct testing 19 and -- and safety monitoring of those pipelines. 20 Environmental issues is probably one of 21 the biggest issues in construction of a pipeline. It 22 wasn't hard to recall on many occasions there were -- 23 there were many times somewhere up to a four-to-one 24 ratio of inspectors to workers working on a pipeline 25 to ensure that not only the environment --</p>

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1 environmental impact concerns were being met, that
 2 the safety aspects were being met, so on and so
 3 forth.
 4 There were an incredible number of
 5 individuals on the construction site making sure that
 6 safety and the environment were -- were attended to
 7 in the most tedious fashion. It actually maybe
 8 impeded the speed of -- of which the construction
 9 happened to the benefit of the pipeline.
 10 Also more directly to the concerns of
 11 the need and necessity issue with local and national
 12 benefits. With the U.S. -- anyone can correct me if
 13 I'm wrong. But I believe the figure is the U.S.
 14 consumes about 25 percent of the world's reserves in
 15 petroleum, and that is not likely to reduce itself
 16 either through conservation or through alternative
 17 methods. There is always going to be a need for oil.
 18 Let's say tomorrow we replace oil with hydrogen, a
 19 product that could probably compete directly with
 20 petroleum as a fuel. But I don't think you can grow
 21 enough product to replace petroleum in tires or
 22 fertilizer or hydraulic hoses, hydraulic fluids,
 23 aside from the fuel itself. I don't see that that's
 24 possible. You're always going to have some need for
 25 the petroleum product.

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1 With the -- with the U.S. consuming
 2 more than it can produce, I believe the U.S. holds
 3 2 percent of the world's oil reserves. There's no
 4 possible way that the U.S. could solely pump itself
 5 into independence being that we consume 25 percent of
 6 the world's resource. So conservation certainly
 7 needs to be an issue raised. I don't hear that
 8 shouted above the hordes today, but the fact I
 9 believe of the matter is you're going to have to deal
 10 with the consumption here today as -- as moving
 11 forward with supplying the product.
 12 And briefly in closing here, I'm going
 13 to say that I hear -- having sat here today, I hear
 14 that there's a lot of questions that many people
 15 raise that I think there's -- there's answers for
 16 those questions if -- if the opportunity for people
 17 to sit down and -- and have a conversation to answer
 18 those questions takes place. This certainly is a
 19 forum which -- which promotes the raising of those
 20 issues which is much needed. I totally agree with --
 21 with the process, but in saying that, I would move to
 22 promote the -- the further application of the
 23 TransCanada line. Thank you.
 24 MR. WAHL: Mr. Kelsch, questions for
 25 the witness?

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1 MR. KELSCH: No questions, your Honor.
 2 MR. WAHL: Mr. Delaney?
 3 MR. DELANEY: I have just a couple,
 4 your Honor.
 5 EXAMINATION
 6 BY MR. DELANEY:
 7 Q. Mr. Ptacek, thanks for coming today and
 8 offering your comments. A few questions. Were you
 9 approached by Keystone Pipeline Company or contacted
 10 by them to testify today?
 11 A. No.
 12 Q. Okay. And you left your job to work
 13 for the Alliance pipeline; is that correct?
 14 A. Correct.
 15 Q. Do you still work for the Alliance
 16 pipeline?
 17 A. No.
 18 Q. Okay. So how long did you work there?
 19 A. I worked for them for two years during
 20 the construction of that project at which time I left
 21 and went to work for water and sewer construction.
 22 It's in the same industry but in a different part of
 23 the industry.
 24 Q. Did you leave on your own volition or
 25 was it because they didn't have any more work for you

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1 after the project was completed?
 2 A. I had -- I had two opportunities
 3 actually to travel with that company and continue
 4 operating as a heavy equipment operator in other
 5 areas within the U.S. Having a family I chose to
 6 stay in North Dakota and work more locally. The life
 7 of a pipeline construction worker is somewhat of a
 8 gypsy's life, and I don't believe that was in the
 9 best interest of my family.
 10 Q. Fair enough. Have you been contacted
 11 or retained about -- I mean, retained to do any work
 12 for the Keystone project?
 13 A. No, I have not.
 14 Q. Okay. You spoke of this monitoring
 15 process which would address some of the safety
 16 concerns people have raised. When you were working
 17 for Alliance, were you directly involved with that
 18 monitoring process or was your work limited to the
 19 heavy equipment operation?
 20 A. I was directly involved in some parts
 21 of that line in installing that process. And through
 22 working with the individuals who were installing it,
 23 I gained some limited knowledge of -- as to the
 24 process with which that monitors the system.
 25 Q. Are you aware of whether or not the

253	<p>1 same monitoring processes are in place for this 2 pipeline as were in place for the Alliance pipeline? 3 A. I believe the cathodic processes was 4 one of the process -- processes that was listed in -- 5 in the slide presentation which would be as I 6 understand similar to the cathodic process which we 7 installed on the Alliance line. 8 Q. Do you know that for certain or -- 9 A. No, I can't speak to that as a fact. 10 Q. Okay. 11 A. I can only assume that cathodic 12 monitoring is similar in nature. 13 MR. DELANEY: Okay. That's all I have. 14 MR. WAHL: Mr. Binek? 15 MR. BINEK: I have no questions. 16 MR. WAHL: Questions from the 17 commission? Commissioner Cramer? 18 MR. CRAMER: I have none. 19 MR. WAHL: Commissioner Wefald? 20 MS. WEFELD: I have none, but I 21 appreciate since I was the one who raised some 22 questions about employment you sharing your 23 experiences. Thank you very much. 24 MR. PTACEK: Thank you. 25 MR. WAHL: Commissioner Clark?</p>	255	<p>1 MR. VCULEK: Vculek. 2 MR. WAHL: Vculek. I'm sorry. I 3 picked up a V someplace. 4 MR. CRAMER: It's a V as in Vculek. 5 MR. VCULEK: Yeah. 6 MR. CRAMER: V as in Victor. 7 MR. VCULEK: V-c-u-l-e-k. 8 MR. WAHL: All right. 9 MR. VCULEK: The Ptaceks and the 10 Vculeks, they're all Bohemian. 11 MR. WAHL: All right. Mr. Vculek, did 12 you hear me -- hear my advice regarding perjury? 13 MR. VCULEK: Yes, I did. 14 MR. WAHL: And accordingly will you 15 raise your right hand, please? Being advised 16 regarding perjury, Mr. Vculek, do you swear that the 17 testimony which you are about to give in this matter 18 shall be the truth, the whole truth and nothing but 19 the truth? 20 MR. VCULEK: I do. 21 MR. WAHL: You may -- I'm sorry. 22 Please state your name and address for the record. 23 MR. VCULEK: Bernard Vculek. Oakes, 24 North Dakota, Box 34, 58474. 25 MR. WAHL: You may proceed with your</p>
254	<p>1 MR. CLARK: No, thank you. 2 MR. WAHL: Thank you very much, 3 Mr. Ptacek. 4 MR. PTACEK: Thanks. 5 MR. WAHL: Is there any other public 6 testimony in support of TransCanada's applications? 7 If not, is there any -- I'm sorry. Do 8 you wish to speak in support of the application, sir? 9 MR. VCULEK: Yes. 10 MR. WAHL: What is your name? 11 MR. VCULEK: Bernard Vculek. 12 MR. WAHL: Spell your last name for me, 13 please. 14 MR. VCULEK: V-c-u-l-e-k. 15 MR. WAHL: Mr. Vculek, go ahead and 16 sign the -- or print your name and address for the 17 register, please. 18 MR. VCULEK: I wrote it. I hope you'll 19 be able to read it. 20 MR. WAHL: Oh, I'm sure we will. 21 MR. VCULEK: I just want to say -- 22 MR. WAHL: Just a minute, please. 23 MR. VCULEK: Oh, I'm sorry. 24 MR. WAHL: I don't want to mispronounce 25 your name. Is it Vculek?</p>	256	<p>1 testimony, Mr. Vculek. 2 MR. VCULEK: I had this whole list out 3 of South Dakota, and I promised the people in the 4 back that I would read it all for you, but now I've 5 changed my mind. I'm just kidding. 6 I'm in support of this project very 7 much so, but I think we need to be very considerate 8 of some of the people who the pipeline goes by their 9 home closely. There may not be heavy enough line. 10 We need to be extra considerate of those folks. 11 We've got a fellow here today who's 12 156 feet away from the pipeline with a brand new 13 home, and I -- I think there can be some changes made 14 for things like that. I've heard some other very 15 good reasons, and there are some good comments in the 16 South Dakota WEB pipeline reading by Curt Hohn, 17 whatever you want to call it. I hope you people can 18 take time and look it over because there are some 19 very valuable comments in there. 20 We in North Dakota, we need to do all 21 we can to be very considerate of the -- of everybody 22 along the line. The water considerations, we're 23 irrigation farmers, and we're all considerate of 24 that. But that's my brief comment. I won't -- I 25 won't read that whole list for you. Thank you very</p>

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1 much for listening to me.
 2 MR. WAHL: Just a minute, Mr. Vculek.
 3 MR. VCULEK: Okay.
 4 MR. WAHL: The lawyers and the
 5 commissioners get to ask you questions yet.
 6 Mr. Kelsch?
 7 MR. KELSCH: No questions.
 8 MR. WAHL: Mr. Delaney?
 9 MR. DELANEY: No questions.
 10 MR. WAHL: Mr. Binek?
 11 MR. BINEK: No questions.
 12 MR. WAHL: Questions from the
 13 commission? Commissioner Cramer?
 14 MR. CRAMER: No, I -- no questions.
 15 Not relevant to this anyway. I'm more interested in
 16 moving grain, but we'll talk about that later.
 17 MR. WAHL: Commissioner Wefald?
 18 EXAMINATION
 19 BY MS. WEFALD:
 20 Q. Is the person whose -- you said you
 21 have a concern about a person whose home is 156 feet
 22 away from the pipeline. Is that in North Dakota?
 23 **A. Yes, it is. It's about 1 mile from**
 24 **where our land is south and -- south of Highway 11,**
 25 **and hopefully he'll get up and say a few words about**

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1 **that too.**
 2 MS. WEFELD: Thank you.
 3 MR. VCULEK: So....
 4 MR. WAHL: Commissioner Clark?
 5 MR. CLARK: No, I have none. I just
 6 want to thank Bernie for making the trip up.
 7 MR. VCULEK: Okay.
 8 MR. WAHL: Follow-up, Mr. Kelsch?
 9 MR. KELSCH: No.
 10 MR. WAHL: Mr. Delaney?
 11 MR. DELANEY: No.
 12 MR. WAHL: Mr. Binek?
 13 MR. BINEK: No.
 14 MR. WAHL: Thank you very much,
 15 Mr. Vculek.
 16 Is there any other public testimony
 17 from persons who will not be able to give their
 18 testimony at Park River tomorrow? Anybody else?
 19 Please come forward.
 20 What is your name, sir?
 21 MR. ELLINGSON: My name is Terry
 22 Ellingson.
 23 MR. WAHL: All right. Would you sign
 24 the register there, please, Mr. Ellingson?
 25 Mr. Ellingson, you heard my advice

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1 regarding perjury?
 2 MR. ELLINGSON:
 3 Yes, I did.
 4 MR. WAHL: Will you raise your right
 5 hand, please? Being advised regarding perjury,
 6 Mr. Ellingson, do you swear that the testimony which
 7 you are about to give in this matter shall be the
 8 truth, the whole truth and nothing but the truth?
 9 MR. ELLINGSON: Yes, I do.
 10 MR. WAHL: Please state your name and
 11 address for the record.
 12 MR. ELLINGSON: My name is Terry
 13 Ellingson. 5065 125th Avenue Northeast, Dahlen,
 14 D-a-h-l-e-n, North Dakota 58224.
 15 MR. WAHL: You may proceed with your
 16 testimony, Mr. Ellingson.
 17 MR. ELLINGSON: I guess as a landowner
 18 where the pipeline is coming across, I have a couple
 19 of concerns that I would like to address. I guess
 20 when they came to get an easement from me, there was
 21 nothing in the easement concerning what's going to
 22 happen to our topsoil. Although we did see in the
 23 slide presentation that they were going to try to put
 24 it back on top, there was nothing in the easement
 25 itself that I looked at that they would put the black

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1 dirt on top and that the productivity of my soil was
 2 going to be similar to what it was when they came
 3 through. That was a concern of mine. I addressed it
 4 to the land person that came to try to get an
 5 easement, and he was going to go back to the people
 6 and I haven't heard anything since.
 7 And the other thing is the number of
 8 pipelines that they can come through once they do
 9 have the easement. Are they going to just have one?
 10 Are they going to have 20 more? Are we going to have
 11 a highway out there? What's going to happen? They
 12 won't tell me. It says in the easement they can have
 13 one or more pipelines. Well, the guy said, "Oh, we
 14 can cross out 'or more.'" I don't think so.
 15 You know, this is for real. They're
 16 going to come in here -- once they get this easement
 17 they can sell the -- the easement right to somebody
 18 else, and I'm going to be stuck with 20 pipelines in
 19 this quarter of land that I used to farm. And that
 20 doesn't make me very happy.
 21 Another thing is the liability issue I
 22 guess that I'm concerned with. Is let's say that
 23 there is an oil spill and it goes over to my
 24 neighbor's land. Am I liable? Are they liable? I
 25 don't see anything of that in the easement that I was

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1 supposed to sign. Or let's say 20 years down the
 2 road they abandon the pipeline, the pipeline rusts
 3 and breaks, my combine tips over, the operator that I
 4 have driving the combine is killed, who's going to
 5 be --
 6 MR. WAHL: I'm sorry, Mr. Ellingson.
 7 We're going to change the tape.
 8 THE WITNESS: I guess I spoke too long.
 9 MR. WAHL: No. You're doing just fine
 10 but....
 11 All right. Go ahead, Mr. Ellingson.
 12 MR. ELLINGSON: Okay. Getting back to
 13 the liability issue. I guess if the pipeline was to
 14 be abandoned, let's say, it rusts through this
 15 30-inch pipeline, there's a big cave-in, someone
 16 driving a combine hits the hole, tips the combine
 17 over and is killed, who is going to be liable?
 18 Probably not me. I don't see anything in the
 19 easement that says the pipeline company is going to
 20 take care of this liability. That's a big issue I
 21 think as landowners that we have to be concerned
 22 with.
 23 And I guess another question that I had
 24 now, if they're going to take all this water and
 25 flush this water into the pipeline, where is this

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1 water going to go that's contaminated with all this
 2 welding products and -- and other things? We haven't
 3 heard anything about that. So that's just something
 4 else I would like addressed. If -- if they are going
 5 to some day possibly get this across our land, I
 6 guess I would like the PSC to make sure that we have
 7 some kind of an acknowledgment that, you know, these
 8 issues are addressed. And that's all I have.
 9 MR. WAHL: Mr. Kelsch, questions for
 10 the witness?
 11 MR. KELSCH: No questions, your Honor.
 12 MR. WAHL: Mr. Delaney?
 13 MR. DELANEY: No questions.
 14 MR. WAHL: Mr. Binek?
 15 MR. BINEK: No questions.
 16 MR. WAHL: Questions by any
 17 commissioner? Commissioner Cramer?
 18 MR. CRAMER: I don't -- I don't have
 19 any questions, Mr. Ellingson. But I want to thank
 20 you for your comments, the brevity of them and the
 21 focus of them. And this is very helpful to me to be
 22 honest, and I suspect several of the questions you've
 23 asked would have been answered but they will
 24 certainly be asked if not. Thank you.
 25 MR. WAHL: Commissioner Wefald?

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1 EXAMINATION
 2 BY MS. WEFALD:
 3 Q. I want to understand more specifically
 4 your topsoil concern. Are you concerned about how
 5 much topsoil they actually segregate on your
 6 property --
 7 **A. Well, what happened --**
 8 Q. -- and how it's respread or just give
 9 me a little -- a few more details about your concerns
 10 about the topsoil issue. I know topsoil and subsoil
 11 is very important to farmers so just help me with
 12 that.
 13 **A. The -- the top layer -- let's say the**
 14 **top 12, 18 inches and your most productive layer of**
 15 **soil.**
 16 Q. Yes.
 17 **A. And we need that to go back on top in**
 18 **order for when we go try to raise crops down the road**
 19 **a year later, ten years later we have the same**
 20 **productivity. If they take the clay or the soil**
 21 **that's 6, 7 feet down, that isn't the same**
 22 **productivity as the topsoil that they're stripping**
 23 **off first.**
 24 **We need to make sure that they're**
 25 **taking that topsoil, putting it in a separate place**

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1 **and putting that -- the worst productivity soil in a**
 2 **separate place and then --**
 3 Q. Uh-huh.
 4 **A. -- placing that back where it was so**
 5 **that when we come to farm that land again that we**
 6 **haven't all of a sudden lost all the potential that**
 7 **we have had. Because although they are going to**
 8 **compensate us for possibly two, three years of lost**
 9 **crop revenue, I don't believe --**
 10 **I mean, we just had a rural water line**
 11 **come through our -- our land. They didn't put the**
 12 **topsoil back. To this day you can still see the**
 13 **strip where the land was, the pipeline went, and you**
 14 **see the strip where the -- there's no -- hardly any**
 15 **crop left there compared to the rest of it so it's**
 16 **critical that when they put this topsoil in that we**
 17 **have an inspector there that's making sure that these**
 18 **people segregate this soil, make sure they put it**
 19 **back the way it was and it gives us a chance to raise**
 20 **another crop.**
 21 Q. Now, my understanding from reading
 22 their application is that they plan to remove up to
 23 12 inches of top soil. You've indicated that in some
 24 places on your land you may have 18 inches of
 25 topsoil.

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1 **A. Well, there's --**
 2 Q. Do you have any recommendations for the
 3 commission about how to address -- if the company
 4 plans to take just up to 12 inches, would that --
 5 would that cause you concern or not?
 6 **A. Yes. Because there is a difference.**
 7 **There is definitely a -- if you would consult with a**
 8 **soil specialist, they can do better than myself. But**
 9 **there is a difference in the productivity as you go**
 10 **down each foot. So -- and -- and like in my -- my**
 11 **particular instance, you know, we probably have**
 12 **18 inches of really good soil whereas you get -- in**
 13 **some other instances they may have 4 feet of very**
 14 **good productive soil. But where it's less, you have**
 15 **to make sure that you have everything you've got**
 16 **otherwise you -- and the other thing is it also makes**
 17 **a difference on the water bearing capacity for the**
 18 **different layers so it's critical --**
 19 Q. Right.
 20 **A. -- it gets put back the way it was.**
 21 Q. I understand. We deal with coal mining
 22 reclamation as well, and soil issues are very
 23 important to those folks as well. All right. Thank
 24 you for helping me with that. So -- but I just need
 25 to clarify.

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1 **A. I would like a little more than**
 2 **12 inches, yes.**
 3 Q. You would like more than 12 inches.
 4 **A. Yes.**
 5 Q. You would like the total layer of
 6 topsoil --
 7 **A. Yes.**
 8 Q. -- that can be identified as topsoil
 9 removed; is that correct?
 10 **A. I would -- I would love that.**
 11 Q. Okay. Thank you. Now, let me see if
 12 there's anything else here.
 13 MS. WEFELD: I think I've got the rest
 14 pretty clear of what you said. Thank you so much.
 15 MR. WAHL: Commissioner Clark?
 16 EXAMINATION
 17 BY MR. CLARK:
 18 Q. Just briefly so I can pinpoint the
 19 location of your property. I'm looking at Dahlen.
 20 It would be relative to that which direction?
 21 **A. We're east -- north and east of Dahlen.**
 22 **I guess I've got about 3 miles -- I own one quarter**
 23 **and I rent two quarters right to the east of County**
 24 **Road 14 on the east edge of Dahlen.**
 25 Q. It look like fairly broken country. I

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1 mean, there's some --
 2 **A. There's some drainage, but actually**
 3 **it's very good farmland.**
 4 Q. Is there? Okay.
 5 **A. Yep.**
 6 Q. Just circling back to something
 7 Mr. Novak had mentioned. Is this fairly elevated
 8 land at this point? I mean, I notice that just to
 9 the west of you there is a string of radio towers
 10 which would indicate to me that you're probably --
 11 **A. Yes. Channel 8 television is 3 miles**
 12 **west of us so it's -- the elevation there is -- is**
 13 **very high, and that's why when you get down -- about**
 14 **12 miles to the east of us is the old beach of Lake**
 15 **Agassiz. And then as you drop further down -- and**
 16 **that's where our rural water comes from, is that**
 17 **aquifer right there. So, I mean, the elevation drop**
 18 **is definitely significant from where I live to -- to**
 19 **the east.**
 20 Q. Sure. And -- and I certainly
 21 appreciate those -- those comments, and I know that
 22 the applicant will have an opportunity tomorrow to
 23 put some things onto the record and answer some
 24 questions. But I know that one of the questions that
 25 I'll have is this issue of elevation and -- and the

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1 drop.
 2 I understand the water commission did
 3 have concerns understandably with the pipeline going
 4 directly over the aquifer so the question then
 5 becomes, I mean, why the decision to move west as
 6 opposed to east given drainage patterns and things
 7 like that. And they'll have an opportunity to
 8 respond to that, but I do appreciate the -- the
 9 concerns so thank you.
 10 **A. Well, that -- that is my big concern**
 11 **because I think as you look at the eastern part of**
 12 **North Dakota, the great amount of water consumption**
 13 **in the big cities comes from either the Sheyenne**
 14 **River or the aquifers, and we need to protect that.**
 15 MR. WAHL: Commissioner Wefald?
 16 MS. WEFELD: Since this has been
 17 brought up twice at the meeting about multiple
 18 pipelines in the easement, a possibility of that,
 19 there is one pipeline -- I can't speak about this
 20 one. But there is one in North Dakota, the Enbridge
 21 pipeline, and I think we're sitting -- is it the
 22 fourth pipeline in that easement bill?
 23 MR. CRAMER: At least.
 24 MS. WEFELD: But anyway --
 25 MR. BINEK: I'm -- I'm not sure.

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1 There's several pipelines within the easement.
 2 MS. WEFELD: Within one easement. So
 3 that is a possibility at least in the Enbridge
 4 pipeline. I don't know about -- what your easement
 5 states.
 6 Q. (Mr. Clark continuing) Can I ask
 7 quickly? Is the -- is the Enbridge pipeline near
 8 your property at all? Are you familiar? I know it
 9 -- I think it's fairly close to Highway 2 so I'm
 10 guessing you may be 8 to 10 miles north of that
 11 but....
 12 **A. Yeah, I'm not -- I'm not sure where it**
 13 **is.**
 14 MR. CLARK: Okay.
 15 MR. CRAMER: I just want to make one
 16 clarification or maybe ask Bill. We don't know -- do
 17 we know for sure that it's in the same -- that these
 18 multiple pipelines of Enbridge's are the same --
 19 operated by the same easement or is -- we know it's
 20 the same corridor, but we -- do we necessarily know
 21 that it's all under the same easement?
 22 MR. BINEK: I haven't -- I haven't
 23 looked at the new application.
 24 MR. CRAMER: Okay. I just want to make
 25 sure, yeah.

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1 MR. BINEK: Definitely is within the
 2 same corridor.
 3 MR. CRAMER: Right.
 4 MR. BINEK: I'm -- I'm not sure about
 5 the rest.
 6 MR. CRAMER: We don't know that that's
 7 right. Okay. Thanks. Just want to be clear about
 8 that.
 9 MR. WAHL: Anything further from the
 10 commissioners?
 11 Follow-up to commissioners' questions,
 12 Mr. Kelsch?
 13 MR. KELSCH: No, no further questions.
 14 MR. WAHL: Mr. Delaney?
 15 MR. DELANEY: No questions.
 16 MR. WAHL: Mr. Binek?
 17 MR. BINEK: I have no questions.
 18 MR. WAHL: Thank you very much,
 19 Mr. Ellingson.
 20 MR. ELLINGSON: Thank you.
 21 MR. WAHL: Is there anyone else here
 22 this afternoon who will not be able to be in Park
 23 River tomorrow?
 24 MR. ZACHARIAS: Yes, sir, Mr. Chairman.
 25 Vaughn Zacharias of Kathryn.

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1 MR. DELANEY: I'm sorry, sir. Can you
 2 repeat your name? I didn't get it.
 3 MR. ZACHARIAS: I'm Norwegian so I've
 4 got to do one thing at a time.
 5 MR. DELANEY: That's my downfall as
 6 well.
 7 MR. WAHL: That's all right,
 8 Mr. Zacharias. Mr. Delaney will pick it up. Were
 9 you -- you've heard my advice regarding perjury, sir?
 10 MR. ZACHARIAS: Yes, sir.
 11 MR. WAHL: Will you raise your right
 12 hand, please? Being advised regarding perjury,
 13 Mr. Zacharias, do you swear that the testimony which
 14 you are about to give in this matter shall be the
 15 truth, the whole truth and nothing but the truth?
 16 MR. ZACHARIAS: I do.
 17 MR. WAHL: Will you please state your
 18 name and address for the record?
 19 MR. ZACHARIAS: Vaughn Zacharias.
 20 12126 52nd Street Southeast, Kathryn.
 21 MR. WAHL: Mr. Zacharias, you may
 22 proceed with your testimony.
 23 MR. ZACHARIAS: I am a landowner, also
 24 operator of three quarters of land that this will be
 25 going through. This is a little bit unique. And

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1 starting from the beginning here, last year giving
 2 the first easement to the Trans line going through,
 3 that gentleman was replaced before last fall. They
 4 came through our land last fall in the early part of
 5 November -- of November without any calls or anything
 6 else. And in our agreement it does state that they
 7 will let us know when they come through with survey
 8 crews. The crop was removed, they went through and
 9 they put in stakes other than what we thought
 10 originally they were going to be.
 11 Twenty-five years ago we had commission
 12 meetings here similar to this with a line going
 13 overhead from Canada to Nebraska so I'm familiar with
 14 that, and I was -- participated in that. That fell
 15 through. So we had a couple meetings and nothing
 16 become of it.
 17 This one here is proceeding a little
 18 bit faster and perhaps a little bit different, and
 19 it's been a little bit difficult to communicate with
 20 these folks. Because they came this spring, and we
 21 saw these lats out in our fields. And we just saw it
 22 last winter too. And I'm not real crazy having it 6
 23 to 700 feet from my residence, with my wife and our
 24 children, but they moved it off that section line
 25 where the other one had gone.

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1 And if you look on your diagrams, on
 2 the bottom of Barnes County the Sheyenne Valley where
 3 they go through the river or underneath it, where
 4 they're going to go just to the northeast of that is
 5 the land that we are encountering. And they made the
 6 move -- I believe. I'm not sure. But talking with
 7 different people, we had no communications until
 8 someone did want to walk our land on May 29th. A
 9 land agent asked us for permission, and I refused
 10 that because I wanted to talk to who was in charge of
 11 it and what the route might be because we had
 12 questions of what had happened last winter and no
 13 someone had answered those.

14 We had made several phone calls to the
 15 engineering which we went out and confronted them in
 16 our field and asked who it was. There's hunting
 17 around there so sometimes people put up blinds for
 18 either geese or hunting deer or whatever it might be.
 19 We sent one of our people up there. They visited
 20 with them. They said they're with the Transatlantic
 21 line. Three days later after they had been through
 22 there, we then were contacted and said, "We're sorry
 23 but we are -- you know, we had gone through and
 24 surveyed." We had asked at that time -- again
 25 several different times we had phone numbers. We had

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1 no response of anyone to ask about what's going to
 2 happen.

3 My concern is we're along the Sheyenne
 4 Valley, and our land has got burial sites of Indians
 5 there. And we have a railroad going through our land
 6 that has been abandoned. It was there for a hundred
 7 years. BNSF went through the Alice, Kathryn, Marion
 8 line, and that has been abandoned now. We have
 9 reclaimed -- we have bought that land back. That
 10 land was given I believe by the government back in
 11 the late 1800s.

12 I'm a fourth generation so I've been
 13 on -- our family has been on that operation, on that
 14 land since 1883. When they abandoned that railroad,
 15 we -- this year now after we have gotten title for
 16 it, it has cost us about 3,500 to \$4,000 to reclaim
 17 it. In our area that this pipeline is going to go
 18 through, it's got deep ravines of 50, 60 feet, and
 19 then there's also other places that are above ground.

20 What's going to happen to that? My
 21 concern is what's going to happen to all the
 22 potential burial sites of Indians and all of the
 23 different things that are there in our. I would like
 24 to see it rerouted. I am not against this project,
 25 but the communication would get an F if you were in

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1 school. And we need to communicate and say, okay,
 2 what's going to happen here?

3 The other folks have talked about
 4 liability. I'm very concerned about liability.
 5 If -- if some activist or something gets ahold of
 6 this and is watching their every move out there, we
 7 don't need people running all over for several miles
 8 from the Kathryn Road which would extend through the
 9 valley, perhaps would be about 6 miles. The Woodland
 10 Indians there 2,000 years ago roamed very freely, and
 11 we know we have some of those sites on our land.

12 And it's just -- it's a concern that we
 13 need to talk about and get it fixed and probably move
 14 that line. And that's -- that's basically my concern
 15 of the safety and different things for my family and
 16 for the land and as a liability as a producer,
 17 owner-operator type thing.

18 MR. WAHL: Mr. Kelsch, do you have any
 19 questions for the witness?
 20 MR. KELSCH: No questions.
 21 MR. WAHL: Mr. Delaney?
 22 MR. DELANEY: No questions.
 23 MR. WAHL: Mr. Binek?
 24 MR. BINEK: No.
 25 MR. WAHL: Questions from the

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1 commission? Mr. -- Commissioner Cramer?
 2 MR. CRAMER: I have none, but you live
 3 in a beautiful place. I'm very familiar with it.
 4 It's great.

5 MR. ZACHARIAS: Thank you.
 6 MR. WAHL: Commissioner Wefald?
 7 EXAMINATION
 8 BY MS. WEFALD:
 9 Q. I want to clarify where your property
 10 is located. I know where Kathryn is. I visited
 11 Kathryn, and I like the community. My great-aunt
 12 grew up in Nome. Anyway your property is to the
 13 south of Kathryn or to the north of Kathryn?
 14 **A. Southeast of Kathryn.**
 15 Q. Southeast of Kathryn.
 16 **A. Section 20 and 29. Of 20 it involves**
 17 **southwest quarter, northwest quarter. And on**
 18 **Section 29 it involves the northwest one-fourth and**
 19 **the railroad rights.**
 20 Q. Okay. And so the pipeline crosses your
 21 property. Does it cross it approximately 3 miles
 22 south of -- 3 miles north of the Barnes and Ransom
 23 county line?
 24 **A. That's correct.**
 25 Q. Okay.

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1 **A. Straight east of Kathryn 2 to 3 miles,**
 2 **in that area. And if you look at that map, that's**
 3 **where there's a little -- they went a little bit**
 4 **further east than normal. You'll see a little --**
 5 Q. Have -- have you had a chance to look
 6 at the -- the surveys that were done for the North
 7 Dakota State Historical Society?
 8 **A. No, ma'am.**
 9 Q. Uh-huh. There -- there is considerable
 10 information that has been filed with the commission
 11 about cultural resource sites along the whole route
 12 and conclusions that have been reached about that so
 13 I just wanted to find out whether you had had an
 14 opportunity to look at that. That is all part of the
 15 public record if you wish to look at that.
 16 **A. Okay.**
 17 MR. WAHL: Any further questions from
 18 the commissioners? Commissioner Clark?
 19 MR. CLARK: I would just thank you
 20 for -- for testifying here today and would echo
 21 Commissioner Cramer's comments. You do live in a
 22 beautiful part of the world.
 23 MR. WAHL: Follow-up to Commissioner
 24 Wefald's questions, Mr. Kelsch?
 25 MR. KELSCH: No further questions -- or

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1 no question.
 2 MR. WAHL: Mr. Delaney?
 3 MR. DELANEY: No.
 4 MR. WAHL: And Mr. Binek?
 5 MR. BINEK: No.
 6 MR. WAHL: Thank you very much,
 7 Mr. Zacharias.
 8 What is your name, please?
 9 MR. MATHEWS: Paul Mathews,
 10 M-a-t-h-e-w-s.
 11 MR. WAHL: Would you print your name
 12 and address for the register, please?
 13 Mr. Mathews, did you hear me -- hear my
 14 advice regarding perjury?
 15 MR. MATHEWS: Yes, I did.
 16 MR. WAHL: Will you raise your right
 17 hand? Being advised regarding perjury, Mr. Mathews,
 18 do you swear that the testimony which you are about
 19 to give for this matter shall be the truth, the whole
 20 truth and nothing but the truth?
 21 MR. MATHEWS: Yes, I do, your Honor.
 22 MR. WAHL: State your name and address
 23 for the record, please.
 24 MR. MATHEWS: Paul, P-a-u-l. Mathews,
 25 M-a-t-h-e-w-s. 9066 119th Avenue Southeast,

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1 Cogswell, C-o-g-s-w-e-l-l.
 2 MR. WAHL: You may proceed with your
 3 testimony, Mr. Mathews.
 4 MR. MATHEWS: Really wasn't -- last
 5 night was the first time I realized this would be a
 6 formal proceeding. I had the chance to go to the
 7 South Dakota PUC meeting to observe their -- their
 8 procedures, and that's -- and that's fine. In fact I
 9 will enjoy the questions from the commissioners or
 10 from any of the parties here today.
 11 I happen to be the 156th person away
 12 from this pipeline location in my -- for my
 13 residence. And all -- as a matter of fact, I don't
 14 shoot blame here anyway, but I'm the accident. I'm
 15 truly the accident. I believe that my first notice
 16 of threat of this pipeline to my residence was
 17 February, right about the 10th, and that was through
 18 a land survey opportunity that they would like to
 19 have rights to inspect the property.
 20 And when he showed me the map, he kind
 21 of smiled and he said, "Whoa. It goes right through
 22 your house." And that -- and that's -- you know, we
 23 can understand that in a -- in a fashion. I'm sure
 24 they were using old aerial maps. I built in
 25 November 2004. My house wasn't there the year that

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1 they -- of the aerial maps. The agent was very
 2 reassuring and he said, "This will be moved. Relax,
 3 Mr. Mathews."
 4 Okay. The next correspondence was
 5 probably -- I -- I have the dates here should
 6 personnel want to know more information. But it was
 7 late April, and I was out in the field farming and
 8 my -- two agents came to -- up to the driveway and
 9 met my wife and said, "We have a form for you."
 10 Interesting. And it was the waiver of 500-foot
 11 avoidance zone. And she -- she said, "Well, how
 12 close are you? 500 feet's -- alone is pretty close."
 13 I think it was 156. Yeah, that's pretty extremely
 14 close in my mind.
 15 I -- I mention all these things to the
 16 certain extent that it kind of tags on to other
 17 people's concerns that were preceding me here. Are
 18 we -- are we being treated as a good neighbor? I --
 19 I do more or less believe the agents had that in
 20 their heart, but something's being triggered here is
 21 I'm having a very lack of opportunity to be prepared
 22 to give you information.
 23 Quickly over the weekend I did some
 24 Internet work. The -- the Department of State, for
 25 instance, did scoping meetings. Part of that they

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1 were going to inform every landowner in -- by written
 2 form. Oops, I'm out of the loop. I wasn't there. I
 3 wasn't on their route. I think if you research your
 4 information for -- at least it tags along with mine.
 5 I'm part of that Hecla land reroute. So I wasn't
 6 part of the route process until I believe January of
 7 2007.

8 You know, it's just kind of one of
 9 those -- as I said in the beginning, it's, oops.
 10 This is -- this is one of those situations that kind
 11 of probably caught the company off guard and I -- I
 12 understand that.

13 Now I'll just -- trying to keep this
 14 moving forward. At that time I asked these -- I got
 15 a call from the agent the next morning.
 16 "Mr. Mathews, is this your final answer? You do not
 17 want an avoidance? You will not sign a waiver?"
 18 "No." Quickly I then engaged in an e-mail
 19 correspondence with Mr. Fahn, from the PUC. He gave
 20 me some general ideas that -- from the commissioners'
 21 office of what might be happening here, but he
 22 encouraged us, "Get ahold of the company." He said,
 23 "I think before they file, they would want to know
 24 what's -- what's going on down there, that they may
 25 want to put a reroute before it ever becomes part of

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1 the route."
 2 The following day I got another phone
 3 call from apparently the -- their supervisor and he
 4 said, "Mr. Mathews, are you sure you don't want to
 5 sign your waiver? By the way, it's a better deal
 6 this week than it was last week. Last week was \$500.
 7 You sign it today, it's a thousand." I said, "No,
 8 I'll pay you a thousand dollars to go away." He
 9 chuckled. "That's not going to happen, Mr. Mathews."
 10 But as we ended that conversation, I think we would
 11 say we agreed to disagree about pipelines in general.

12 I -- and I -- my wife and I would stand
 13 here and say we probably support pipelines, but the
 14 end of the game is make it safe. Make it safe. And
 15 there was concern, location. Where is location going
 16 to be? And I wanted to -- I felt as if my land and
 17 my residence was going to be burdened by this. I
 18 would -- I asked this gentleman from Troy -- Trow
 19 Engineering, I believe it was, to send me an engineer
 20 to explain me the route process. Why is this
 21 selected as the best route? And again some -- I
 22 believe you -- the commissioners were even part of
 23 that e-mail process knowing that Mr. Mathews wanted
 24 to talk with somebody with the company. It -- this
 25 repeated itself for the next months or January -- or

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1 June.
 2 And finally just in an off conversation
 3 with a friend of mine in Senator Conrad's office, I
 4 said, "Anybody talking about Keystone pipeline?"
 5 "What is it?" A quick little talk about it, and he
 6 said, "Let me have somebody make some inquiries." I
 7 heard from Keystone the next morning. Thank you.
 8 But, you know, that was the hard process. That was
 9 July 10th. Today's July 23rd. That's not much time
 10 to prepare. I don't -- actually the only piece of
 11 mailing I've gotten from Keystone is Stakeholder.
 12 9066 119th Avenue. It was a -- a PR kind of type for
 13 sure, Q and A, questions and answers about a project
 14 I believe. That's all I've gotten by that method.

15 I've -- requesting from the agents I
 16 was able to go over to my copier and make copies of
 17 the map, but that's all I've gotten. The process
 18 here seems to be I'm left -- something's wrong with
 19 the process. It's going too fast. I haven't had to
 20 -- I don't know what questions to ask. I really
 21 don't. But truly it comes down to safety. I know
 22 there's --

23 I was in attendance here when you
 24 discussed the WEB document that's been submitted into
 25 evidence. I was fortunate to be able to read

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1 something. You go out on the Internet and you -- it
 2 was one of those hits. Finally, finally, we heard
 3 something from what I was -- believed to be an
 4 independent resource. I would encourage anybody and
 5 everybody to read it. Weigh -- weigh it to yourself
 6 whether it's factual or not. It -- I'll just leave
 7 it at that. Use your own judgment of its
 8 credibility. It's just interesting that this
 9 document was submitted to the PUC a month ago. But
 10 I'll just say that much about that subject.

11 Water safety, again water's invaluable.
 12 We've got to protect it. Again my property will have
 13 sand veins running underneath it to the tune of 4 to
 14 6 feet. I don't know. Where's the spill go?
 15 Accidents will happen. In the South Dakota public
 16 meetings -- and TransCanada can clarify that, but I
 17 think they made the representation that these leaks
 18 lower than what the pressures can indicate, their
 19 best source of information is your nose or your eyes.
 20 You can smell it or you can see it.

21 We're a rural area. Where are you
 22 going to -- where are the people to smell or see it
 23 and then it's down 4 feet? How long will it be
 24 leaking into our aquifers before nobody notices it?
 25 I don't -- I don't have the answer to that. I hope

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1 the North Dakota Public Health will assist you in
 2 that -- in that matter. Again I'm not going to try
 3 to pick on them, but I'm a little concerned about a
 4 lake that we're developing as a community in
 5 conjunction with the North Dakota State Game & Fish.
 6 It's Kraft. It's probably marked Kraft Slough on
 7 your documents. But we've managed to put perch in
 8 there in 2004 and now we have walleyes. In my
 9 opinion it's running very close. Should we have an
 10 accident we'll lose that lake.
 11 Quickly, land impairment. I -- I
 12 appreciate the -- the idea that you will help us
 13 reclaim and -- and offset income potential loss over
 14 the -- the pipeline, but I have my own little
 15 demonstration going on. It's out in front of my
 16 home. I -- I have geothermal trenches extending away
 17 from my home so I have trenches going into a field.
 18 This is the third year of cropping, and I'm quite a
 19 ways away from getting 50 percent production yet, yet
 20 my expenses remain the same. Again it's a -- I
 21 appreciate the effort, but it probably -- after three
 22 years we still have issues there as far as bringing
 23 it back into production. Believe me, I'm babysitting
 24 that because I look at it every day. It's right
 25 outside my front window.

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1 I'm going to conclude this just by
 2 saying again, I believe the commissioners are our
 3 last line of defense here. You -- you are so
 4 important to the process of protecting our personal
 5 private rights. You give them a route permission,
 6 and we're -- we're facing -- we're going to be the
 7 underdog. You know, use it wisely. I -- I hope
 8 that -- I hope that we never have to think about
 9 years later reading about a catastrophic event and
 10 some people's residents were way too close. Thank
 11 you.
 12 MR. WAHL: Mr. Kelsch, any questions
 13 for the witness?
 14 MR. KELSCH: Yes, your Honor.
 15 EXAMINATION
 16 BY MR. KELSCH:
 17 Q. Mr. Mathews, the -- have you been made
 18 aware that the -- TransCanada Keystone has moved the
 19 line a minimum of 500 feet east of your residence?
 20 **A. The agent just said we are outside of**
 21 **the avoidance zone. That's all the information I**
 22 **have. And to be fair to the company, he said, "Can I**
 23 **come out and meet with you?" And I said, "This**
 24 **commission meeting's coming up on Monday. Maybe I'll**
 25 **gain some of my information in that route, and then**

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1 **we'll talk about it."**
 2 Q. Okay.
 3 **A. But other than seeing stakes, I haven't**
 4 **gone out and measured stakes. And if I can offer**
 5 **this -- this thing about surveys to the gentlemen**
 6 **before me. Again on my survey application, when the**
 7 **agent was there, I said, "I will sign, but can I put**
 8 **on there that you call me at least a couple hours**
 9 **ahead of time?" You know, 156 feet and -- we're --**
 10 **we're working on getting shades on all our windows,**
 11 **but I would just appreciate that, you know, my whole**
 12 **family knows what you're doing out there. It did not**
 13 **happen.**
 14 Q. Were there -- were there times that --
 15 that TransCanada Keystone people contacted you and
 16 you didn't call them back or didn't accept the call?
 17 **A. No. I returned the call. I mean, we**
 18 **were playing telephone tag with the agent for half a**
 19 **week through two or three days. He was -- you know,**
 20 **I was out spraying early and he was gone by 5:00.**
 21 MR. KELSCH: Okay. No further
 22 questions.
 23 MR. WAHL: Mr. Delaney?
 24 MR. DELANEY: I have no questions, your
 25 Honor.

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1 MR. WAHL: Mr. Binek?
 2 MR. BINEK: I have no questions.
 3 MR. WAHL: Questions from the
 4 commission? Commissioner Cramer?
 5 MR. CRAMER: I just have one.
 6 EXAMINATION
 7 BY MR. CRAMER:
 8 Q. With -- with your geothermal trench
 9 project that you have done and the reclamation, did
 10 you -- did you separate the topsoil prior to
 11 respreading it or --
 12 **A. Locally we have a backhoe operator**
 13 **that's a legend. Incredible -- he's incredible in**
 14 **that fashion. Yes, he -- he peeled off exactly to**
 15 **the inch of the topsoil.**
 16 Q. So it's real -- real visibly obvious.
 17 **A. Yes.**
 18 Q. Just out of curiosity --
 19 **A. Yes.**
 20 Q. -- how deep is your topsoil or how
 21 thick is the seam?
 22 **A. Oh, it would vary. It just varies.**
 23 **I --**
 24 Q. Sure.
 25 **A. It would vary within a hundred feet.**

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1 MR. CRAMER: Sure. All right. I have
 2 nothing further. Thank you. Thanks for your
 3 testimony --
 4 MR. MATHEWS: You're welcome.
 5 MR. CRAMER: -- and your demeanor.
 6 MR. WAHL: Commissioner Wefald?
 7 MS. WEFELD: Yes.
 8 EXAMINATION
 9 BY MS. WEFELD:
 10 Q. I have a map of 2006 aerials provided
 11 by the company where then they indicated homes that
 12 are located near the route.
 13 A. Uh-huh.
 14 MS. WEFELD: Would I be able to just
 15 bring up the map and ask him to identify for me which
 16 home?
 17 MR. WAHL: Sure. Do you want me to do
 18 that?
 19 MR. MATHEWS: The southwest of
 20 Section 1. Is Section 1 on the map?
 21 MR. WAHL: For the -- for the record, I
 22 am showing Mr. Mathews Exhibit 36. Well, it really
 23 isn't Exhibit 36, but it's -- it's document 36 for
 24 the filings, and PU-06-421 and page -- well, maybe
 25 page 11. In any event, Mr. Mathews, can you identify

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1 your -- your residence on this map? Is this -- is
 2 this your residence here?
 3 MR. MATHEWS: Yes, it is.
 4 MR. WAHL: This is identified as
 5 building 28; is that correct?
 6 MR. MATHEWS: That's correct.
 7 Q. (Ms. Wefeld continuing) Mr. Mathews,
 8 did you come today because even if the pipeline is
 9 500 feet or more than 500 feet away from your home
 10 you still have concerns?
 11 A. It would be -- it's based on what we
 12 can gain about whether it's safe or not.
 13 Q. All right.
 14 A. Again as you research -- and one of the
 15 pieces of research out there again is evidence by the
 16 WEB Water of Aberdeen. Particularly if there's more
 17 than one pipeline, it's -- I don't want to put my
 18 family at risk every night that I go to bed.
 19 MS. WEFELD: Thank you.
 20 MR. MATHEWS: I don't know.
 21 MS. WEFELD: Thank you.
 22 MR. WAHL: Anything further?
 23 Commissioner Clark?
 24 MR. CLARK: No. Just thank you for
 25 participating in this. And -- and I know you had

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1 expressed concern about the -- the speed of this, and
 2 just let me assure you that -- I mean, this is the
 3 reason the that PSC exists. And I think I speak on
 4 behalf of -- of all the commissioners in just saying
 5 that we take our responsibility in this regard very
 6 seriously.
 7 Because you're right, I mean, we are
 8 the last stop on a project like this. We're the ones
 9 who have to ensure that all of the permits, all of
 10 the requirements that -- that the pipeline has, that
 11 they've done everything that they can be expected to
 12 do and that this state's environment, our natural
 13 resources, our culture are protected so I -- I just
 14 appreciate your testimony. And let me assure you
 15 that we -- we have that in mind and that we come into
 16 these with a -- with a blank slate. We have no
 17 preconceived notion of -- of what the record's going
 18 to look like. It really is the testimony of you
 19 and -- and other North Dakotans and the information
 20 that the applicant can provide that -- that drives
 21 our decision.
 22 MR. WAHL: Follow-up, Mr. Kelsch?
 23 MR. KELSCH: No further questions.
 24 MR. WAHL: Mr. Delaney?
 25 MR. DELANEY: No further questions.

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1 MR. WAHL: Mr. Binek?
 2 MR. BINEK: No.
 3 MR. WAHL: Thank you very much,
 4 Mr. Mathews.
 5 MR. DELANEY: Very -- very briefly,
 6 your Honor, before the next gentleman speaks, I would
 7 like to clarify something for the record. There's
 8 been a number of references by the commissioners to
 9 maps up there, and I guess this morning -- at this
 10 morning's hearing we had admitted their application
 11 as T7. Are the maps that the commissioners are
 12 referring to, are those within the application? I
 13 just want to make sure they're part of the record.
 14 MS. WEFELD: They're part of the record
 15 that had been submitted by the company as far as our
 16 official case file.
 17 MR. DELANEY: Okay. So they would also
 18 be -- if they're filed, they would also be part of
 19 the record of this hearing?
 20 MS. WEFELD: Yes, that's what my
 21 understanding is but maybe that's --
 22 MR. WAHL: Yes. Yes. That's -- that's
 23 correct. That doesn't say you can't mark them as an
 24 exhibit. I don't believe it's necessary to mark them
 25 as an exhibit. But as you saw Mr. Kelsch do this

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1 morning, that was his preference, and there's nothing
 2 wrong with that.
 3 MR. KELSCH: And speaking to that, your
 4 Honor, we would probably want that marked as an
 5 exhibit in the siting case as well as the PC & N
 6 case, the application.
 7 MR. WAHL: All right.
 8 MR. KELSCH: And I -- and how you want
 9 to handle that, I know some of the people's exhibits
 10 are in, but I believe you indicated it would be in
 11 both cases.
 12 MR. WAHL: No, that's not -- we -- the
 13 exhibits --
 14 MR. KELSCH: Okay.
 15 MR. WAHL: -- that I have marked this
 16 afternoon are marked in the siting application.
 17 MR. KELSCH: Okay. Okay.
 18 MR. WAHL: So if you -- if you wish to
 19 have your application for the siting application
 20 hearing also, then we should mark it accordingly.
 21 And if my sheet is correct that would be Exhibit --
 22 the application, would be Exhibit T2 for this siting
 23 application hearing; all right?
 24 MR. KELSCH: Yes, in its entirety.
 25 That would include the supplemental filings and some

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1 of these maps in the.... For both the corridor and
 2 route applications.
 3 MR. WAHL: Yes. Which are part of that
 4 siting hearing --
 5 MR. KELSCH: Yes.
 6 MR. WAHL: -- yes. But now I -- I take
 7 your statement, Mr. Kelsch, about whether the maps
 8 are all part of the application. If you say they
 9 are, that's -- I'm sure that's true. But I don't
 10 know that for a fact. I'm not confirming that.
 11 MR. KELSCH: Well, I guess I'd make the
 12 statement, I -- if I'm incorrect, I'd -- I'd leave it
 13 to Mr. Binek to -- to or Mr. Delaney to -- but I'm
 14 sure they're all part of the application -- they were
 15 submitted as -- as attachments to the application.
 16 MR. WAHL: Right. I'm not saying
 17 there's a question about that. I'm simply saying I
 18 don't know. And what I'm describing as Exhibit T2 is
 19 the application, whatever it is.
 20 All right. May I have your name
 21 please, sir?
 22 MR. SONDERLAND: Buel Sonderland.
 23 That's spelled B as in boy, u-e-l. Sonderland, S as
 24 in Sam, o-n-d-e-r-l-a-n-d.
 25 MR. WAHL: Mr. Sonderland, would you

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1 take just a moment and sign the register? Maybe
 2 you've already done that.
 3 MR. SONDERLAND: Yea.
 4 MR. WAHL: You're ahead of me. Very
 5 good. Did you, Mr. Sonderland, hear my advice
 6 regarding perjury today?
 7 MR. SONDERLAND: Yes, I did.
 8 MR. WAHL: Will you raise your right
 9 hand, please? Being advised regarding perjury,
 10 Mr. Sonderland, do you swear that the testimony which
 11 you're about to give in this matter shall be the
 12 truth, the whole truth and nothing but the truth?
 13 MR. SONDERLAND: I so do.
 14 MR. WAHL: Please state your name and
 15 address for the record.
 16 MR. SONDERLAND: Buel Sonderland. 2102
 17 25 1/2 Avenue South, Fargo 58103.
 18 MR. WAHL: All right. You may proceed
 19 with your testimony, Mr. Sonderland.
 20 MR. SONDERLAND: Thank you, your Honor,
 21 Public Service commissioners. I'm going to just
 22 address a couple areas of concern. They've both
 23 been -- or all three have been mentioned. And first
 24 of all, I acknowledge how important you commissioners
 25 are because our concerns do rest in your hands, and I

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1 appreciate your concern and your consideration.
 2 So the first thing I want to address
 3 is -- is how fast this is progressing. We've been
 4 hearing all day about surveys, easements and so
 5 forth, but nothing about permits being issued,
 6 environmental impact studies being done. And as was
 7 talked about, there's many, many agencies, both
 8 federal and state, that have to give this approval.
 9 So it behooves me to understand how this can progress
 10 so fast and checks being written for easements when
 11 all these permits are lacking.
 12 The other thing that concerns me is
 13 economic benefits have been mentioned. And, yeah,
 14 it's good for a period of two years and then we get
 15 some property tax, but more important economic
 16 benefits to North Dakota would mean tapping into this
 17 pipeline. Instead of taking discounts for the oil
 18 production that we have in North Dakota, let's get
 19 the full value out of it. And we do have this
 20 control. We don't have to have this permit issued to
 21 the Canadian company unless we get a firm agreement.
 22 Now, I question what happened when
 23 Governor Hoeven pressed this issue earlier this
 24 spring. I understand that he -- he was insistent
 25 that this be done. Now, it didn't I know. But again

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1 we've got to stand up for ourselves and take what's
 2 due us when we've got a chance to benefit our economy
 3 for the lifetime of this pipeline.
 4 The other area of concern is the
 5 proposed route of this pipeline. I understand it's
 6 going to benefit TransCanada to run it as far east
 7 as -- and come down through Walhalla because it's got
 8 an existing line there. Good for them. But that
 9 doesn't help us. Again we have to look out for North
 10 Dakota citizens. Why bring that pipeline down
 11 through some of the most scenic areas we have in
 12 eastern North Dakota? And you all know we don't have
 13 too many of them as it is.
 14 It comes right down between Walhalla
 15 and the Pembina Gorge. And, boy, if you guys haven't
 16 been up there and -- to see what that country is
 17 like, it's unbelievable. It -- in addition to that,
 18 it runs down, starts to parallel the Sheyenne River
 19 for some 35 miles running right parallel to it. It
 20 gets as close as two and a half miles I believe --
 21 just estimating off the map within -- two and a half
 22 miles within Lake Ashtabula.
 23 And you talk -- we've heard people
 24 talking about water supply and aquifers and how
 25 important it is. Well, the Sheyenne River is going

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1 to be a major source of water for all the cities in
 2 the Valley in the future, and it all comes through
 3 the Sheyenne River, Lake Ashtabula. Where does the
 4 drainage go? You -- you run that pipeline down east
 5 of the river and east of Lake Ashtabula, all drainage
 6 goes right down to the lake or the river, and then as
 7 it proceeds south cuts across south of I-94.
 8 We've got another beautiful scenic area
 9 that many eastern citizens of North Dakota enjoy, and
 10 that is that area between Little Yellowstone and Fort
 11 Ransom. It's hilly, it's wooded, it's beautiful, and
 12 you can't convince me that you can go in there, take
 13 a 110-foot easement to construct a pipeline and leave
 14 with 50-foot of right-of-way and not leave a scar.
 15 And realize these people need access to that pipeline
 16 every -- every day. If there's a problem they have
 17 to have an easement or a way to get in there. That
 18 means we're going to lose. There's going to be a
 19 scar, a big scar.
 20 So that sums up my concerns. I -- I
 21 would just like to urge that you consider getting the
 22 pipeline rerouted. I mean, don't come through an
 23 agricultural area where we cultivate crops. North
 24 Dakota is notorious for its wide-open spaces. We've
 25 got rangeland that's not going to be as impacted as

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1 it would cultivated lands. Where there's a will to
 2 do things, I know there's a way to do it so I urge
 3 the commission to take these concerns into
 4 consideration. Thank you very much.
 5 MR. WAHL: Mr. Kelsch, any questions
 6 for the witness?
 7 MR. KELSCH: I think just one, your
 8 Honor.
 9 EXAMINATION
 10 BY MR. KELSCH:
 11 Q. Mr. Sonderland, do you own any property
 12 along the proposed pipeline?
 13 A. **No, I don't.**
 14 MR. KELSCH: Okay. Thank you. That's
 15 all.
 16 MR. WAHL: Mr. Delaney?
 17 MR. DELANEY: No questions.
 18 MR. WAHL: Mr. Binek?
 19 MR. BINEK: No questions.
 20 MR. WAHL: Questions from the
 21 commission?
 22 MR. CRAMER: I don't --
 23 MR. WAHL: Commissioner Cramer?
 24 MR. CRAMER: I don't have any questions
 25 other than again a statement to thank you for taking

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1 the time to come over and give us your feedback. I
 2 just -- I would like -- and I'm going to avoid a
 3 civics lesson on what authority we have and we don't
 4 have, but I will tell you one of the issues that
 5 frustrates a lot of people is the speed with which
 6 these things take place.
 7 And you just -- I just want everyone to
 8 know that regardless what happens apart from this
 9 proceeding -- and this isn't the only type of a
 10 situation where lots of things happen in parallel.
 11 That does not diminish at all the responsibility we
 12 have here today or in the next few months as we -- as
 13 we discuss this within our staff, with our staff in
 14 work sessions as we read -- not only reread testimony
 15 but -- but late-filed exhibits, as we review those,
 16 as we read briefs and -- and consider the law.
 17 But one thing you should know is that
 18 the timeline for us to act is in law. And one of the
 19 values of having this hearing early in the process,
 20 the law requires us to make a decision six months
 21 after a completed application has been filed. That
 22 puts us somewhere in mid to late October. I feel a
 23 lot better about having a lot of these proceedings
 24 and getting a lot of information early in that
 25 process giving us time then to ask for more

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1 information if it's necessary, to take the time to
 2 consider all of the facts of the case rather than
 3 push it all very late and then be forced into a very
 4 quick decision.
 5 So we do have some -- we are confined
 6 by -- by law in terms of our timeline. I just want
 7 everyone to understand that and that we do try to
 8 optimize the opportunity to learn as much as we can
 9 prior to making that decision. And -- and your
 10 concerns are our concerns as well. Thank you.
 11 MR. WAHL: Commissioner Wefald?
 12 MS. WEFELD: Thank you. No questions.
 13 MR. WAHL: Commissioner Clark?
 14 MR. CLARK: No questions. Thanks.
 15 MR. SONDERLAND: Your Honor, may I make
 16 one more statement?
 17 MR. WAHL: Sure.
 18 MR. SONDERLAND: TransCanada testified
 19 this morning that they've got, what, 50 years' of
 20 experience, 36,000 miles of pipeline, and the
 21 question was asked: What's your emergency response
 22 plan for our -- the pipeline? You don't have one?
 23 You don't have one until 2009. That -- that's a
 24 question. Thank you.
 25 MR. WAHL: Wait, just a moment,

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1 Mr. Sonderland. We should --
 2 MR. SONDERLAND: I'm sorry.
 3 MR. WAHL: Yeah, that's fine.
 4 Mr. Kelsch, questions?
 5 MR. KELSCH: No questions.
 6 MR. WAHL: Mr. Delaney?
 7 MR. DELANEY: No questions.
 8 MR. WAHL: Mr. Binek?
 9 MR. BINEK: No.
 10 MR. WAHL: Commissioners?
 11 MS. WEFELD: No.
 12 MR. WAHL: No questions. Thank you
 13 very much, Mr. Sonderland.
 14 (Off the record.)
 15 MR. WAHL: What is your name, sir?
 16 MR. BURCHILL: Nyle K. Burchill.
 17 MR. WAHL: Mr. Burchill, will you sign
 18 the register, print your name and --
 19 MR. BURCHILL: I have. I have.
 20 MR. WAHL: You have -- you're ahead of
 21 me. Very good, sir. Did you, Mr. Burchill, hear my
 22 advice regarding perjury today?
 23 MR. BURCHILL: I did.
 24 MR. WAHL: Will you raise your right
 25 hand, please? Being advised regarding perjury,

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1 Mr. Burchill, do you swear that the testimony which
 2 you are about to give in this matter shall be the
 3 truth, the whole truth and nothing but the truth?
 4 MR. BURCHILL: I do.
 5 MR. WAHL: Please state your name and
 6 address for the record, Mr. Burchill.
 7 MR. BURCHILL: Nyle K. Burchill.
 8 That's N-y-l-e. Burchill is spelled B-u-r-c-h-i-l-l.
 9 835 Eighth Avenue Northwest; Valley City, North
 10 Dakota 58072.
 11 MR. WAHL: You may proceed with your
 12 testimony, Mr. Burchill.
 13 MR. BURCHILL: Thank you, your Honor,
 14 members of the commission, members of the Keystone
 15 delegation. I am appearing here today on my own
 16 concerns. I -- I do not have any land that's
 17 involved at this time. I did in the original route
 18 but not at this time. But I'm a retired farmer. My
 19 land is in the northeast corner of Barnes County.
 20 And my remarks today is going to be mainly as it
 21 passes through Barnes County.
 22 Now, I'm sure you have maps. And if
 23 you do, start at the Luverne pumping station. As the
 24 route proceeds from the Luverne pumping station, it
 25 goes to the southwest approximately a mile and

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1 three-quarters going west, but longer than that at an
 2 angle of course. It gets closer than the gentleman
 3 before me said, closer than -- as close as one to one
 4 and a half miles of Lake Ashtabula. It parallels the
 5 upper end of the lake for over 4 miles.
 6 Then if you follow that route, it turns
 7 and goes south through Grand Prairie Township. Then
 8 it gets into Noltimier Township. It turns back east
 9 for about the same distance as it has gone west.
 10 Then it turns due south. Goes through all of the
 11 townships until it gets to -- to the last one, the
 12 bottom one, and then Barnes County which is
 13 Thordenskjold. That's -- that's a Norwegian name.
 14 And at that point -- and Vaughn -- it's in Vaughn's
 15 area, Vaughn Zacharias's area. It gets within a mile
 16 of the river at that point. And then it crosses
 17 Highway 46 and then takes a -- veers to the west
 18 again and crosses the river.
 19 When it gets into the -- when it leaves
 20 the Luverne pumping station, it gets into the
 21 Sheyenne and the Lake Ashtabula Watershed which is a
 22 very steep area. I'm very familiar with it. I own
 23 land in the eastern portions of those townships.
 24 I've lived there for all my life. And so it's very
 25 steep. So a leak would get to the lake very fast,

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1 particularly if it happened to be high water, heavy
 2 rain or a spring runoff.
 3 If the pipeline was to go southeast
 4 from the Luverne pumping station for a mile and
 5 three-quarter to two miles and then proceed straight
 6 south, it would take it completely out of the
 7 Sheyenne River Watershed. It would take it
 8 completely out of the Little -- Little Yellowstone
 9 area. It would cross the Sheyenne River somewhere
 10 further down the line. So I am recommending that it
 11 be moved from -- or rerouted from the Sheyenne -- or
 12 from the Luverne pumping station to the southeast and
 13 then proceed straight south through the -- through
 14 the county.
 15 Valley City gets its -- replenishes its
 16 aquifer from the Sheyenne River. There's much talk
 17 about bringing Missouri River water down to the
 18 Sheyenne and then consequently -- and then down to
 19 Fargo-Moorhead. So we need to be very, very careful
 20 about what potentially could happen to the Sheyenne
 21 River Valley and -- River I should say. So I think
 22 it's very imperative that this route be changed.
 23 Thank you.
 24 MR. WAHL: Mr. Kelsch?
 25 MR. KELSCH: No questions.

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1 MR. WAHL: Mr. Delaney?
 2 MR. DELANEY: No questions.
 3 MR. WAHL: Mr. Binek?
 4 MR. BINEK: No.
 5 MR. WAHL: Commissioners?
 6 MR. CRAMER: None.
 7 MS. WEFELD: None.
 8 MR. WAHL: Thank you. Thank you very
 9 much, Mr. Burchill.
 10 What is your name, please?
 11 MS. KLEIN: Ramona Klein.
 12 MR. WAHL: I'm sorry. I --
 13 MS. KLEIN: Ramona Klein.
 14 MR. WAHL: Klein. Ms. Klein, you heard
 15 my advice this afternoon regarding perjury?
 16 MS. KLEIN: Yes, I did.
 17 MR. WAHL: Will you raise your right
 18 hand, please? Being advised regarding perjury,
 19 Ms. Klein, do you swear that the testimony which you
 20 are about to give in this matter shall be the truth,
 21 the whole truth and nothing but the truth?
 22 MS. KLEIN: I do.
 23 MR. WAHL: Please state your name and
 24 address for the record.
 25 MS. KLEIN: Ramona Starke Klein. 3340

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1 123 R Avenue Southeast; Oriska, North Dakota 58063.
 2 MR. WAHL: You may proceed with your
 3 testimony, Ms. Klein.
 4 MS. KLEIN: My land bought by my folks
 5 long ago was supposed to be left for me and my kids.
 6 It's paid for. They worked and slaved to get it.
 7 Now I find myself in the position of having to defend
 8 it. Even my tenants are worried about the fact that
 9 they're going to fall into this trench. Who's liable
 10 if they fall in the trench. Am I liable too? Are
 11 they? We don't know. Nobody's telling us.
 12 I don't even know exactly where the
 13 trench is at this point. This is Gardena soil. I
 14 live -- my land is right across on the Peak exit
 15 3 miles out of town. Gardena is about the best you
 16 can get so why are we going through prime farmland on
 17 top of it all. It's right across from Richard
 18 Starke's land to put you two -- give you an idea of
 19 where it is. He's my cousin. Right across the road.
 20 Okay. So you've got my location. The
 21 soil is Gardena. I don't know why you would even
 22 think about putting a pipeline through here with all
 23 this water, all the potential of getting into the
 24 lake. I would think the lake people would have been
 25 here en masse today to protest this. Because if

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1 there's a spill, where's it going to go? It's going
 2 to run right into the lake.
 3 By the way, I've got springs in my land
 4 down there. Beautiful springs. I love them. They
 5 go right behind Wolsky Plaza and right into Valley
 6 City. And you know where it goes from there? Right
 7 to the Sheyenne River. Bingo, 3 miles and it's in
 8 the Sheyenne River. I'm sure the illustrious
 9 gentleman over here can't say that it's not going to
 10 wash 3 miles if we have a spill.
 11 And that -- that probably is my final
 12 point because I know you're running out of time.
 13 I'll be brief. We were talking about the validity of
 14 the statements made in the WEB Water Board.
 15 TransCanada has had 576 spills in the past six years.
 16 576 spills from TransCanada in the past six years.
 17 You know where all this is? It's on their official
 18 Web site, www.TransCanada.com for anybody to go and
 19 see and they put it there.
 20 So we don't need to dispute WEB Water,
 21 we don't need to dispute anything unless TransCanada
 22 doesn't have the right information on their own Web
 23 site. And I know you're in a hurry so I think that's
 24 all I have to say except, please, move it out to the
 25 western -- if you guys want to connect with the

309	<p>1 pipeline, to our oil -- which of course some of us 2 don't quite believe that. But let's say that you 3 really do. Wouldn't it make sense to go out where 4 our oil is and not here? How are you going to get it 5 here anyway? That's what I was trying to figure out 6 all morning. Thank you. 7 MR. WAHL: Mr. Kelsch, questions for 8 the witness? 9 MR. KELSCH: No questions, your Honor. 10 MR. WAHL: Mr. Delaney? 11 MR. DELANEY: I have none. 12 MR. WAHL: Mr. -- or Mr. Binek? 13 MR. BINEK: No. 14 MR. WAHL: Commissioners? 15 MR. CRAMER: I have none. 16 MS. WEFELD: None. 17 MR. CLARK: None. 18 MS. WEFELD: Thank you. 19 MR. WAHL: Thank you very much, 20 Ms. Klein. 21 What is your name, sir? 22 MR. ENGQUIST: My name is Randy 23 Engquist. 24 MR. WAHL: I'm sorry. Your last name? 25 MR. ENGQUIST: Engquist,</p>	311	<p>1 commissioners and our township officers. At that 2 time I asked members of the TransCanada pipeline that 3 were present if it is true that they cannot detect a 4 leak that's less than one and a half percent of their 5 volume of this -- of this pipeline. They said that 6 was true. 7 Okay. Just doing some -- some fast 8 math here -- I'm sure this is maybe a worst-case 9 scenario that they're putting down, but they did put 10 this in the presidential report that they reported to 11 the United States when they applied for this -- this 12 permit. 13 If we took 10 percent of that figure, 14 I'm figuring that 495,000 barrels of oil, including 15 the 155,000 they said they had included or since 16 added to this line, if we did the figuring on this at 17 a 10 percent of -- of what we're talking here, over a 18 90-day period -- they said it will take them up to 90 19 days to detect a one and a half percent leak. We're 20 talking over 2.8 million gallons of oil spilled. 21 That's at 10 percent of what they said. 22 Now, where I live my well is 38 feet 23 deep. They're coming through a ridge to the east of 24 my place a quarter mile. Everything flows directly 25 to my farm site. This also indirectly, like 500 feet</p>
310	<p>1 E-n-g-q-u-i-s-t. 2 MR. WAHL: Mr. Engquist, did you hear 3 my advice today regarding perjury? 4 MR. ENGQUIST: Yes, I did. 5 MR. WAHL: Will you raise your right 6 hand, please? Being advised regarding perjury, 7 Mr. Engquist, do you swear that the testimony which 8 you are about to give in this matter shall be the 9 truth, the whole truth and nothing but the truth? 10 MR. ENGQUIST: I do. 11 MR. WAHL: Please state your name and 12 address for the record. 13 MR. ENGQUIST: Randy Engquist. 8221 14 117th Avenue Southeast, Crete, C-r-e-t-e, North 15 Dakota. 16 MR. WAHL: You may proceed with your 17 testimony, Mr. Engquist. 18 MR. ENGQUIST: Okay. Thank you, your 19 Honor and -- and commissioners. I'm going to try to 20 keep this brief. I'm not a good public speaker. 21 Mr. Novak's comments here earlier hit on something 22 that I had intended to speak about, and I'm just 23 going to touch on it very quickly. 24 This past Thursday I attended a meeting 25 in -- in Forman, North Dakota, for our county</p>	312	<p>1 further east, the -- the water or the oil would flow 2 to the east. 3 In the early '80s I -- I had attended a 4 meeting in Fargo where I was subpoenaed to do a 5 deposition for Sargent County. Our -- our water 6 commission cleaned drained in what they call Drain 7 No. 11. It was put in in the early 1900s. Our 8 county was in a lawsuit for many years at a fine of 9 over a million dollars a day because we put dirt in 10 the water. 11 Now, if there's a leak in this area, 12 it's very sensitive. It will directly go into Drain 13 No. 11 -- well, indirectly. You know -- you know, it 14 can go one of two directions, but it will go into 15 Drain No. 11 on down into the Wild Rice River and 16 over to the Red. Canada will get their oil back. 17 I would be lying if I said I want this 18 thing to go through. I don't want it on my land. 19 But if I can't stop it, please put some controls on 20 it. Like at our -- close to a residence, I think 21 there was some very good points brought up in this 22 WEB Water thing, you know, kind of some 23 recommendations they had. I think one very good one 24 was if you come close to a residence or a -- a 25 sensitive area, make them double the thickness of the</p>

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1 pipeline. Make it safe. Let's do it right. Thank
 2 you.
 3 MR. WAHL: Mr. Kelsch, questions for
 4 the witness?
 5 MR. KELSCH: No questions.
 6 MR. WAHL: Mr. Delaney?
 7 MR. DELANEY: I have no questions.
 8 MR. WAHL: Mr. Binek?
 9 MR. BINEK: No questions.
 10 MR. WAHL: Questions by the
 11 commissioners?
 12 MR. CRAMER: No questions. Just thank
 13 you.
 14 EXAMINATION
 15 BY MS. WEFALD:
 16 Q. Is your -- is the pipeline crossing
 17 your land as proposed in its proposed route?
 18 A. Yes, it is.
 19 Q. Yes, it is.
 20 A. **If I could say one more thing. Again**
 21 **this is beside the point. I guess I'm thinking let's**
 22 **maybe say it. I've had people want to purchase land**
 23 **to build on. When I mentioned this to the pipeline**
 24 **company, they said, "If you're not developing it now,**
 25 **it's not our problem."**

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1 MR. WAHL: I'm sorry. Mr. Engquist,
 2 I'm sorry. The court reporter is having difficulty
 3 hearing you.
 4 MR. ENGQUIST: Am I not speaking into
 5 it correctly?
 6 MR. WAHL: And speak louder if you
 7 could.
 8 MR. ENGQUIST: Okay. Okay.
 9 MR. WAHL: Pretend that you're talking
 10 to me without the mic and you'll do fine.
 11 MR. ENGQUIST: Okay. I have property
 12 that people have tried to purchase. I'm 13 miles
 13 from Bobcat along the State Highway No. 13. People
 14 have approached me to buy property there because it's
 15 in the Oakes School District, not the North Sargent
 16 School District. I haven't chose to develop it
 17 because I don't want people there, but that's not
 18 saying that some day I may not change my mind. If
 19 this line goes through there, a lot of that option is
 20 gone. I am going -- I am going to be financially
 21 hurt. I'm going to get a dollar here and lose three
 22 over there. That's really I have.
 23 MS. WEFELD: Thank you.
 24 MR. WAHL: Well, we better do this.
 25 Mr. Kelsch?

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1 MR. KELSCH: No, no questions.
 2 MR. WAHL: Mr. Delaney?
 3 MR. DELANEY: I have nothing.
 4 MR. WAHL: Mr. Binek?
 5 MR. BINEK: No questions.
 6 MR. WAHL: Thank you very much,
 7 Mr. Engquist.
 8 What is your name, sir?
 9 MR. STRANDER: Emery Strander.
 10 MR. WAHL: Mr. Strander, did you hear
 11 me -- here my advice regarding perjury today?
 12 MR. STRANDER: Yes, I did.
 13 MR. WAHL: Will you raise your right
 14 hand, please? Being advised regarding perjury,
 15 Mr. Strander, do you swear that the testimony which
 16 you are about to give in this matter shall be the
 17 truth, the whole truth and nothing but the truth?
 18 MR. STRANDER: Yes, I do.
 19 MR. WAHL: Will you please state your
 20 name and address for the record?
 21 MR. STRANDER: Okay. My name is Emery
 22 Strander, Lisbon, North Dakota, and I'm talking about
 23 land that they are going to run through that I own at
 24 Fort Ransom Township 158, 38 on Section 22 in Fort
 25 Ransom Township.

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1 My concern is they're within feet of a
 2 cemetery. This cemetery, I have bought a plot
 3 myself, and I am very concerned about how close they
 4 can -- want to put that line. It's right now I would
 5 say about 250 feet from the cemetery. The land it
 6 runs through I'm selling to a young man. He's got
 7 control of the land so far, but it isn't paid for so
 8 I still have it too. I still have equity in that
 9 land that they're going across. I ain't quite as
 10 concerned about the pipeline itself going through as
 11 where they're putting it is what I'm concerned about.
 12 I -- my parents are buried there. I
 13 have lived on that land 132 years -- or it's been in
 14 the family. I haven't lived there, but it's been in
 15 the family 132 years and I'm very concerned about
 16 what's going to happen out there. And it's not only
 17 me. My parents are there and my sisters and brothers
 18 are there and my sister-in-law are buried out there,
 19 and I'm very, very concerned of what's going to
 20 happen out there being that close to the cemetery.
 21 And that's on the northeast -- or that
 22 would be on the northeast one-fourth of 158, 38 -- or
 23 58 -- 135, 58 in Fort Ransom Township. I own that
 24 half section that it's on there. Or actually the
 25 cemetery is on the northeast corner of Section 22,

317	<p>1 northwest Section 22. And that's my concern. And I 2 haven't been approached by anybody about easements or 3 anything either from me. My -- the person that is 4 buying my land has been told that you either sign or 5 we'll get after you and make you sign. 6 Well, I don't know if that was true or 7 not. I -- I really haven't talked to the gentleman 8 that was out and seen him or not, see. I haven't 9 signed anything myself because I'm concerned about 10 what's going to happen first about where the line is 11 going to go or where the pipeline runs through the 12 land there. 13 MR. WAHL: All right. 14 MR. STRANDER: And that's all I've got 15 to say. 16 MR. WAHL: Mr. Kelsch? 17 MR. KELSCH: No questions. 18 MR. WAHL: Mr. Delaney? 19 MR. DELANEY: No questions. 20 MR. WAHL: Mr. Binek? 21 MR. BINEK: No questions. 22 MR. WAHL: Commissioners? 23 MR. CRAMER: No questions. 24 MS. WEFELD: No questions. 25 MR. WAHL: Thank you very much,</p>	319	<p>1 either question, either the question of the 2 certificate of public convenience and necessity or 3 the siting of the -- of the pipeline. 4 All right. We stand adjourned until 5 tomorrow at 1:00 in Park River. Thank you. 6 (Whereupon, the hearing was adjourned 7 at 5:29 p.m.) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
318	<p>1 Mr. Strander. 2 MR. STRANDER: Thank you. 3 MR. CRAMER: Thank you. 4 MR. WAHL: It's 5:00. 5 MS. WEFELD: 5:30. 6 MR. CLARK: And then some. 7 MR. WAHL: Nobody else is -- oh, in 8 fact it's past 5:00. I'm going to -- I'm going to 9 continue this hearing until tomorrow July 24th at 10 Park River. Tomorrow at Park River we'll continue 11 with -- in fact I'm also going to continue the 12 hearing for the -- for the certificate of convenience 13 and necessity. I don't think there's anything more 14 to be done for the hearing of convenience and 15 necessity, but we have not on the record proceeded 16 and I -- Mr. Kelsch, there may be rebuttal for the 17 certificate of convenience and necessity. So that 18 hearing also will be continued to tomorrow at Park 19 River at 1:00. 20 Then this hearing, the siting hearing, 21 the siting application hearing will also be continued 22 to tomorrow, July 24th, 1:00 at Park River for the 23 completion of the testimony of TransCanada witnesses 24 and for any further evidence to be offered by the 25 intervenors as well as further public testimony on</p>	320	<p>2 I, CHARLA A. PAWLIK, hereby certify that 3 I am qualified as a verbatim shorthand reporter; that 4 I reported in Stenographic shorthand the foregoing 5 Public Service Commission hearing at the time and 6 place aforesaid; and that the foregoing transcript, 7 consisting of three hundred nineteen (319) pages, is 8 a true and correct, full and complete transcription 9 of said shorthand notes to the best of my ability. 10 Dated at Fargo, North Dakota, this 3rd day 11 of August, 2007. 12 13 14 15 CHARLA A. PAWLIK - R.P.R. 16 Notary Public 17 18 19 20 21 22 23 24 25</p>

QUALIFICATIONS AND RESUME FOR DEAN COWLING

QUALIFICATIONS

Seventeen years experience in the areas of pipeline project development and implementation; pipeline and power operations and maintenance; and pipeline business development.

EDUCATION SUMMARY

Bachelor of Science Degree in Business, 1989
Ferris State University at Big Rapids, Michigan, U.S.A.

CONTINUING EDUCATION

Executive Development Program, 2005
Richard Ivey School of Business – The University of Western Ontario

CAREER HISTORY

TransCanada Pipelines Ltd

2006 – Present Director, Keystone Pipeline Project

Responsible for the development and implementation of the Keystone Pipeline Project in both Canada and the United States, which includes oversight of permitting, engineering, land acquisition, community safety and environment, construction and commissioning.

2005 – 2006 Director, Pipeline Projects Implementation

Responsible for development and implementation of pipeline projects in both Canada and the United States. These projects included pipeline; compressor station and meter station installations and improvements.

2003 – 2005 Director, Field Operations

Responsible for the operations and maintenance of pipeline, compressor stations, meter stations and power plants in Northern Alberta, Canada. Responsibilities included oversight of community, safety and environment, operating and capital budgets, and asset performance.

2000 - 2003 Manager, Eastern Business Development

Responsible for Business Development activities mainly focused in the New England and Mid Atlantic regions of the United States. Responsibilities included identifying business development opportunities and optimizing pipeline investments.

NOVA Gas Transmission Ltd

1998 – 2000 Manager, Program Planning and Estimating, Operations and Engineering

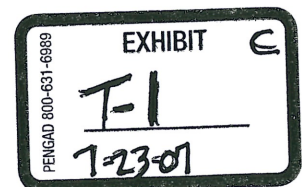
1997 - 1998 Customer Service Representative, Customer Service

1996 - 1997 Program Planner, Operations and Engineering

1994 - 1996 General Rate Application Coordinator, Regulatory Affairs

1992 - 1994 Employee Development Coordinator, Engineering

1990 - 1992 Business Systems Analyst, Information Technology



July 19, 2007



INDUSTRIAL COMMISSION OF NORTH DAKOTA
NORTH DAKOTA PIPELINE AUTHORITY

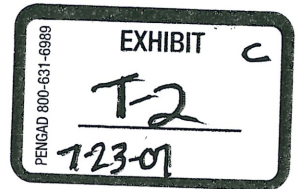
Governor
John Hoeven
Attorney General
Wayne Stenehjem
Agriculture Commissioner
Roger Johnson

June 27, 2007

The Honorable Susan E. Wefald, President
North Dakota Public Service Commission
State Capitol
Bismarck, North Dakota 58505

The Honorable Kevin Cramer, Commissioner
North Dakota Public Service Commission
State Capitol
Bismarck, North Dakota 58505

The Honorable Tony Clark, Commissioner
North Dakota Public Service Commission
State Capitol
Bismarck, North Dakota 58505



PC+N

Dear Commissioners Wefald, Cramer and Clark:

The Public Service Commission has before it Case No. PU-06-421 regarding the TransCanada Keystone Pipeline. This case involves the construction of a 1,845 mile crude oil pipeline from Hardisty, Alberta to key United States market centers in the Midwest. This project is expected to initially transport about 435,000 barrels per day of crude oil with future expansion capabilities to increase that volume to 590,000 barrels per day. Approximately 218 miles of this pipeline will cross eastern North Dakota and the siting of this pipeline in North Dakota is being considered by the Public Service Commission.

Pipeline bottlenecks currently exist on the oil pipeline infrastructure in North Dakota which inhibit area producers from readily accessing markets with their production. This situation has created market conditions that have resulted in depressed prices for western North Dakota crude oil. The TransCanada Keystone Pipeline could play a role in resolving this problem by providing another transportation route for moving crude oil to the refineries in the United States. We also want to make you aware that in conversations with the management of the TransCanada Keystone Pipeline we have strongly urged them to allow future connections to this pipeline in North Dakota that could provide additional capacity to move North Dakota production to market.

There are additional North Dakota economic benefits of future property tax and sales tax revenues as well as benefits to local communities during the construction process.

Mark Makelky, Director
State Capitol, 14th Floor - 600 E Boulevard Ave Dept 405 - Bismarck, ND 58505-0840
E-Mail: kingswoodconsulting@gmail.com PHONE: 701-220-1778 FAX: 701-328-2820
"Your Gateway to North Dakota": www.nd.gov



For the above reasons, the North Dakota Industrial Commission acting in its capacity as the North Dakota Pipeline Authority wishes to go on record in support of the TransCanada Keystone Pipeline project. Thank you for your consideration of the Pipeline Authority's position.

Sincerely,

Mark Makelky, Director
North Dakota Pipeline Authority

C: TransCanada Keystone Pipeline

Jeffcoat-Sacco, Illona Memorandum

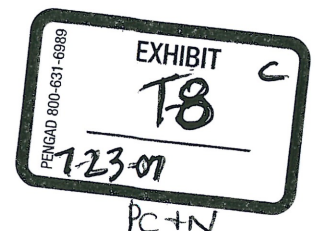
To: Illona Jeffcoat-Sacco
From: Mike Diller
Date: June 5, 2007
Re: TransCanada Keystone Pipeline, LP
Public Convenience and Necessity
Case No. PU-07-152

The following is written to provide the commission with a very limited review of this case regarding the applicant's financial ability to construct and operate the Keystone Pipeline. According to the applicant's siting application (PU-07-152), the total cost to construct the pipeline is \$2.1 billion of which \$277 million will be located in North Dakota.

The applicant is owned by TransCanada Corporation a publicly owned company traded under the symbol TRP on the New York Stock Exchange. According to its application and the financial information available on the website of Yahoo! Finance, TransCanada has been a very successful company in every respect. According to its application, the parent company reported shareholder equity of \$7.7 billion for the year ended 2006.

The commission has used stockholder equity of the parent company as a litmus test for showing financial ability to provide service. Based on its review, staff concludes that the applicant has access to sufficient capital through its parent company to provide service in North Dakota.

Staff sees no reason to deny this application and will provide this document to the applicant's representatives.





INDUSTRIAL COMMISSION OF NORTH DAKOTA
NORTH DAKOTA PIPELINE AUTHORITY

Governor
John Hoeven
Attorney General
Wayne Stenehjem
Agriculture Commissioner
Roger Johnson

STATEMENT
Before the North Dakota Public Service Commission
July 23, 2007

My name is Mark Makelky. I am the Director of the North Dakota Pipeline Authority. During the 2007 legislative session, the North Dakota Pipeline Authority was created for the purpose of diversifying and expanding the North Dakota economy by facilitating development of pipeline facilities to support the production, transportation, and utilization of North Dakota energy-related commodities, thereby increasing employment, stimulating economic activity, augmenting sources of tax revenue, fostering economic stability, and improving the state's economy.

The North Dakota Industrial Commission--Governor John Hoeven, Attorney General Wayne Stenehjem, and Agriculture Commissioner Roger Johnson--acting as the North Dakota Pipeline Authority has previously submitted a letter indicating their support of the TransCanada Keystone Pipeline Project.

Canada is the largest exporter of crude oil to the United States, comprising over 11% of our imports. Growing oil production in Canada has the potential to decrease our dependence on crude oil from more unstable parts of the world. Pipeline projects such as Keystone are essential in order to move that crude oil into the United States to ensure secure future supplies of energy.

The Keystone pipeline could provide a direct benefit to North Dakota if its producers or pipeline companies are able to connect their facilities to it. That would provide another delivery path for North Dakota produced crude oil to access Midwest markets that pay premium prices for light sweet crude oil. Capacity bottlenecks on present pipeline infrastructure have created a situation where North Dakota crude oil has suffered price penalties of \$5 to \$30 per barrel. We are aware of at least one North Dakota company that has expressed an interest in connecting its facilities to the Keystone system.

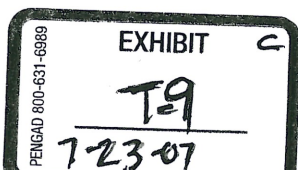
In addition, Keystone provides the indirect benefit of relieving some capacity problems on other parts of the crude oil pipeline system. A majority of North Dakota crude oil is shipped through the Montana-Wyoming-Colorado-Nebraska pipeline infrastructure referred to as the "Guernsey Hub" which is filled to capacity with oil supplies from Canada. Construction of the Keystone pipeline is expected to relieve some strain on the Guernsey Hub. This would allow more production and thereby increase mineral royalties paid to North Dakota citizens and increase state tax revenues to help fund schools and other government functions across the state.

According to US Department of Transportation statistics, pipelines are the safest method of transporting petroleum products. Pipelines are also the most efficient and economical method of shipping the large quantities needed by this country on a daily basis.

If due care is provided during construction to prevent damage to the pipe and its coating system and adequate cathodic protection measures are applied to the pipe with regular monitoring to ensure its effectiveness, a pipeline system can last for decades without significant deterioration of the pipe itself. And with proper pipeline patrol and inspection programs to minimize chances of third party mechanical damage to facilities, the risk of failure is reduced even further. Finally, appropriate emergency response and spill prevention/containment programs can minimize the effects of any leak and prevent significant environmental damage on the remote chance that something does happen to the pipe. Keystone has gone on record as planning to meet or exceed industry standards in all these regards.

I am not here to comment on routing issues. The physical location of the pipeline is a matter best resolved by Company representatives, the affected landowners and the Public Service Commission.

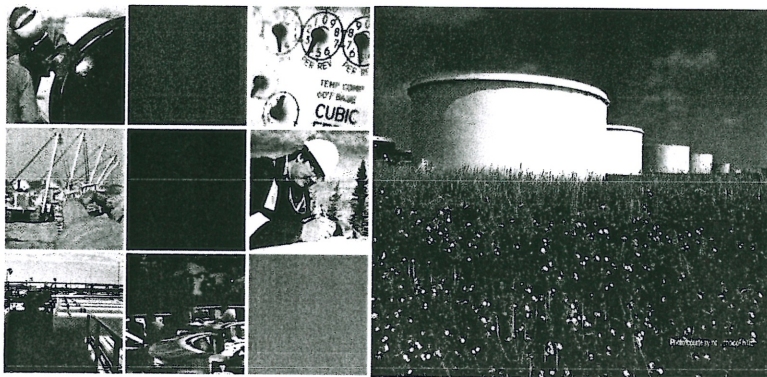
Thank you for this opportunity to appear before the Public Service Commission and express the position of the North Dakota Industrial Commission acting in its capacity as the North Dakota Pipeline Authority.



PC 1 N

Mark Makelky, Director
State Capitol, 14th Floor - 600 E Boulevard Ave Dept 405 - Bismarck, ND 58505-0840
E-Mail: kingswoodconsulting@gmail.com PHONE: 701-220-1778 FAX: 701-328-2820
"Your Gateway to North Dakota": www.nd.gov

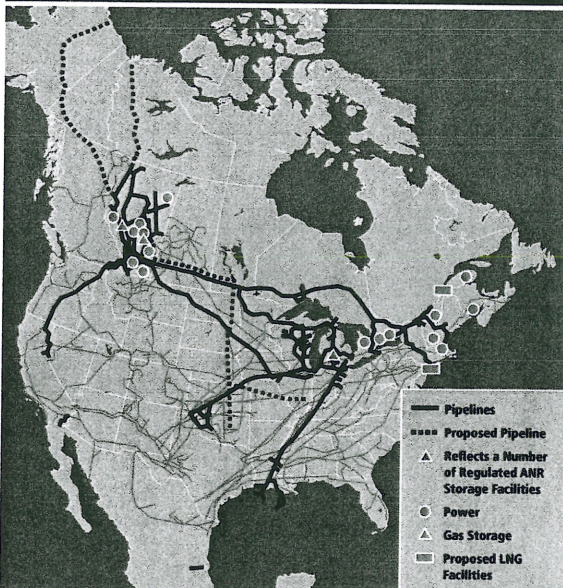




Keystone Oil Pipeline Project
 North Dakota Public Service Commission
 Public Hearings
 July 23 -24, 2007



TransCanada – A North American Company



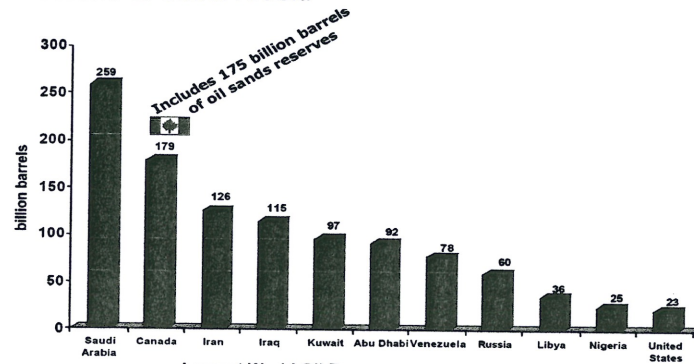
- ~36,500 miles of wholly owned pipeline
- Skilled, expert people
- More than 50 years of construction and operating experience
- Relationships with ~40,000 landowners
- Ideally positioned to connect new sources of supply to growing markets
- ~\$26 billion in total assets



PENGAD 800-631-6988
 EXHIBIT
 T-1
 7-23-07
 Siting

Purpose of Keystone Pipeline Project

- Transport secure supply of crude oil from Canadian oil sand deposits to U.S. refineries and pipeline hubs
- Alberta has second largest crude oil reserves in the world; second to Saudi Arabia



Largest World Oil Reserves
(CAPP, 11/25/2004, Source: Oil and Gas Journal)



3

System Alternatives for Serving Project Need

- Potential system alternatives to serve the need of the Keystone project were evaluated
- All identified alternatives involved construction of new pipeline facilities
- Keystone is the only alternative in a position to meet the increased demand for crude oil within the timeframe required

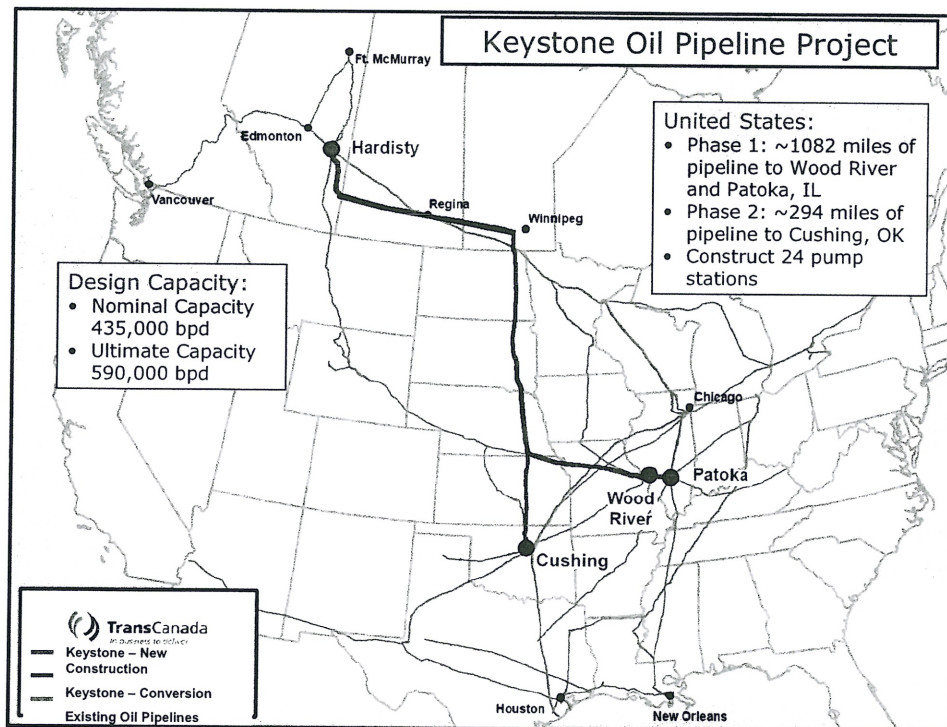


4

Commercial Support for Keystone

- Shipper commitments in place
- Contracts totalling 495,000 bpd
 - Initial 340,000 bpd for Wood River and Patoka, IL
 - In-service Q4 2009
 - Additional 155,000 bpd for Cushing, OK
 - In-service Q4 2010
- Average term of 18 years

5



Federal and State Regulatory Review



- U.S. Department of State –Presidential Permit Review under National Environmental Policy Act
- Review by other federal agencies (Corps Of Engineers, Fish & Wildlife Service, Department of Transportation)
- North Dakota Public Service Commission:
 - Certificate of Public Convenience and Necessity
 - Certificate of Corridor Compatibility and Route Permit
- ND Department of Health, ND Department of Transportation, and other authorities

7



Keystone Project Benefits to North Dakota



Short-term construction benefits

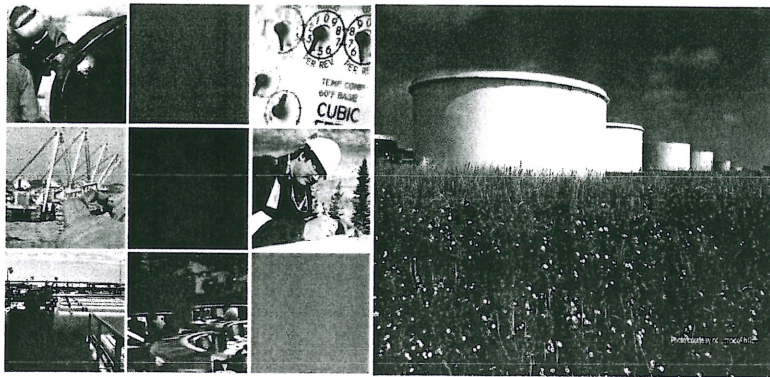
- Food, lodging during construction (~\$3.25 million)
- Construction materials and other supplies (~\$750K)
- 10 – 15% of total construction workforce hired locally

Long-term operations benefits

- ~\$5.2 million in property tax revenues in first year; continued over life of pipeline
- Employment – direct and contract employees to support operations

8

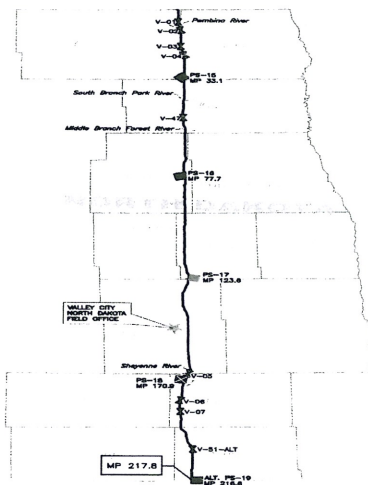




Route Selection and Environmental Impact



North Dakota Facilities



- 218 miles of 30 inch pipe
- 5 Pumping Stations
- 13 Mainline Valves
- 4 Check Valves
- 1,440 psig MAOP



Route Selection Process

- Identify Project Objectives
- Identify Control Points
- Define Study Area
- Collect Data and Solicit Input
- Identify Constraints and Opportunities
- Develop and Assess Alternatives
- Additional Input and Route Refinement



11



Exclusion Areas

- Defined by ND PSC
- Areas excluded in the consideration for a Route for a transmission facility
- The proposed Route does not cross any Exclusion Areas
- One Exclusion Area within the proposed one mile ND PSC Corridor – Fort Ransom State Park – not impacted by Route

12



Avoidance Areas



- Defined by ND PSC
- Areas not to be considered in routing transmission facility unless no reasonable alternative
- Tetrault Woods State Forest – Consultation with State Forest Service – Mitigation measures including Horizontal Directional Drilling (HDD)
- Residences (residence, school, place of business) within 500 feet
 - 23 potentially affected residences
 - Obtained 18 waivers
 - Re-routes resulted in avoidance of 4 residences
 - 1 residence where there is no reasonable alternative

13



Environmental Review



- Comprehensive Environmental Review under NEPA
- Extensive Environmental Information filed with US State Department and provided to ND PSC
- Summary of North Dakota-Specific Environmental Impacts at Table 3 of ND PSC Corridor Application addresses:
 - Air Quality, Geology, Soils and Agricultural Production, Water Resources, Vegetation, Wildlife, Aquatic Resources, Sensitive Species, Land Use, Cultural Resources, Native American Consultation, Socioeconomic Conditions, and Public Health and Safety

14



Environmental Mitigation



- Construction Mitigation and Reclamation Plan (CMR Plan)
- State Department will attach environmental mitigation conditions to minimize impacts (i.e. CMR Plan)
- PSC may also attach environmental mitigation conditions to Corridor Certificate and Route Permit
- Adoption of these construction and reclamation commitments ensures environmental impact will be minimal

15

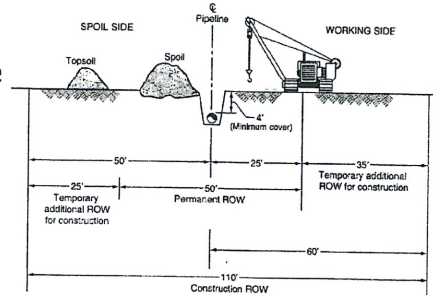


Land and Construction



Typical Land Requirements

- 110 foot construction Right-of-Way (ROW)
 - 60 foot wide temporary workspace
 - 50 foot wide permanent ROW
- Additional temporary workspace for stream, road and railroad crossings, and similar locations
- Pipe yards and contractor yards



17



CMR Plan

Covers the following types of lands:

- Agricultural
- Forested
- Wetlands and Water bodies
- Range and Pasture
- Residential, Industrial and Commercial

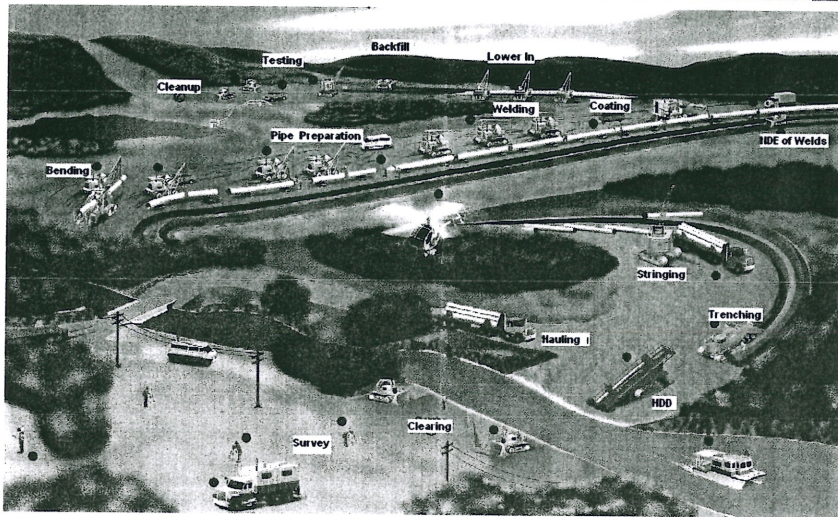
Mitigation & reclamation procedures include:

- Noise, Weed, and Dust Control
- Spill Prevention, Containment & Cleanup Of Construction Equipment
- Topsoil Removal, Storage & Replacement
- Erosion & Sediment Control
- Reclamation (De-compaction, Tilling, Rock Removal, and Seeding)

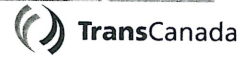
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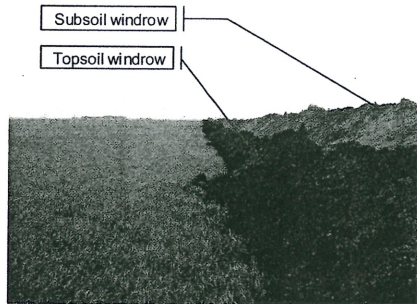
Pipeline Construction – “Assembly Line”



19



Topsoil Salvage and Storage



20



Pipe Hauling, Stringing and Bending

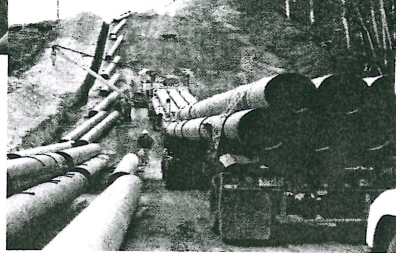
Pipe Transportation



Pipeline Bending



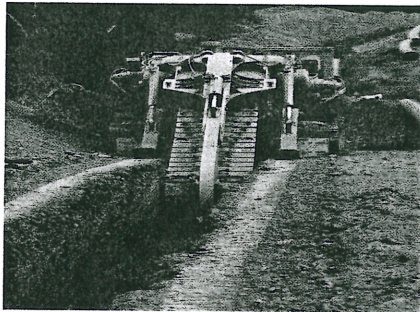
Pipeline Stringing



21



Trenching



22

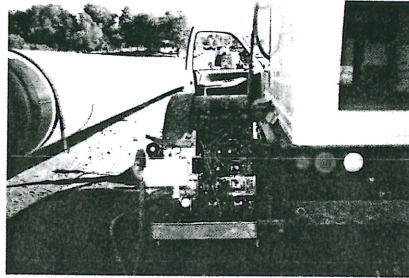


Welding and Welding Inspection

Welding



X-ray Inspection



23

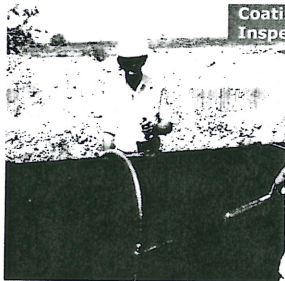


Pipe Coating, Inspection & Lowering In

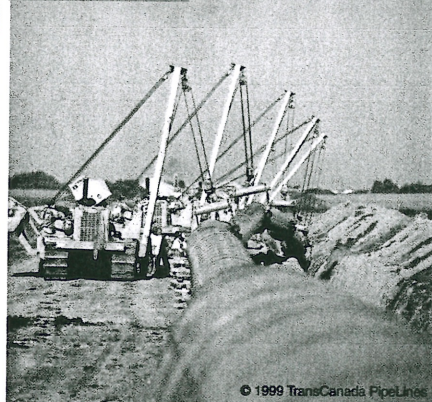
Field Joint Coating



Coating Inspection



Lowering In



Backfill



Backfill



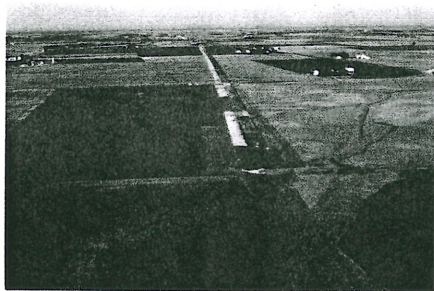
Padding



25



Topsoil Replacement

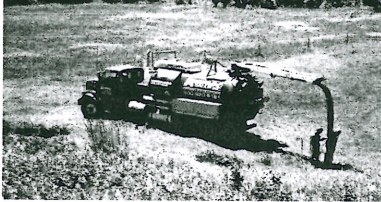


26



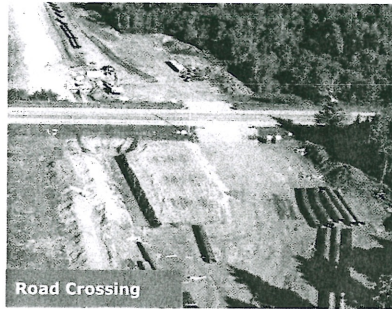
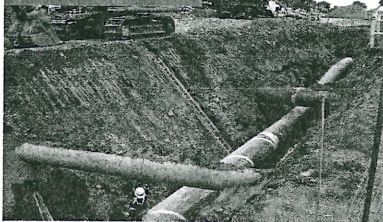
Road and Utility Crossings

Hydrovac Locating Existing Utilities



- One Call Notification
- Utility Notification
- "Day-lighting" of existing utilities
- On-site utility inspector

Utility Crossing

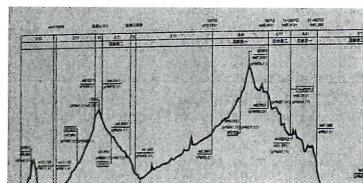
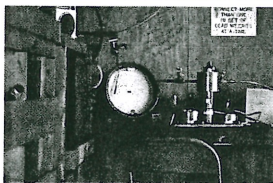
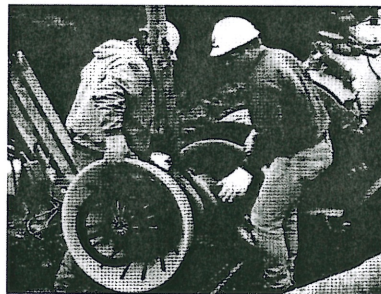
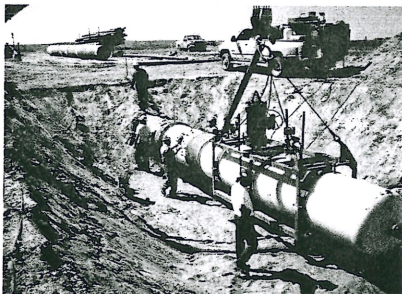


Road Crossing

27



Hydrostatic Testing and Pipeline Inspection "Caliper Pig"



28

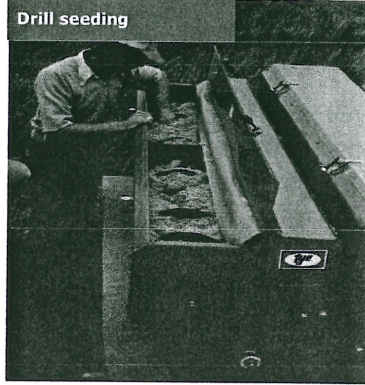


De-compaction, Rock Picking & Seeding

Subsoil De-compaction



Drill seeding



Rock picking

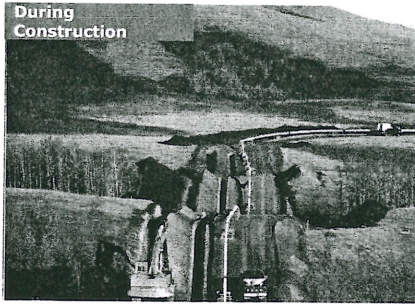


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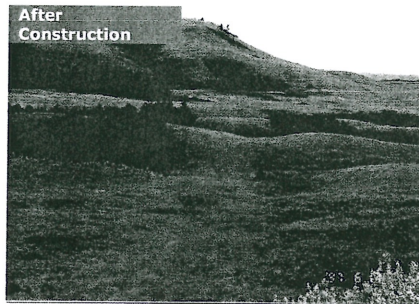


Right-Of-Way Reclamation

During Construction

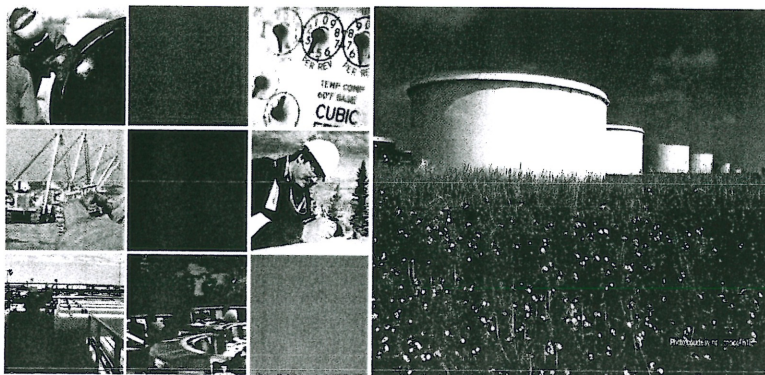


After Construction



30





Pipeline Safety and Integrity



Key Regulations & Standards

- Facilities designed, constructed, tested, and operated in accordance with all applicable requirements including:
 - USDOT 49 CFR Part 195, Transportation of Hazardous Liquids by Pipeline
 - American Society of Mechanical Engineers (ASME) Standard B31.4
 - American Petroleum Institute (API) Standards
 - USDOT 49 CFR Part 194, Response Plans for Onshore Oil Pipelines

Key Design Safety Features

- Depth of Cover
- High Strength Steel Pipe
- External Protective Coatings
- Cathodic Protection (CP)
- Marker Signs
- Isolation Valves
- Supervisory Control and Data Acquisition System (SCADA)
- Leak Detection

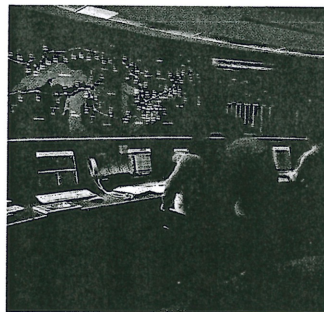


33



Pipeline Operations - SCADA and Leak Detection Systems

- Real-time remote control and monitoring of pump stations and mainline valves
- Fully redundant Primary and Backup Control Centers
- Dual Communication Systems
- Short scan cycle time (6 to 8 seconds)
- 24 hour monitoring, 7 days a week, 365 days a year
- Dedicated Leak Detection System (Computational Pipeline Monitoring System)

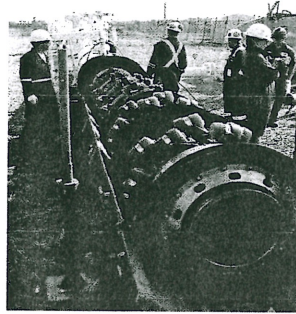
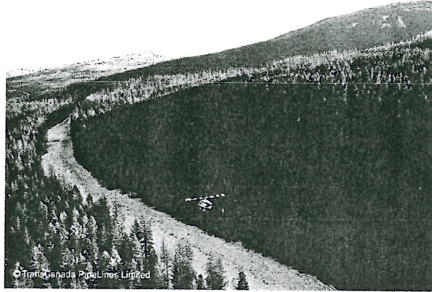


34



Pipeline Maintenance

- Integrity Management Program that meets or exceeds federal requirements
 - In-line Inspection program
 - Investigation and Repair program
 - On-going monitoring (CP and aerial survey)



35



Oil Spill Response Plan

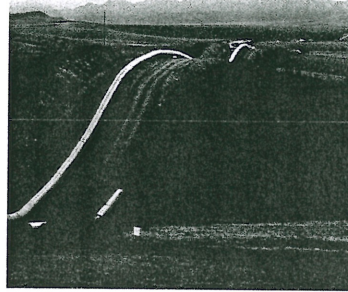
- Preliminary Oil Spill Response Plan submitted to DOS / ND PSC
 - Pre-positioned response equipment at locations based on spill analysis and worst case discharge volume
 - Responders located along route and able to respond in compliance with 49 CFR Part 194
 - Keystone will remediate the area of a spill in coordination with federal and state agencies, including ND Department of Health
- Final Oil Spill Response Plan filed with US DOT Pipeline & Hazardous Materials Safety Administration (PHMSA) prior to line fill

36



Keystone Commitment

- To design, construct and operate a safe pipeline
- To build and operate in a socially and environmentally responsible manner
- To meet or exceed industry and government standards
- To consult with all stakeholders on a regular basis
- To treat stakeholders with respect and fairness



37



Keystone Contact Information

Keystone Oil Pipeline Project Office
7509 NW Tiffany Springs Parkway
Northpointe Circle II, Suite 200
Kansas City, MO 64153

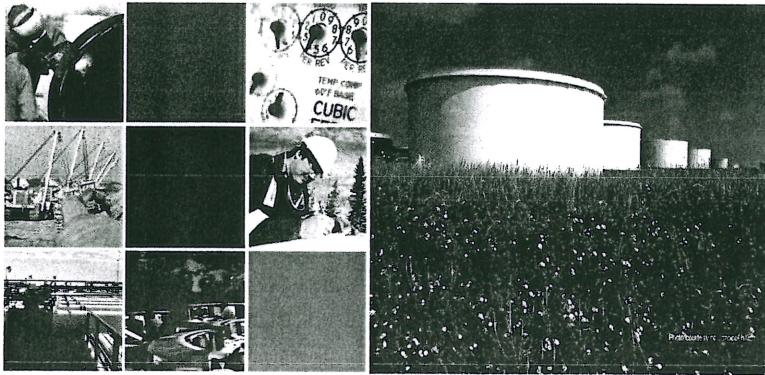
www.transcanada.com/keystone

General Inquiries 1.866.717.7473
Landowner Inquiries 1.877.880.4881



38



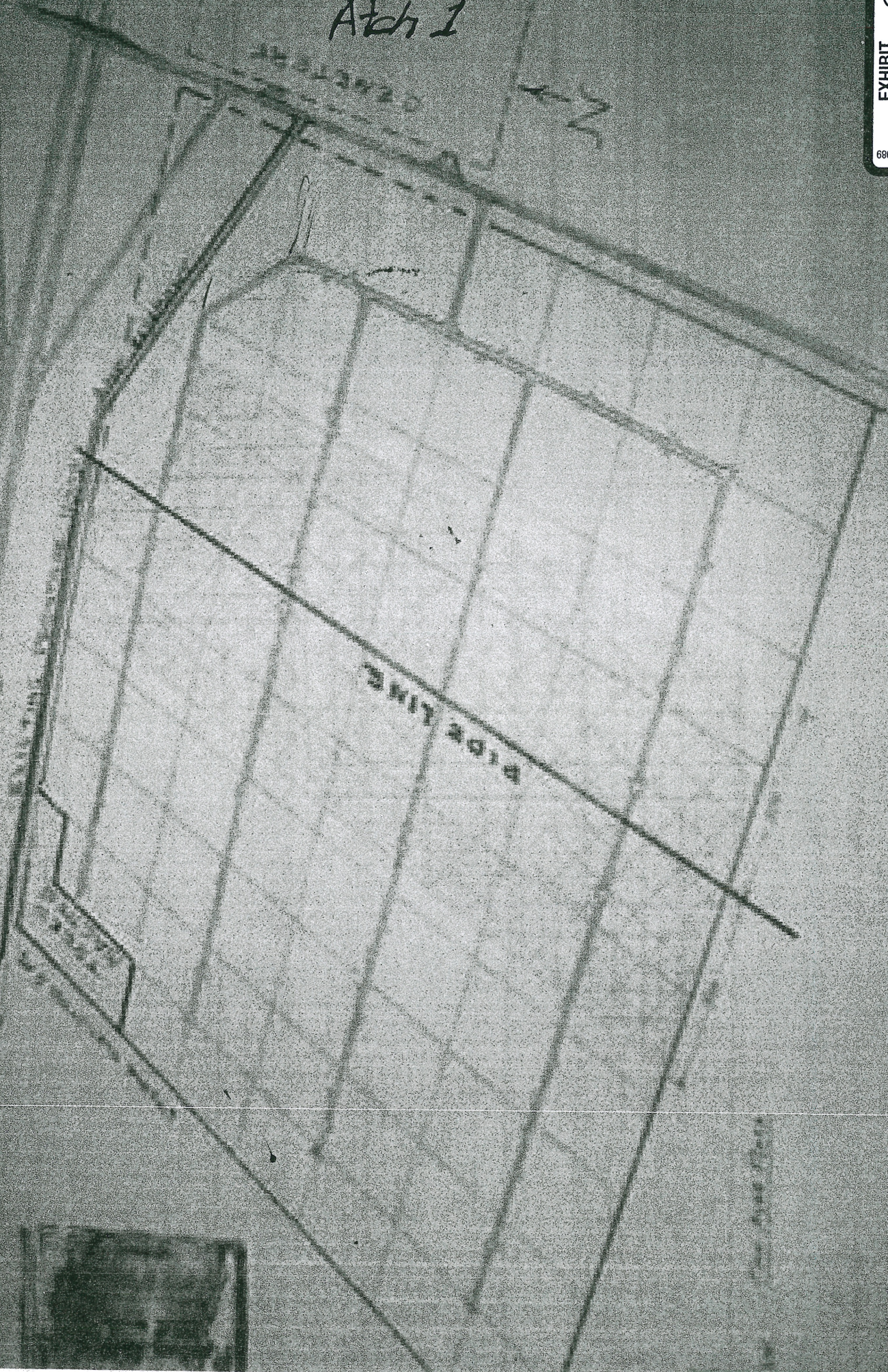


THANK YOU



Atch 1

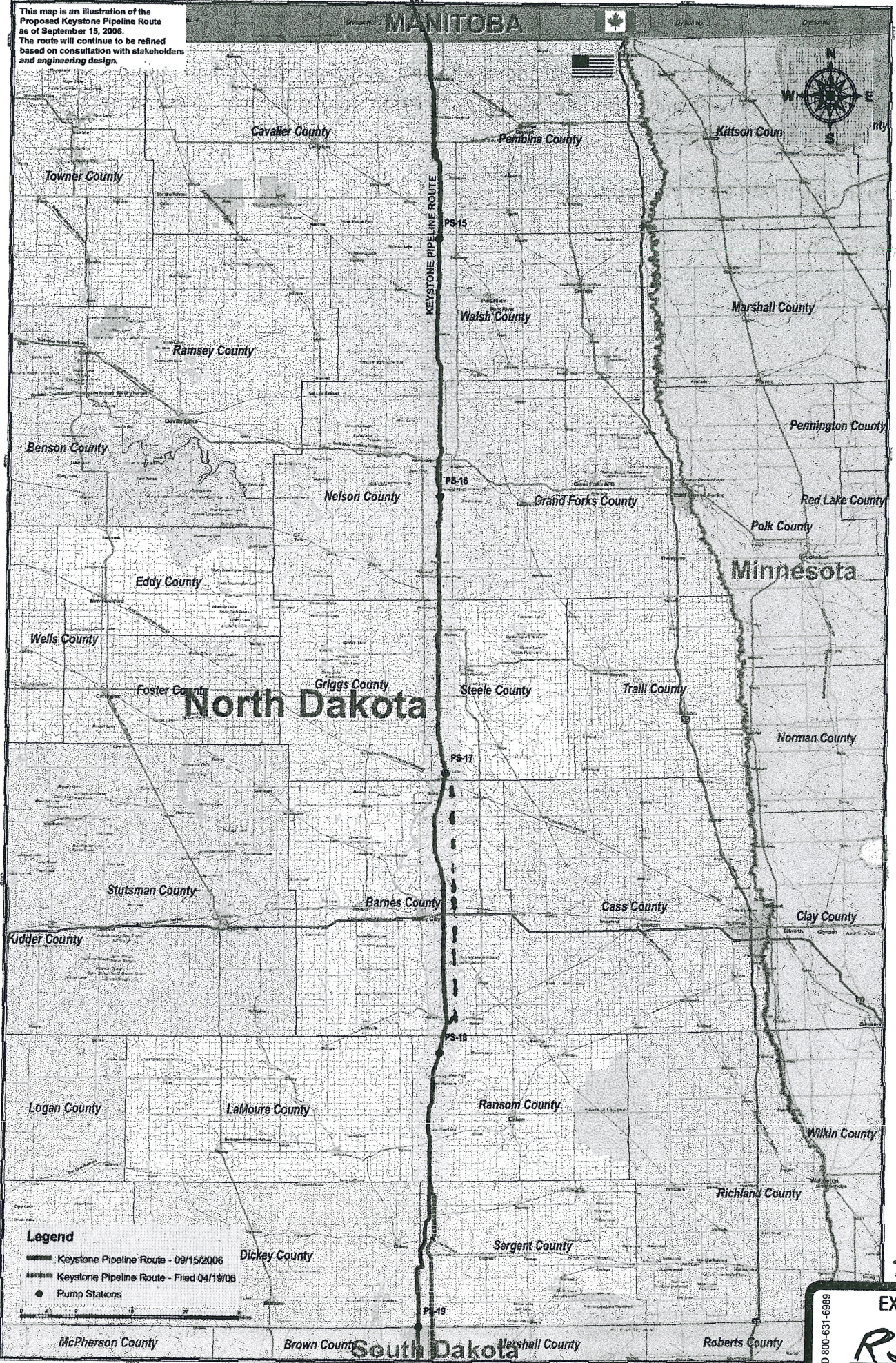
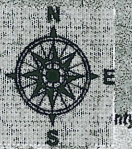
EXHIBIT 6
RSI
7-23-07
PENGAD 800-631-6989



Atch 2

This map is an illustration of the Proposed Keystone Pipeline Route as of September 15, 2006. The route will continue to be refined based on consultation with stakeholders and engineering design.

MANITOBA



- Legend**
- Keystone Pipeline Route - 09/15/2006
 - Keystone Pipeline Route - Filed 04/19/06
 - Pump Stations

Siting

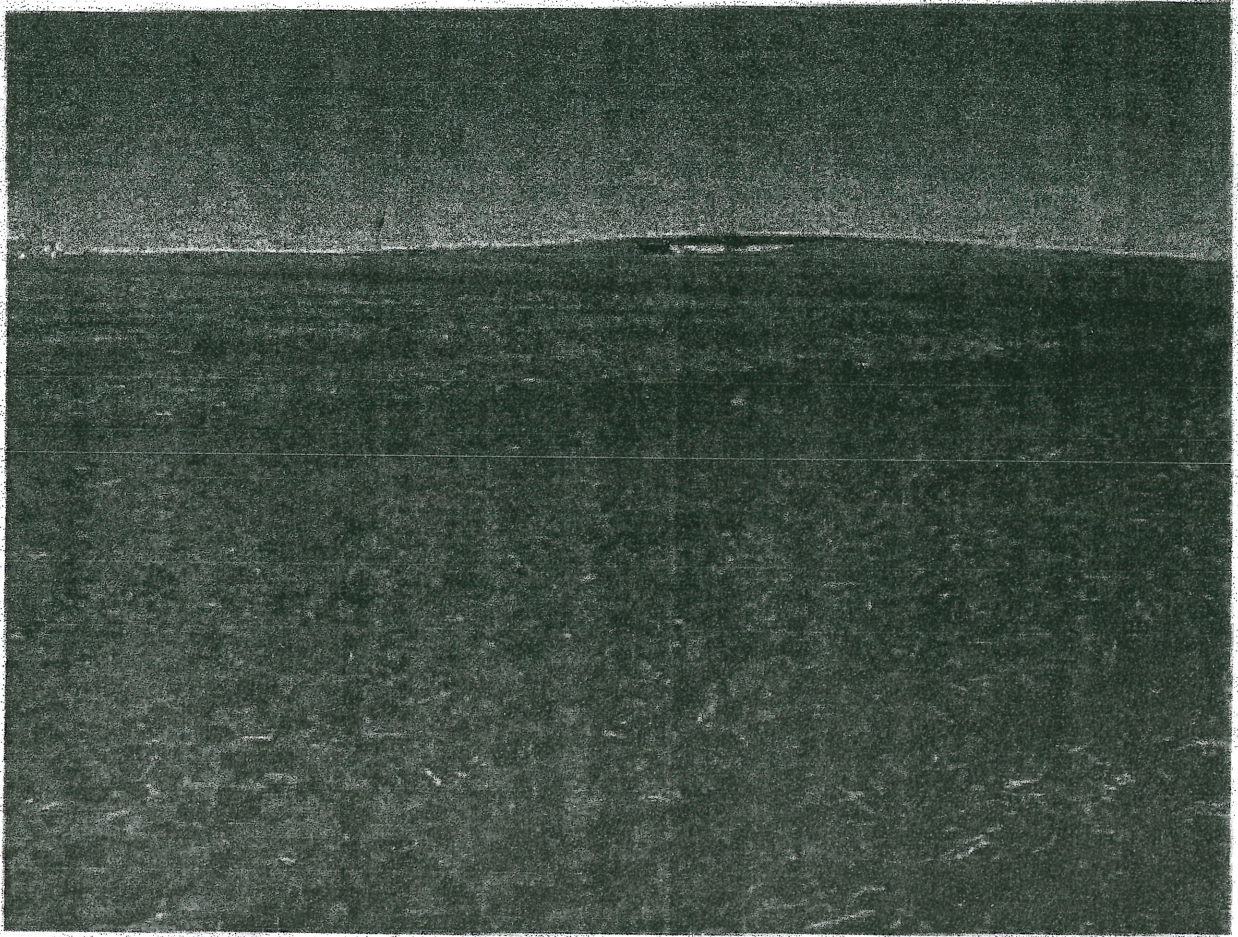
EXHIBIT C

RSZ

7-23-07

PENGAD 000-631-6995

Atch 3



LOOKING N.E.



Siting

PENGAD 800-631-6889	EXHIBIT	<
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12/26/2006

ADN clippings

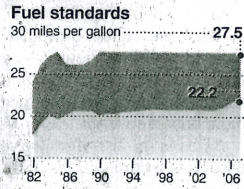
EXHIBIT C
RS4
7-23-07

SATINOL

Raising auto fuel standards

A recent Senate bill will require automakers to increase the fuel economy for their vehicles from current standards.

■ Fleet vehicles ■ Light trucks*



*Includes SUVs, vans and pickup trucks.

SOURCE: Department of Transportation AP
23 June 07 MON
Cars

of the near future will use less fuel

Senate legislation suggests cars may rely on ethanol, electricity

WASHINGTON (AP) — The cars, sport utility vehicles and pickups people will buy in the years ahead are likely to use less fuel, and many will rely on ethanol or household electricity instead of gasoline.

The energy legislation pushed through the Senate this week provides a roadmap to the future, demanding higher automobile fuel economy, mandating huge increases in ethanol as a motor fuel and supporting more research into building "plug-in" hybrid-electric vehicles.

While Senate Republicans complained that the bill does nothing to increase domestic oil production, Democrats said that's because the nation must move energy policy away from its heavy reliance on oil.

The House is preparing its own version.

The Senate bill requires automakers to increase fuel economy to 35 miles per gallon, about a 40 percent increase over what cars, SUVs and small trucks are required to achieve now. It would lump all the vehicles under a single regulation, but also give manufacturers flexibility so large SUVs wouldn't have to meet the same requirements as smaller cars.

It requires a yearly increase of ethanol production to 36 billion gallons a year by 2022, a seven-fold increase from today. By 2015, half of the new vehicles offered to buyers — as many as 10 million — will have to be capable of running on 85 percent ethanol, biodiesel or some other alternative energy source.

And for the first time, the president must find ways to cut

See FUEL — Page A5

□ Coal

Continued from Page A1

and then you take a rural state like North Dakota, where we rely on our combines and our cars for livelihoods," Van Dyke said. "It's a complicated issue and if there was an easy solution, we'd have found it."

This is the first time Hansen, director of NASA's Goddard Institute for Space Studies in

New York, has called for an end to coal burning. He said it's the No. 1 solution to global warming, and that so far, no coal-fired plants can capture carbon dioxide emissions so they are not released into the atmosphere.

While burning oil and natural gas also release carbon dioxide, they will run out and there's more coal to burn and pollute the Earth, so it's more of a threat, Hansen said.

"Coal is the big amount,"

Hansen said. "Until we have that clean coal power plant, we should not be building them. It is as clear as a bell."

Hansen, who said he was speaking as a private citizen, also told the press club that by mid-century all coal-fired power plants that do not capture and bury carbon dioxide "must eventually be bulldozed." It's foolish to build new ones if the emissions can't be dealt with, he said.

Fuel ^{23 Jan 07} M.D.N.

Continued from Page A1

oil demand by 20 percent of what it is expected to be in 2017 — a target President Bush has embraced — and attain further reductions after that. Gasoline demand is expected to grow 13 percent to 261 billion gallons a year by 2017 without some fuel-saving measures.

But will auto showrooms provide the same selection of vehicles? Will they be as big, as powerful, as safe?

"I would expect them to look a lot like they do today, the same size, the same acceleration and the same or even better safety," says David Friedman, director of the clean vehicles program at the Union of Concerned Scientists.

He maintains they will have better technology, better engines, more efficient transmissions and stronger aluminum bodies. They'll cost a little more but use much less gasoline.

"The goal is to replace fossil

fuels with alternative fuels and use conservation," said Sen. Maria Cantwell, D-Wash., who was involved in the discussions on many of the auto fuel economy and motor fuel issues that ended up in the bill.

What has changed from a few years ago, she said, is there no longer is "a fear factor that you're going to be in itty bitty cars" if the government requires automakers to make more fuel efficient vehicles.

In addition to making conventional cars more fuel efficient, the bill seeks to boost research into use of lithium-ion batteries — like those used in laptop computers and cameras — in vehicles.

Should ways be found to make them more durable in a vehicle environment, cars could be plugged into an electric socket at home, relying only rarely on gasoline, says Friedman. Some studies have estimated the fuel cost — mostly the cost of electricity and a small amount of gasoline — would be equivalent to about \$1 a gallon, said Cantwell.



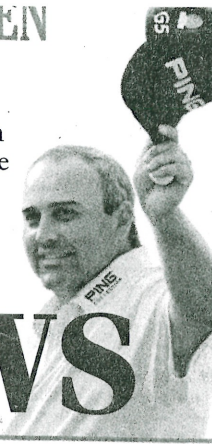
MODERN LOVE
Velve couple operates Mustang parts business, B1

WORK OUT
Heart of America Medical Center hosts Wellness Center Outdoors, C1



U.S. OPEN

Cabrera wins U.S. Open title by one stroke, D1

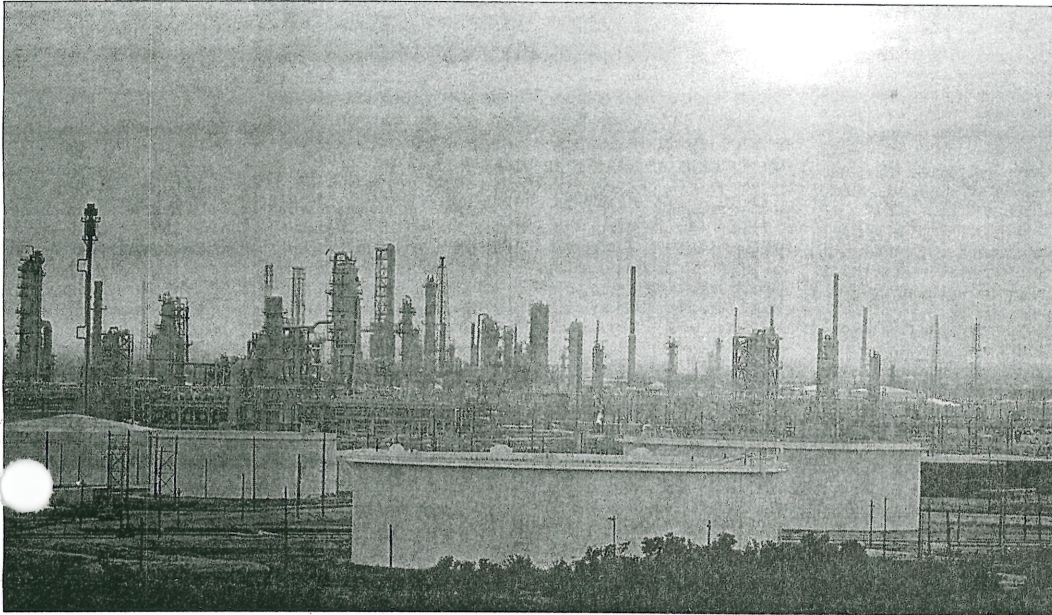


Minot Daily News

MINOT, NORTH DAKOTA

MONDAY JUNE 18, 2007

50



AP Photo

The sun begins to set over an oil refinery in Port Arthur, Texas, May 17. A push from Congress and the White House for huge increases in biofuels such as ethanol, is prompting the oil industry to scale back its plans for refinery expansions. That could keep gasoline prices high, possibly for years to come.

Oil reacts to biofuels push

Washington ethanol push prompts oil industry to scale back refinery expansion

WASHINGTON (AP) — A push from Congress and the White House for huge increases in biofuels, such as ethanol, is prompting the oil industry to scale back its plans for refinery expansions. That could keep gasoline prices high, possibly for years to come.

With President Bush calling for a 20 percent drop in gasoline use and the Senate now debating legislation for huge increases in ethanol production, oil companies see growing uncertainty about future gasoline demand and little need to expand refineries or build new ones.

Oil industry executives no longer believe there will be the demand for gasoline over the next decade to warrant the billions of dollars in refinery expansions — as much as 10 percent increase in new refining capacity — they anticipated as recently as a year ago.

Biofuels such as ethanol and efforts to get automakers to build more fuel-efficient cars and SUVs have been portrayed as key to countering high gasoline prices, but they are likely to do little to curb costs at the pump today, or in the years ahead as refiners reduce gasoline production.

A shortage of refineries frequently has been blamed by politicians for the sharp price spikes in gasoline, as was the case last week by Sen. James Inhofe, R-Okla., during debate on a Senate energy bill.

"The fact is that Americans are paying more at the pump because we do not have the domestic capacity to refine the fuels consumers demand," Inhofe complained as he tried unsuccessfully to get into the bill a proposal to ease permitting and environmental rules for refineries.

This spring, refiners, hampered by outages, could not keep up with demand and imports were down because of greater fuel demand in Europe and elsewhere. Despite stable — even sometimes declining — oil prices, gasoline prices soared to record levels and remain well above \$3 a gallon.

Consumer advocates maintain the oil industry likes it that way.

"By creating a situation of extremely

tight supply, the oil companies gain control over price at the wholesale level," said Mark Cooper of the Consumer Federation of America. He argued that a wave of mergers in recent years created a refining industry that "has no interest in creating spare (refining) capacity."

Only last year, the Energy Department was told that refiners, reaping big profits and anticipating growing demand, were looking at boosting their refining capacity by more than 1.6 million barrels a day, a roughly 10 percent increase. That would be enough to produce an additional 37 million gallons of gasoline daily.

But oil companies already have scaled those expansion plans back by nearly 40 percent. More cancelations are expected if Congress passes legislation now before the Senate calling for 15 billion gallons of ethanol use annually by 2015 and more than double that by 2022, say industry and government officials.

"These (expansion) decisions are being revisited in boardrooms across the refining sector," said Charlie Drevna, executive vice president of the National Petrochemical

See FUELS — Page A7

Brandi Schoenberg, Miss North Dakota International 2007, will compete in Chicago, July 27-28 with 32 other contestants for the title of Miss International 2007. Every contestant must have a platform issue, and Schoenberg's is Big Brothers Big Sisters, which she has been a part of for three years.

Submitted Photo



Big Sister, Beauty Queen

Brandi Schoenberg looks toward a successful future

Although she may be a small-town girl at heart, Brandi Schoenberg has made it big in Bismarck, as a college graduate, a Big Sister and a beauty queen.

Schoenberg, originally from Mohall, graduated from the University of Mary in Bismarck in April with a bachelor of science degree in business administration and business communication. Like most college graduates, she has sent out some resumes and even turned an internship into a part-time job, though that will be ending soon.

She currently works on the

marketing team at the North Dakota Department of Commerce. Originally an intern, she was hired part-time through the end of the biennium which June 30.



Story by **DAN FELDNER**, Staff Writer

"I like there. I learned a lot," she said in her cheery voice during a phone interview. "It's great stepping stone."

Her work on the market team is mostly a support

See PROFILE — Page A

Fuels

Continued from Page A1

and Refiners Association.

With the anticipated growth in biofuels, "you're getting down to needing little or no additional gasoline production" above what is being made today, said Joanne Shore, an analyst for the government's Energy Information Administration.

In 2006, motorists used 143 billion gallons of gasoline, of which 136 billion was produced by U.S. refineries, and the rest imported.

Drevna, the industry lobbyist, said annual demand had been expected to grow to about 161 billion gallons by 2017. But Bush's call to cut gasoline demand by 20 percent — through a combination of fuel efficiency improvements and ethanol — would reduce that demand below what U.S. refineries make today, he said.

"We will end up exporting gasoline," said Drevna.

Asked recently whether Chevron Corp. might build a new refinery, vice chairman Peter Robertson replied, "Why would I invest in a refinery when you're trying to make 20 percent of the gasoline supply ethanol?"

Many cars take ethanol, but only a trickle at the pumps

ALBANY, N.Y. (AP) — Steve Williams does what millions of American motorists can't: Fill up on cheaper, ethanol-based fuel from a local gas station.

Advocates, including farmers and President Bush, have offered E85 — a blend of 85 percent ethanol and gasoline — as an affordable way to help the nation grow itself toward energy independence with a cleaner-burning fuel. They would like to see more people like Williams, who filled up his 2003 Ford Explorer with E85 on a recent morning.

But there's a big hitch for this fuel of the future. There are too few pumps. While there are about 5 million "flexible fuel" vehicles on U.S. roads that can handle E85, there are only 1,145 public stations that offer the fuel nationwide, according to the National Ethanol Vehicle Coalition.

The number of gas stations in North Dakota selling E85 topped out at more than 30 but has been falling, said Kim Christianson, energy programs manager for the state Division of Community Services.

"I'd estimate it to be around 20 or 25 now," Christianson said. "The biggest issue is supply."

Valero Corp., the nation's largest refiner producing 3.3 million barrels a day of petroleum product, recently boosted production capacity at its Port Arthur, Texas, refinery by 325,000 barrels a day. But company spokesman Bill Day said some additional expansions have been postponed.

"That's not to say we've changed our plans," Day said in an interview. "But it's fair to say we're taking a closer look at

what the president is saying and what Congress is saying" about biofuels. He said there's a "mixed message" coming out of Washington, calling for more production but also for reducing gasoline demand.

"It's something that we have to study pretty carefully," said Day.

Ron Lamberty of the American Coalition for Ethanol said all the talk about biofuels threatening gasoline produc-

tion is the "latest attempt to blame ethanol on Big Oil's failure to meet our energy needs."

"The ethanol industry continues to grow while oil refiners continue to make excuses for maintaining their profitable status quo," said Lamberty.

Sen. Byron Dorgan, D-N.D. said consolidation of the oil industry into fewer companies has left them with no incentive to expand refineries.

"It's a perverted system that does not act as a free market system would act," said Dorgan. "If you narrow the neck of refining, you actually provide a greater boost to price which is a greater boost to price ability."

Richard Blumenthal, the attorney general of Connecticut, wants Congress require refiners to maintain supply cushion in case of unexpected outages.

In the 1980s, Blumenthal said at a recent hearing, refiners were producing at 77.6 percent of their capacity, "which allowed for easy increases in production to address shortages. In the 1990s, as the industry closed refineries, ... (that figure) rose to 91.4 percent, leaving little room for expansion cover supply shortfalls."

The bill being debated in Senate is HR 6.

TransCanada-Keystone Crude Oil Pipeline

Prepared by*

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Introduction

TransCanada, a Canadian company, is seeking a permit approval from President Bush through the U.S. State Department and from the South Dakota Public Utilities Commission to construct and operate a \$2.1 billion, **30 inch high pressure crude oil pipeline** from the oil sands area of Hardisty, Canada to Patoka, Illinois, crossing through eastern South Dakota. A number of issues that require additional information are identified throughout this booklet. Agency contacts are on page 21. Action items can be found on page 18.

Public Hearings – SD Public Utilities Commission

The South Dakota Public Utilities Commission, which has regulatory authority over oil and gas lines in South Dakota, will be holding four public hearings on the TransCanada-Keystone Pipeline. The PUC is charged with protecting South Dakota citizens and property from the impacts of oil and gas pipelines. **The PUC will take public comment and written testimony** on the dates and times listed below. Landowners and community leaders should plan to attend to offer their views, voice their concerns and present verbal or written testimony. Additional more formal hearings will follow these informal hearings.

Monday, June 25, 2007, 11:00 AM

Monday, June 25, 2007, 7:00 PM

Tuesday, June 26, 2007, 7:00 PM

Wednesday, June 27, 2007, Noon

City Commission Chambers, 416 Walnut, Yankton, SD

Joe's Café, 1150 Spruce, Alexandria, SD

Clark Community Center, 120 N Commercial St, Clark, SD

Marshall County Community Bldg, 909 S Main, Britton, SD

Written testimony may be sent by email or by U.S. mail to the PUC at the address shown below. Those who wish to have **legal standing** and take part in the final decision process must file an **Application for Party Status** with the PUC before 5:00 pm **June 26, 2007** on a form available from the PUC Office in Pierre, SD listed below. A copy of the form may also be secured by calling 1-800-658-3957.

SD Public Utilities Commission

State Capitol Building – 1st Floor

500 E Capitol Avenue

Pierre, South Dakota 57501-5070

Phone 1-800-332-1782 or (605) 773-3201

Fax (605) 773-3809

Dusty Johnson, Chairman..... dustin.johnson@state.sd.us

Gary Hanson, Vice Chairman... gary.hanson@state.sd.us

Steve Kolbeck, Commissioner.. steve.kolbeck@state.sd.us

www.state.sd.us/puc/puc

U.S. State Department

Elizabeth A. Orlando, Foreign Affairs Officer
OES/ENV Room 2657 U.S. State Department

Washington, D.C. 20520

Phone (202) 647-4284

Fax (202) 647-1052

orlandoea2@state.gov

I-29 Alternate Route - Preferred (Map on Page 2)

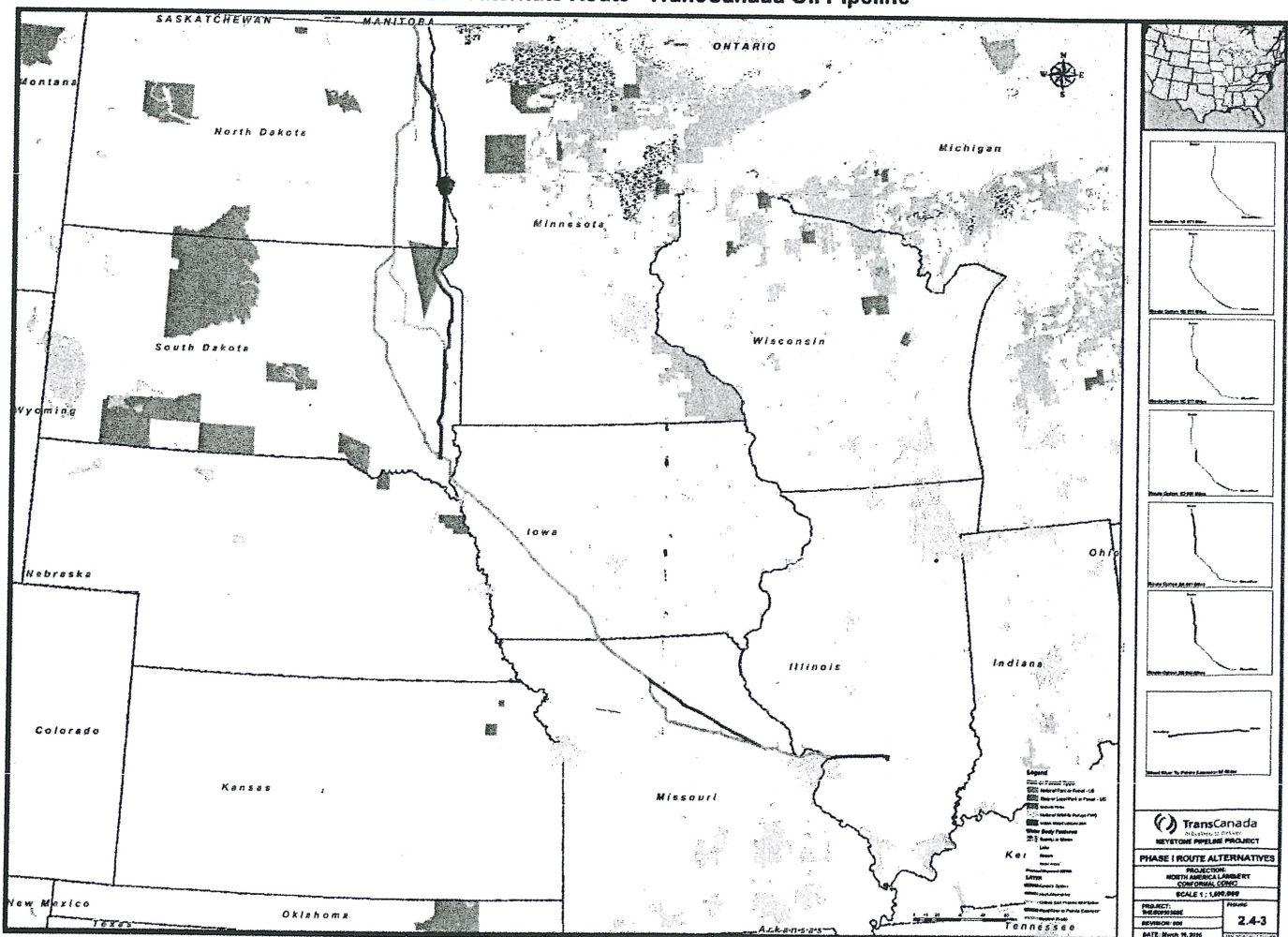
The permit application TransCanada filed with the U.S. State Department in 2006 included an "**Alternate Route**" (Map 2.4-3) for the crude oil pipe along **Interstate Highway I-29 through North Dakota and South Dakota** (see page 2). **The I-29 Alternate Route would allow for the oil pipeline to be placed in existing state road right-of-way and would require far less acquisition or condemnation of privately owned productive farm land. If an oil leak occurs in the future, it could be contained in a wide highway road ditch along a well traveled highway where it could be quickly spotted and reported and emergency response teams and equipment quickly dispatched to clean up the oil spill. WHY NOT locate the Trans-Canada-Keystone Oil Pipeline in state road right-of-way rather than through productive private farm lands? The Governor and other state officials support the TransCanada-Keystone Oil Pipeline and will collect contractor's excise and annual tax revenues. If there is an oil leak, the Governor and state agencies will have better luck getting TransCanada out to clean up a "spill" in a timely manner than a farmer or landowner located in a remote rural area with narrow township roads or section line trail access. The I-29 route would be a straight shot south to Elk Point, the proposed location for an oil refinery announced by industry and state officials on 6/13/07.**

TransCanada's Easement Is Unfair - Landowners DON'T SIGN

Even before the PUC public hearings have been held, TransCanada's out-of-state land agents have been contacting landowners telling them their land will be condemned if they don't sign a **TransCanada Easement and Right-of Way Agreement**. Some landowners have complained of threats and harassment by TransCanada land agents. Some have claimed that TransCanada is targeting absentee landowners, poor landowners, and the elderly. Many question why TransCanada is being allowed by the SD Public Utilities Commission to secure land easement **before the PUC has even held public hearings or granted the company a permit** to pass through the South Dakota. Lawyers who have reviewed the easement question whether it provides landowners protection against future oil leaks, fires, and soil or ground water-contamination. Section 1 of the easement is shown below.

"Section 1. Grantor (landowner) on behalf of itself and its heirs, assigns, agents, successors in interest and any other person or entity taking through or under it) does hereby release, acquit, waive and forever discharge Grantee (TransCanada), and its successors and assigns, its parent, subsidiary and related companies and their officers, directors, employees, shareholders, agents, successors, assigns, attorneys, insurers, sub-contractors, consultants, or any other person or entity taking through or under them, or any of them, of all and from all manner of action, causes of action, lawsuits, claims and demands of every kind and nature whatsoever, whether known or unknown and whether arising in law or in equity, that Grant has or may have against Grantee (its successors and assigns) in connection this Agreement.

Interstate 29 - Alternate Route - TransCanada Oil Pipeline



Landowners Should Not Sign Any TransCanada Documents

Landowners shouldn't sign any TransCanada documents before first having them reviewed by an attorney, especially the easement document, which as written takes away landowner rights in the event of a spill or pipe failure. Furthermore, there is no good reason to sign documents before the PUC hearings have been held. In the event of a crude oil leak, will TransCanada have any responsibility to the landowner for damage to their property, loss of future income, and other damages caused by an oil leak? Many question whether the onetime payment by TransCanada is adequate for the risk and conditions place on the land. **A payment offered by TransCanada to one landowner in Marshall County amount to \$39 per acre when figured over the 50 year expected life of the pipeline, well below what cash rent is going for in the area** (\$26,000 : 13.3 acres : 50 yrs = \$39 acre per year average). At a landowners meeting in Britton, SD on May 10, 2007, TransCanada's engineer L.A. "Buster" Gray said easements that had already been secured from landowners with the Section 1 clause included would not be returned, cancelled or amended. Is the only remedy left for landowners who have signed the document with this wording who now object, some form of class action litigation or a restraining order to restore landowner rights? Who is looking out for the rights of South Dakota landowners and farmers?

Have Officials Already Given A Foreign Company Condemnation Over Private Lands?

The following statement is taken from the information filed by TransCanada with the U.S. State Department as part of the permit application process.

"Landowners will receive monetary compensation in return for granting easements, including compensation for the diminution in the value of the property, if any, loss of use during construction, crop loss, loss of nonrenewable or other resources, and restoration of unavoidable damage to property during construction. If an easement cannot be negotiated with the landowner, Keystone may acquire easements needed for the pipeline under state eminent domain laws."
(TransCanada Construction Mitigation & Reclamation Plan, pg 1-21).

TransCanada-Keystone Pipeline intends to acquire the necessary right-of-way easement for construction and operation of the pipeline by negotiating easements with landowners along the route or, if necessary by condemnation. **As late as May 10, 2007 TransCanada's land agents have been telling South Dakota landowners they have the right to use SD eminent domain laws to condemn private land if the owner doesn't accept TransCanada's offer.** Landowners have reported being threatened with condemnation if they don't sign immediately, on the very same day the landowner was given the easement document.

Has the PUC, the Governor, the Legislature, or a court all ready granted Trans-Canada the power of condemnation and eminent domain over private land as they claim BEFORE the Public Utilities Hearings were even held on June 25, 25 and 27, 2007?

WHY would any South Dakota official grant a foreign company the right of condemnation and eminent domain over private lands owned by South Dakota landowners and taxpayers? Whatever happened to the concept of private property rights? What precedent does this set for South Dakota? Since statehood, the use of eminent domain has been limited to public roads and local utilities that provide a direct benefit to the citizens and landowners of South Dakota. A crude oil pipeline from Canada provides no such direct benefit to South Dakota landowners or rural communities it crosses.

WHY was Information Filed With The PUC – NOT AVAILABLE TO THE PUBLIC ?

As of Tuesday, June 12, 2007 **most of the information** filed with the Public Utilities Commission by TransCanada in support of their permit application **was not available to the public and the landowners of South Dakota, 13 days before public hearings are to be held.** PUC Staff contend that state laws and rules allow TransCanada to block access to the information on file. With PUC hearings less than 13 days away, landowners and taxpayers of South Dakota had to file a complaint and ask for a special hearing before the Public Utilities Commission to get documents released that **should have been made public from day one.** The PUC scheduled a hearing on this request for Tuesday, June 12, 2007 at 1:30 pm. Below is a list of documents as they appeared on the PUC website docket. To access the PUC website to look at the list of documents do the following: (1) enter www.puc.sd.gov, (2) then click on Commission Actions at the top of the screen, (3) then Commission Dockets, (4) then 2007 Hydrocarbon Pipeline, and (5) then HP07-001. You should see something that looks like what is listed below. If you have access to a computer, check it out for yourself.

HP07-001 -In the Matter of the Application by TransCanada Keystone Pipeline, LP for a Permit under the South Dakota Energy Conversion and Transmission Facility Act to Construct the Keystone Pipeline Project.

Weekly Filing 04/26/07 to 05/02/07 Agendas:

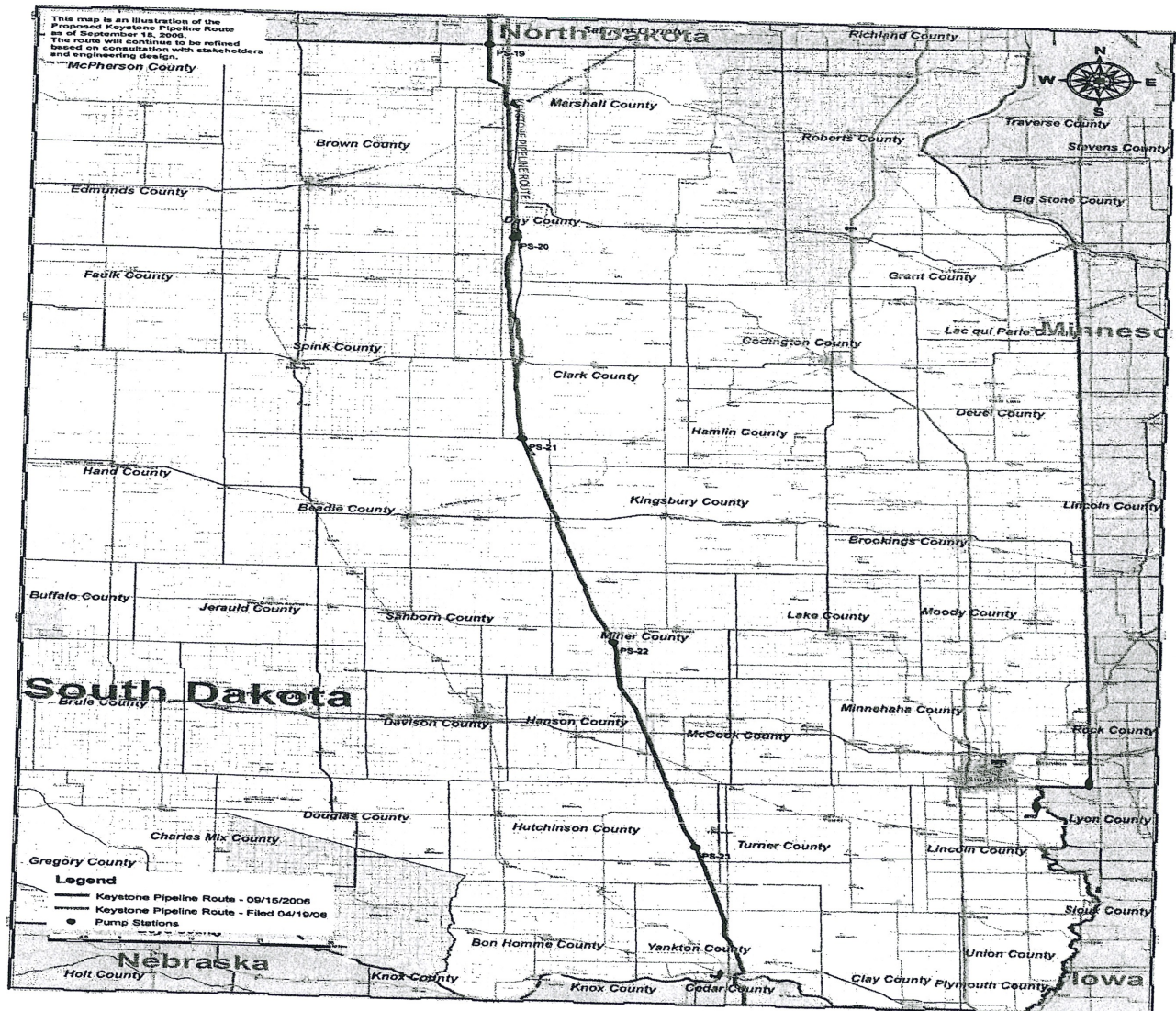
June 5, 2007, Agenda to Commission Meeting
May 8, 2007, Addendum to Agenda to Commission Meeting

Open Docket All information is being linked as it is verified by the Public Utilities Commission Office.
04/27/07 - Letter 05/24/07 - Letter 05/31/07 - Letter

- Application
- Exhibit A - Route Maps, Land Use Maps, and Soil Maps
- Exhibit B - Construction Mitigation and Reclamation (CMR) Plan
- Exhibit C - Supplemental Filings with the Department of State
 - All Documentation of Exhibit C is Confidential (Not Available to the Public)**
 - Pipeline Risk Assessment and Environmental Analysis Confidential
 - Appendix A DNV Frequency Volume Study Confidential
 - Emergency Response Plan Confidential
 - Keystone Pipeline Project - Description Plan Confidential
 - Update Keystone Pipeline Project - Description Plan Confidential
 - North Dakota Route Map Confidential
 - Summary and Table of Contents for Illinois, Kansas, Missouri, Nebraska, North Dakota, Oklahoma, and South Dakota Supplement Filing
 - Part 1 (North Dakota, South Dakota, and Nebraska) **Confidential**
 - Part 2 (North Dakota, South Dakota, and Nebraska) **Confidential**
 - Part 3 (Kansas, Missouri, Oklahoma, Illinois) **Confidential**
 - Part 4 (Kansas, Missouri, Oklahoma, Illinois) **Confidential**
 - Work Plan Memo for Illinois, Kansas, Missouri, Nebraska, North Dakota, Oklahoma, and South Dakota Supplement Filing
 - Part 1 (North Dakota, South Dakota, and Nebraska) **Confidential**
 - Part 2 (North Dakota, South Dakota, and Nebraska) **Confidential**
 - Part 3 (Kansas, Missouri, Oklahoma, Illinois) **Confidential**
 - Part 4 (Kansas, Missouri, Oklahoma, Illinois) **Confidential**
 - Contents of Supplemental Filing Cushing Extension Part 1 and Part 2 Confidential
 - Cultural Resource Surveys and Reports Confidential
 - REX Cultural Surveys
 - Kansas Confidential
 - Missouri Confidential
 - Nebraska Confidential
 - Supplemental Filing for each State Below:
 - Illinois Confidential
 - Kansas Confidential
 - Missouri Confidential
 - Nebraska Confidential
 - North Dakota Confidential
 - Oklahoma Confidential
 - South Dakota Confidential
- September 2006 Supplement Filing Wetlands
 - Summary and Contacts Confidential
 - Table of Contents Confidential
 - Kansas City District Confidential
 - Omaha District Confidential
 - St. Louis District Confidential
 - Tulsa District Confidential
 - National Park Service Confidential
 - US Fish and Wildlife Service South Dakota Contacts Confidential
- Native American Consultations
 - Letters June 13 to Tribes ARG Part 1 and Part 2 Confidential
 - Letters June 14 to Tribes ARG Part 1 and Part 2 Confidential
 - Letter June 13 to Tribes Metcalf Part 1 and Part 2 Confidential
- List of Tribes Contacted Part 1 and Part 2 Confidential
- Native American Response Part 1 and Part 2 Confidential
- State Historical Preservation Office Part 1 and Part 2 Confidential
- Mainline Pipeline Route Alternative Confidential
- Final Environmental Reports dated November 2006
- Exhibit D - Biological Reports All Documentation of Exhibit D is Confidential (Not Available to the Public)

- January 2007 Raptor Report Confidential
- Map 1, Map 2, Map 3, Map 4, Map 5, Map 6, Map 7, Map 8, Map 9, Map 10 Confidential
- Bio Field Survey Confidential
- Wetlands Survey Confidential
- 05/22/07 - Notice of Public Hearing
- 05/22/07 - Letters to Newspapers: Daily Press & Dakotan, Freeman Courier, Salem Special, The Alexandria Herald, Miner County Pioneer, De Smet News, The Plainsman, The Clark County Courier, Reporter & Farmer, The Britton Journal.
 - Notice of Public Hearing
 - Application for Party Status
- 05/29/07 - List of Landowners Confidential (Not Available to the Public)
- 05/29/07 - Application for Party Status Confidential (Not Available to the Public)
- 05/31/07 - Letter and Application for Party Status Confidential (Not Available to the Public)

TransCanada-Keystone Crude Oil Pipeline filed documents in 2006 with the U.S. State Department. To access those documents by computer take the followings steps; (1) using the internet search for U.S. State Department website, (2) in the upper right hand corner of the State Department web page enter Keystone Pipeline and click GO to search, (3) of the several items that pop up, click on the one that mentions Applying for Presidential Permits for Liquid Pipelines, (4) a list of items should show up on the left side of the screen, click on www.keystonepipeline.state.gov, (5) click on Project Documents and a list of documents should come up on the screen, which amounts to about 6 inches of printed paper. Keep in mind these were filed last year and may not be current.



South Dakota's Rural Communities & Landowners Should Be Treated Fairly

TransCanada wants to put a crude oil pipeline through rural areas near Britton, Langford, Andover, Ferney, Raymond, Carpenter, Iroquois, Howard, Alexandria, Menno, and other towns ending at Yankton, SD. Did TransCanada select North Dakota and South Dakota for their pipeline route because Minnesota and Iowa have tougher environmental laws and provide more protection for landowners and property rights? At a May 10, 2007 meeting in Britton, SD farmers and landowners challenged TransCanada officials to (1) accept long term liability for any oil leaks or pipeline failures, (2) offer a better up-front price, (3) agree to pay an annual payment to each landowner crossed for the life of the oil line (50 years) which is something wind farms have been doing, and (4) post a cash bond with each County and Township government for damage to roads, with Fire Departments for the costs of future emergency response and with the rural water systems and the State for damages to groundwater supplies and water resources.

At \$65 per barrel, the 435,000 barrels of crude oil TransCanada plans to ship through South Dakota each day will be worth \$28 million per day (\$10.3 billion per year). If the price of oil goes to \$80 per barrel as industry experts predict, the 435,000 barrels of oil would be worth **\$34.8 million per day (\$12.7 billion per year)** to TransCanada and its partners. TransCanada can well afford to treat the rural communities they cross fairly. If not, maybe they should find a different route for their oil pipeline.

Rural Roads & Highway Crossings

No mention has been made by TransCanada regarding spring load limits and maintenance of county and township roads during pipeline construction when miles of heavy steel pipe, construction equipment and materials will be delivered to job sites by semi truck and trailer. Many rural county and township roads can't handle that kind of heavy load and traffic. Township and county road budgets have limited resources. TransCanada and their contractors should be required to bore all roads and post cash bonds with every County and Township they cross. State highways, paved roads, and primary gravel roads will be bored rather than "open cut", according to the TransCanada permit application filed with federal government. All other secondary roads, which we assume would include gravel roads and section lines, will be "open cut" during the construction of the oil pipeline unless the local entity (county or township) requests otherwise. Open cuts through roads tend to settle which can result in auto accidents and damage to farm machinery, combines, grain trucks and other equipment.

High Pressure Oil Pipeline Means High Risk For South Dakota

The TransCanada-Keystone Oil Pipeline will be operated at **1,400 psi** (pounds per square inch) to deliver 18,270,000 gallons per day. The pressure may be raised to **1,700 psi** to deliver 24,822,000 gallons per day. In a news story in the *Argus Leader*, Robert Jones, VP for TransCanada said the operating pressure could be as high as **2,000 psi**. By comparison, the 155 mile WEB water mainline built with ductile iron pipe operates at a peak pressure of 100 to 209 psi and delivers 8,000,000 gallons of water per peak day. A 30" crude oil pipeline pressurized at 1,400 psi to 1,700 psi is a very serious and dangerous pressure vessel. The natural gas line that failed in 2000 near **Carlsbad, NM** was operating at **675 psi when it failed** killing 12 people.

Public Safety – Property Damage

According to NTSB there were 227 reported pipeline failures in the U.S. in 2000 with property damages of \$197 million and 16 fatalities. As reported by the National Transportation Safety Board (NTSB), a single pipeline accident...**"can injure hundreds of persons, affect thousands more, and cost millions of dollars in property damage, loss of work opportunity, community disruption, ecological damage, and insurance liability"**(7). According to the Office of Pipeline Safety (OPS) the most common cause of liquid or natural gas transmission pipeline accidents is corrosion (24%). Another less frequent category is seam weld failure on pipe, when the seam of the pipe splits open. Seam weld failure accounted for 4% to 5% of the failures and 30% of the property damage according to a 2002 OPS report. The "Distribution Pipeline Incident Summary by Cause Report" issued by OPS concluded that... **"Outside force damage is a catchall term that includes (1) third party excavation damage, (2) excavation damage caused by the pipeline company itself, (3) landslides, (4) fire, (5) lightning, (6) snow, (7) wind, (8) motor vehicles and (9) vandalism."** **Explosions on large natural gas pipelines can kill people hundreds of feet away and spills from oil pipelines may extend miles away from the pipeline and often can never be fully cleaned up.** (see page 12, Bemidji, MN 1979 oil spill)

TransCanada Has NO EXPERIENCE Operating High Pressure Oil Pipelines ?

At public meetings held in Aberdeen and Britton on May 10, 2007, TransCanada officials L.A. "Buster" Gray, Chief Engineer and Nichole Aitken, Stake Holder Relations Manager admitted to a group of

landowners, farmers and local officials that TransCanada doesn't own or operate any crude oil pipelines. Yet in a news story printed in the *Argus Leader* TransCanada Vice President Robert Jones claimed his company had lots experience and a good track record. So which is it? NO EXPERIENCE or lots of experience? It depends on who TransCanada is talking to and what "spin" they want to put on their message. A recent search of TransCanada's official website found no oil pipeline listed among the facilities they own and operate. Is it a good idea for South Dakota and the Midwest to have a large high pressure crude oil pipeline built and operated by a **company which has no proven track record of operating a high pressure oil pipeline?** When companies with experience, like BP (British Petroleum), are having pipe failures and leaks like the one that dumped 200,000 gallons of crude oil at Prudhoe Bay, Alaska on March 3, 2003 (page 11)? High pressure crude oil pipelines are no place for "first time" on the job training.

Oil Sands – What's In The Crude Oil ?

TransCanada has refused to release the exact composition of the crude oil they plan to transport across North and South Dakota claiming it is "proprietary information". A Canadian industry website describes the oil as Tar sands, also referred to as **oil sands** or **bituminous sands**, made up of a combination of clay, sand, water, and bitumen. On average bitumen contains **83.2% carbon, 10.4% hydrogen, 4.8% sulphur, 0.94% oxygen, and 0.36% nitrogen**. Most bitumen contains sulphur and several heavy metals such as **nickel, vanadium, lead, chromium, mercury, arsenic, selenium** and other toxic elements. Technically speaking, the bitumen is not oil nor tar, but a semisolid, degraded form of oil that does not flow at normal temperatures and pressures, making it difficult and expensive to extract. Tar sands are mined to extract the oil-like bitumen, which is then converted into synthetic crude oil or refined directly into petroleum products by specialized refineries. Most refineries can only handle about 10-15 per cent of their input coming from these heavy oil sources. Oil sand deposits are strip mined or made to flow into producing wells by in situ techniques, which reduce the bitumen's viscosity with steam and/or solvents. This latter process uses a great deal of water. **"Canadian crude is heavy, lower-quality oil than that coming from the Middle East", according to David Sykuta, director of the Illinois Petroleum Council in Springfield. "It sells for less per barrel than Mideast oil, but it's not cheaper because you have to spend more to turn it into gasoline,"** he said. Plus, refiners will need to invest heavily to handle the extra supply. Bitumen is primarily used for paving roads. Its other uses are for general waterproofing products, including roofing felt and for sealing flat roofs. Vessels for the heating of bitumen or bituminous compounds are usually **excluded from public liability insurance policies**. Under the heat and pressure of burial deep in the earth, the remains were transformed into materials such as bitumen, kerogen, or petroleum.

Oil Sands- The Impacts On Public Health & Safety

TransCanada has refused to release the exact composition of the crude oil they plan to transport across North Dakota and South Dakota claiming it is "proprietary information". Below is a summary of information taken from the Canadian Centre for Occupational Health & Safety website (<http://www.ccohs.ca>).

Hydrogen sulfide: *Colorless gas, rotten eggs odor at very low concentrations, smell begins to dull at 50 ppm and completely lost above 100 ppm (2-15 minutes) deadening the sense of smell. Detection through odor is not reliable. Olfactory fatigue may result from prolonged exposure to concentrations below 100 ppm. The sense of smell is deadened above 100 ppm. It occurs naturally in crude petroleum, natural gas, sour gases, in salt mines, in volcanic gases, hot sulfur springs, lakes, and salt water ponds. Also a by-product of petroleum refineries, petrochemical plants, natural gas plants, paper mills, iron smelters, coke ovens, food processing plants and tanneries. Since Hydrogen sulfide can react with iron in the presence of moisture, the steel used must be chosen carefully. EXTREMELY FLAMMABLE GAS. Forms explosive mixtures with air over a wide concentration range. Very low ignition energy. Gas is heavier than air and may hug the ground. Distant ignition and flashback are possible. During a fire, irritating/toxic sulfur dioxide may be generated. Confined space hazard. Can accumulate in confined spaces, especially in low-lying, poorly ventilated areas, producing a fire/toxicity/explosion hazard May ignite in contact with some metal oxides and oxidants. VERY TOXIC. May be fatal if inhaled. Gas may be severely irritating to the eyes and respiratory tract. Causes lung injury-effects may be delayed. Inhalation of high concentrations may cause respiratory paralysis, irregular heartbeat, collapse and death. May cause nervous system effects. Liquefied escaping from cylinder can cause frostbite. It poses a very serious inhalation hazard. Human exposures at 250-500 ppm - potentially fatal build-up of fluid in the lungs (pulmonary edema, headache, nausea, dizziness), especially if exposure is prolonged; 500 ppm - severe lung irritation, excitement, headache, dizziness, staggering, sudden collapse ("knockdown"), unconsciousness and death within 4-8 hours, loss of memory for period of exposure; 500-1000 ppm - respiratory paralysis, irregular heart beat, collapse, and death. The symptoms of pulmonary edema, such as chest pain and shortness of breath, can be delayed for up to 48 hours after exposure. Prolong exposure to higher concentrations can produce bronchitis, pneumonia and a potentially fatal build-up of fluid in the lungs. There are numerous case reports of deaths, especially in the petroleum industry, sewage maintenance, and farmers. Most fatalities have occurred in relatively confined spaces (e.g. sewers, sludge tanks, cesspools, or H2S collecting in pits or dips on open land or in buildings). In many cases, multiple deaths have occurred at a single site. Rescuers, attempting to save an unconscious co-worker, have entered a confined area without respiratory protection or safety lines. They, in turn, have been overcome by H2S. Workers who survive a serious short-term*

exposure may recover or may experience long-term effects. **Fire Fighting Instructions:** Extreme caution is required in a fire situation. Evacuate area and fight fire from a safe distance or a protected location. Approach fire from upwind to avoid extremely hazardous gas and toxic decomposition products. For fires involving flammable gases, the best procedure is to stop the flow of gas before attempting to extinguish the fire. In some cases, extinguishing the fire with carbon dioxide or dry chemical powder may be necessary to permit immediate access to valves to shut off the flow of gas. However, this must be done carefully. If it is not possible to stop the flow of gas and if there is no risk to the surrounding area, allow the fire to continue burning while protecting exposed materials with water spray, to prevent ignition of other combustible materials. Gas clouds may be controlled by water spray or fog. If possible, use unmanned monitor nozzles and immediately evacuate the area. DO NOT direct water at open or leaking containers or cylinders and take precautions not to get water inside a container or cylinder. Reverse flow into cylinder may cause rupture. Take care not to block pressure relief valves. May cause dense fog and reducing visibility. For a massive fire in a large area, use unmanned hose holder or monitor nozzles; if this is not possible withdraw from fire area and allow fire to burn. Be aware that flying material from ruptured tanks may travel in any direction. Withdraw immediately in case of rising sound from venting safety device or any discoloration of tank/pipe due to fire. After the fire has been extinguished, explosive, toxic atmospheres may linger. Before entering such an area, especially confined areas, check the atmosphere with an appropriate monitoring device. **Protection of Fire Fighters:** Hydrogen sulfide is an extremely toxic, flammable gas.. Do not enter without wearing specialized equipment suitable for the situation. Firefighter's normal protective clothing (Bunker Gear) will not provide adequate protection. Chemical protective clothing (e.g. chemical splash suit) and positive pressure self-contained breathing apparatus (NIOSH approved or equivalent) may be necessary.

Benzene: Clear, colorless liquid with a characteristic, aromatic hydrocarbon odor. **EXTREMELY FLAMMABLE LIQUID AND VAPOUR.** Can accumulate static charge by flow or agitation. Vapor is heavier than air and may spread long distances. Distant ignition and flashback are possible. Liquid can float on water and may travel to distant locations and/or spread fire. Can decompose at high temperatures forming toxic gases. Harmful if inhaled or swallowed. Central nervous system depressant. Vapor may cause headache, nausea, dizziness, drowsiness and confusion. May cause blood and bone marrow effects, based on animal data. Causes skin and eye irritation. Aspiration hazard. Swallowing or vomiting of the liquid may result in aspiration into the lungs. **CANCER HAZARD** - can cause cancer. **MUTAGEN** - may cause genetic damage. **Fire Fighting Instructions:** Evacuate area and fight fire from a safe distance or a protected location. Approach fire from upwind to avoid hazardous vapors and toxic decomposition product. Stop the leak before attempting to stop the fire. If the leak cannot be stopped, and if there is no risk to the surrounding area, let the fire burn itself out. If the flames are extinguished without stopping the leak, vapors could form explosive mixtures with air and reignite. Closed containers may explode in the heat of the fire. Isolate materials not yet involved in the fire and protect personnel. Water may be ineffective for fighting fires involving benzene because of its low flash point, unless used under favorable conditions by experienced firefighters trained in fighting all types of flammable liquid fires. Benzene and its decomposition products are extremely hazardous to health. Do not enter any fire area without specialized protective equipment suitable for the occasion. Firefighter's normal protective equipment (Bunker Gear) will not provide adequate protection. Chemical resistant clothing (e.g. chemical splash suit) and positive pressure self-contained breathing apparatus (MSHA/NIOSH approved or equivalent) may be necessary.

Groundwater

The oil pipeline will cross numerous aquifers within South Dakota, including the **Oakes, Bramton, Tulare, Vermillion, Altamont, Floyd, and Lower James-Missouri aquifers.** The depth to water in the Oakes Aquifer along the route of the pipeline in **Marshall County is 10-15 feet in depth.** The depth to the upper layer of water of the **Altamont Aquifer near Raymond in Clark County varies from 10-35 feet.** The same is true for ground water in the **Carpenter area of Clark County.** Near-surface groundwater occurs at various locations where the pipeline crosses small streams in northwestern Day County (*TransCanada Construction Mitigation & Reclamation Plan, pg 3-5-35*). Much of the ground water in **northwest and western Day County is within 4 feet of the surface** according to the **Day County Soils Survey** completed by USDA-NRCS.

A release of crude oil will find its way into soil materials and can enter groundwater and move through the aquifer system. The potential for groundwater contamination is greater where the water table is relatively close to the surface, and where the soils overlying the aquifer are porous materials. Depending on the type of pipe failure, the volume of the spill, the depth of the groundwater and the soil conditions in the area, a crude oil spill could continue to move and contaminate an aquifer or adjacent property for years. Crude-oil moving through gravel or sandy soils could reach and damage PVC water line used by municipal water systems and rural water systems to deliver drinking water to towns, farms, rural homes, livestock hookups, ethanol plants and other customers. **Five of the eight rural water systems crossed by TransCanada rely on groundwater wells.** (see page 10)

Oil Spill -Impact On Water Quality

Among the many substances in crude-oil are chemicals such as **benzene, toluene, ethylbenzene, xylene** and other lightweight chemical compounds. These compounds are more water soluble and can disperse further and more rapidly in both surface and ground waters than other crude oil substances. These compounds pose a

significant threat to water quality. For example, one teaspoon of benzene (**0.005 ppm**) can contaminate **260,660 gallons** of water. The US-EPA enforceable water quality standard for drinking water allows no more than 0.005 ppm concentration of benzene in both surface water and groundwater. **Benzene** exposure can cause **anemia or a decrease in blood platelets** and may result in an **increased risk of cancer**. **Toluene** in excess of EPA standards can cause problems with the **nervous system, kidneys and liver**. **Ethylbenzene** can cause problems with the **liver and kidneys**. **Xylene** can cause damage to the **nervous system**.

Oil Spill – What Are The Odds Of An Oil Leak In South Dakota ?

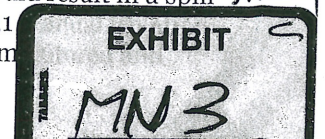
An "**Oil Spill Frequency Volume Study**" filed by TransCanada with the federal government in 2006 acknowledged that oil spills do occur on oil pipelines. Release of crude oil can occur during transport through a pipeline and pose a significant risk of soil and water contamination surrounding the area of the spill. The TransCanada Study estimated that **a 1,000 barrel (42,000 gallons) oil spill may occur anywhere along the TransCanada Keystone Pipeline once in 12 years; a 10,000 barrels (420,000 gallons) oil spill may occur once in 39 years; and a spill of more than 10,000 barrels might occur once in 50 years** (*TC Pipeline Risk Assessment, pg 3-2*). The projections are theoretical based on historical data of pipeline operation. The extent of environmental damage would depend on the location and quantity of the oil spill, the type of soil and water resources in the area of the spill, and the topography of the land area. In a study independent of the oil industry, the **United States Geological Survey (USGS) estimated that an average of 83 crude-oil spills occurred in the United States during the three year period of 1994-1996, with each spilling about 50,000 barrels (2,100,000 gallons) of crude-oil**. The British Petroleum (BP) pipeline failure and spill on March 3, 2003 at Prudhoe Bay, Alaska dumped 200,000 gallons of crude oil. BP is recognized as having years of oil pipeline operations experience, and they had a major pipe failure and oil spill. TransCanada doesn't even own or operate a crude oil pipeline and has no experience or track record operating a high pressure crude oil pipeline.

Oil Spill -Impact On Farm Land and Soils

According to the information filed by TransCanada with the U.S. State Department, the clean-up of a **84,000 gallon spill (2,000 barrels) from the TransCanada pipeline spill could require the removal of up to the equivalent land area of 3 feet in depth over 400 acres or about 2,001,277 cubic yards of soil** (*Pipeline Risk Assessment, pg 4-4*). A summary of TransCanada's record of gas spills from 2000 through 2005 is shown on page 20. **TransCanada had 576 spills in the past 6 years, for an average of 96 spills per year.** The crude oil is extracted from Alberta oil sands, called "bitumen", is described as "black and thick oil". TransCanada refuses to release the makeup of the crude-oil claiming "proprietary information". Crude-oil released into soils will disperse both vertically and horizontally. Soil reports published by the U.S. Department of Agriculture -Natural Resources Conservation Service (NRCS) show a large quantity of sandy soils and shallow ground water areas that will be crossed by the TransCanada-Keystone Pipeline in Brown, Marshall and Day County (9). Sandy soils found throughout much of the TransCanada-Keystone Pipeline route could enhance the dispersion of crude-oil. Soil moisture and precipitation could also increase the dispersion of a crude-oil spill. Clean-up of soil contaminated by crude oil can require significant time, effort and cost. Required remedial actions may range from excavation and removal of contaminated soil to allow the contaminated soil to recover through natural environmental fate process (evaporation, biodegradation, etc). State and federal programs mandate notification and initiation of response actions "*in a timeframe and on a scale commensurate with the threats posed*" (*TransCanada Construction Mitigation & Reclamation Plan, 2-50*). What about the loss of crop production, property values and future earnings to farmers as a result of contamination by an oil spill? A crude oil pipeline leak near Bemidji, MN in 1979 was never fully cleaned up and soils remain sterile 28 years later.

Risk Of Large Crude Oil Spill

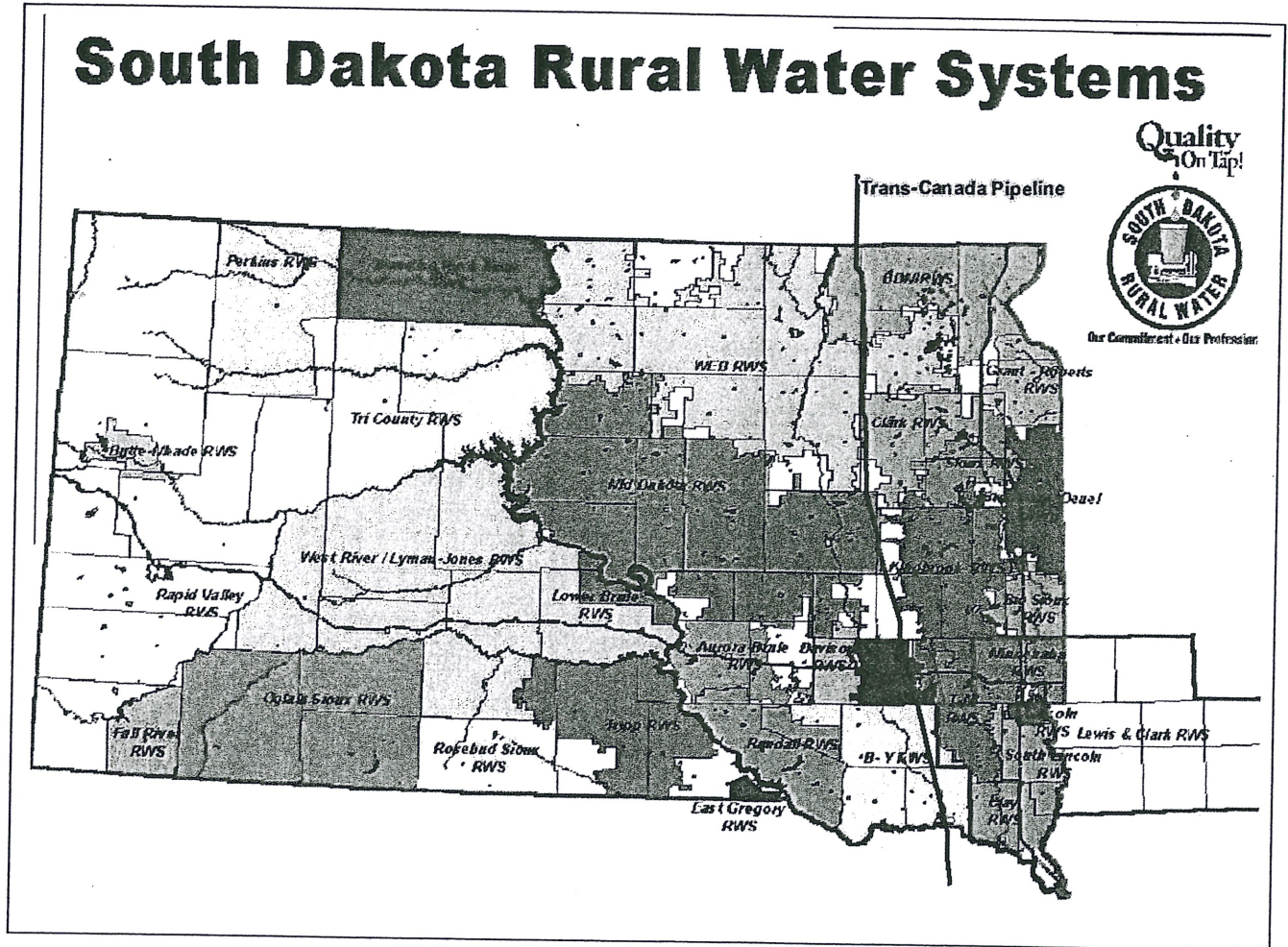
The TransCanada-Keystone Oil Pipeline plan calls for a wide separation between mainline automated valves and manual valves. For example, the distance between the pump station at the North Dakota-South Dakota state line and the next pumping station near Ferney, SD is about 42 miles of 30 inch pipe which would hold about 156,660,000 gallons of crude-oil (3,728,571 barrels). The distance between the Fernery pump station and the next pump station near Carpenter, SD is about 47 miles of 30 inch pipe which would hold about 175,312,000 gallons of crude oil (4,174,000 barrels). In addition to the 4 automated valves at compressor pump stations, the TransCanada-Keystone Pipeline will have 7 to 10 manually operated valves on the 220 miles of pipeline in South Dakota, with some valves being 20 to 30 miles apart. **In the event of a major pipe failure, there may not be time to reach valves to stop the crude-oil from draining out of the pipeline on to productive farm land and into wetlands.** Manually operated valves won't do much good if the TransCanada operations staff are hundreds of miles away in Alberta or Omaha. A pipe failure at a low elevation point on either the 42 mile reach between North Dakota and Ferney, SD or the 47 mile reach between Ferney and Carpenter, SD could result in a spill of millions of gallons of crude oil. By way of comparison, the 155 mile WEB water mainline has 31 valves, with each valve located every 5 miles, and six pump stations and control points which are m



operated by a computerized SCADA system and operations staff dispatched out of Aberdeen, South Dakota. At May 10, 2007 meeting a TransCanada official said that their operational staff will be located in Omaha, NE and the SCADA control center will be located in Canada.

Rural Water Systems

The permit application filed with the U.S. State Department by TransCanada failed to acknowledge that the proposed oil pipeline would cross miles of rural water pipeline operated by eight (8) rural water systems in South Dakota. **The permit application filed with the federal government by TransCanada in 2006 failed to identify the risk that could result in the event that a crude-oil spill came in contact with buried PVC water pipelines.** A study by Iowa State University, commissioned by the American Water Works Association (AWWA), confirmed that petroleum and crude-oil products can permeate through the rubber gasket of PVC water pipes, contaminating the drinking water being delivered to customers by municipal and rural water systems. How much PVC water pipeline will need to be replaced in the event of a large oil "spill" is not known at this time, nor is it known if TransCanada would be held responsible for the cost of replacement.



The TransCanada Oil Pipeline route will cross eight rural water pipeline systems in South Dakota.

BY Water District	PO Box 248, Tabor, SD 57063-0248	(605) 463-2531	byh2o@byelectric.com
BDM Water System	PO Box 49, Britton, SD 57430	(605) 448-5417	www.bdmruralwater.com
Clark Rural Water	PO Box 162, Clark, SD 57225	(605) 532-5201	crws@itctel.com
Hanson Water System	PO Box 324, Emery, SD 57332	(605) 449-4422	davhanrw@sunrisenet.com
Kingsbrook Rural Water	PO Box 299, Arlington, SD 57212	(605) 983-5074	kbrw@iw.net
Mid-Dakota Rural Water	PO Box 318, Miller, SD 57362	(605) 853-3159	office@mdrws.com
WEB Water	PO Box 51, Aberdeen, SD 57402	(605) 229-4749	chohn@webwater.org
TM Water District	PO Box 445, Parker, SD 57053	(605) 297-3334	tmrwd@iw.net

WEB Rural Water - Concerns

The WEB pipeline system provides high quality drinking water service to **7,759 rural hookups, 104 towns and bulk users, and 5 ethanol plants in a 17 county service area, which includes 14** counties in South Dakota and 3 counties in North Dakota. A 12 inch PVC mainline near Andover, South Dakota delivers treated water to 1,023 rural hookups and 8 towns in Day County and 6 rural hookups in Marshall County and several hookups in Clark County. If the TransCanada-Keystone pipeline fails at or near the point where the crude oil pipeline crosses WEB's 12" PVC water mainline a **crude-oil spill could damage the rubber pipe joint gaskets, permeate through the pipe wall, and contaminate the drinking water service of 1,029 rural hookups and 8 towns.** WEB will require TransCanada to secure a permit to cross water lines easements, which will include insurance coverage naming WEB as "additional insured" and a cash bond to cover the impacts of any future oil "spills" or leaks. WEB will also require TransCanada to case all lines crossed by the oil pipeline.

Missouri River Crossing

The TransCanada-Keystone Oil Pipeline will cross the **Missouri River near Yankton, South Dakota, upstream of a section of river which is the only portion of the Missouri River in South Dakota that remains in a natural scenic condition.** The area is managed by the National Park Service and will require a permit from the U.S. Secretary of Interior. Constructing an oil pipe crossing under the Missouri River east of Yankton would be a major project and a major environmental concern. **The Missouri River is a source of water for over half the population of South Dakota, including the City of Sioux Falls, once the Lewis & Clark water system is completed.** (*TransCanada Construction Mitigation & Reclamation Plan, 2-64*).

TransCanada's Emergency Response Plan - Where Is?

The U.S. Office of Pipeline Safety requires that TransCanada-Keystone prepare and file an Emergency Response Plan (ERP). The TransCanada permit application filed with the U.S. State Department states last year stated that an Emergency Response Plan will be filed as a "supplemental" to the permit application. No plan has been made available as of June 8, 2007. **The Emergency Response Plan, which is required by law, should be filed with state and local government, fire departments, utilities and local emergency responders for review, comment and approval BEFORE consideration is given to any permits by the SD Public Utilities Commission or the U.S. State Department**

Computer Monitoring Systems

TransCanada-Keystone says they will use two technology-based leak detection systems, which will include leak detection software SCADA (Supervisory Control and Data Acquisition) monitoring and volumetric balancing. Sensors and monitoring equipment will be located at pump stations and the data collected will be transmitted by satellite to the central control center in Canada (*TransCanada Construction & Reclamation Plan, 2-48*). The SCADA systems that TransCanada will be using will help monitor and operate the crude-oil pipeline and may help detect problems by sensing changes in pressure and flow rate. However, at the point the SCADA system senses a change in pressure or flow and shuts the automated valves off at the pump station, a major release or spill may have already occurred on the pipeline miles away from the pump station. Based on NTSB's reports on oil and gas line failures, and WEB's own experience, **computer SCADA systems may detect major changes in pressure and flow but they don't necessarily detect small leaks that develop on pipelines, which over time can develop into a major leak or spill and contaminate soil and ground water for days, weeks or months before the leak is found.** That is exactly what happened on March 3, 2005 with the BP crude oil pipeline failure at Prudhoe Bay, Alaska (see below). This kind of leak causes more of a problem when the pipe is located in a remote isolated rural area. Because of the potentially severe consequences of a crude-oil spill, prevention is critically important and successful prevention requires regular testing of the pipeline's integrity, including internal corrosion. Internal inline inspection devices, known as "smart pig" may detect some defects in the pipe as they travel through the pipeline being moved by oil flow and pressure.

Prudhoe Bay, Alaska – Oil Leak Linked To Poor Maintenance

A news story by David Greising in the May 27, 2007 Chicago Tribune reported that a worker driving along the western part of the Prudhoe Bay field smelled the oil and discovered the 200,000-gallon spill. **"BP's automatic detection system had missed the slow-flowing leak, which had appeared an estimated five days earlier.** BP was tapping into new oil sources that delivered viscous, highly corrosive crude. From that point forward, oil flowing through BP's eastern operating area would be increasingly thick and slow flowing, and **thicker oil is far more corrosive, thanks in part to the sand that settles in the bottom of pipes and deflects**

anti-corrosion chemicals away from the metal they are intended to protect". "A 25 percent budget cut instituted in 1999, after the Amoco merger, meant that one crucial corrosion-fighting method—sending cylindrical probes called "pigs" through the pipes to both clean and inspect them—was abandoned virtually altogether, company records show." Given the history, it's difficult to believe the assurances TransCanada is giving regarding the Keystone Pipeline. Any permit the PUC considers approving should include some strong conditions and requirements for regular scheduled maintenance to protect private farm land, public lands, wetlands, the environment, and public safety.

Operations-Workforce

TransCanada-Keystone say they will have **20 employees in the United States to operate the 1,073 miles of crude-oil pipeline, 23 pump stations and 45 mainline valves**. At a meeting on May 10, 2007 a TransCanada official said the Operations Staff will be located in **Omaha, NE**. Timely emergency response will depend on where the operations staff will be located and how quickly they can be mobilized to respond to a pipe failure, leak or oil fire at a remote rural location. The Trans-Canada staff will need to provide 24 hour-7 day per week coverage, including evenings, weekends and holidays, to respond to emergency calls that might develop on the 1,073 miles of high pressure (1,440 psi to 1,700 psi) crude-oil pipeline. Assuming there are three work shifts that will mean 6 staff on duty at any one time. That's not enough staff to handle a large water line leak repair let alone a high pressure crude oil pipeline failure. Congressional hearings on the BP crude oil spill at Prudhoe Bay, Alaska held in May 2007 gathered a wealth of information that the SD Public Utilities Commission should secure and review before making a final decision on granting TransCanada a permit to cross South Dakota. In the interest of public safety the PUC should require that Trans-Canada locate at least 6 staff or more at a central location in South Dakota to handle maintenance, emergency response, oil spill containment and fire fighting.

Bemidji, MN - Oil Spill 1979

An oil spill of about 10,700 barrels (449,400 gallons) occurred on August 20, 1979 near Bemidji, Minnesota when a pipeline transporting crude-oil broke causing contamination of soils and the underground aquifer. A study commissioned by the **United States Geological Study** (USGS) estimated that after the initial cleanup efforts were completed in 1980, about 110,000 **gallons of crude oil remained** in the sub-soil and ground water table. Tests show that a plume of oil is moving toward a lake.

The land appears to be sterile. The results of the Bemidji study showed that the oil continues to move underground in the direction of the ground water flow toward a nearby lake. Thirteen different studies have been completed at the Bemidji spill site from 1979 to 1996 by scientific teams addressing such issues as; crude-oil in shallow sand, crude-oil in a shallow aquifer, geochemical evolution, flow modeling of crude-oil permeability distribution, biodegeneration, creosote contaminants in groundwater, hydrocarbon vapors in unsaturated soil zones and distribution of gas vapors. Twenty eight years later the soil is still contaminated by crude oil and nothing grows.

Additional information on the U.S. Geological Survey Bemidji Crude-Oil Research Project is available on the internet <http://www.mn.cr.usgs.gov/bemidji/> or by contacting the District Chief, U.S. Geological Survey, Toxic Substances Hydrology Program, 2280 Woodale Drive, Mounds View, Minnesota 55112, telephone number (612) 783-3100.

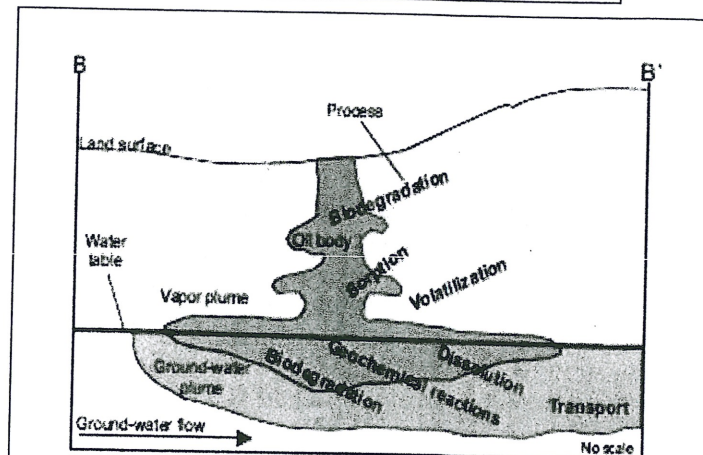
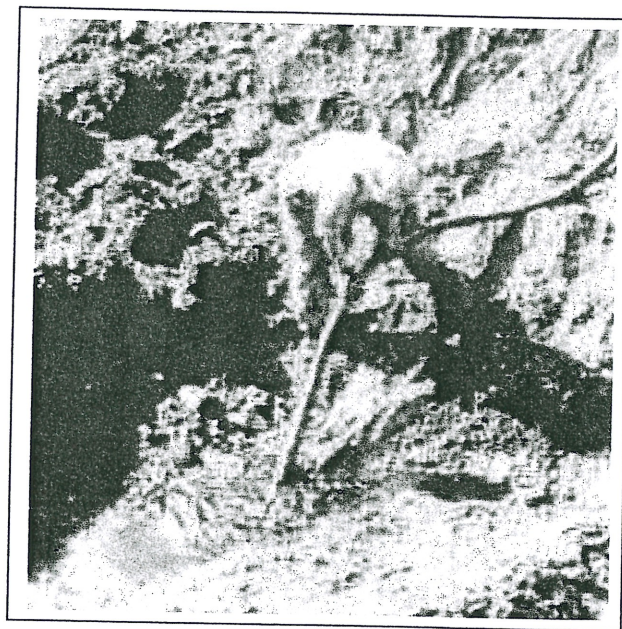
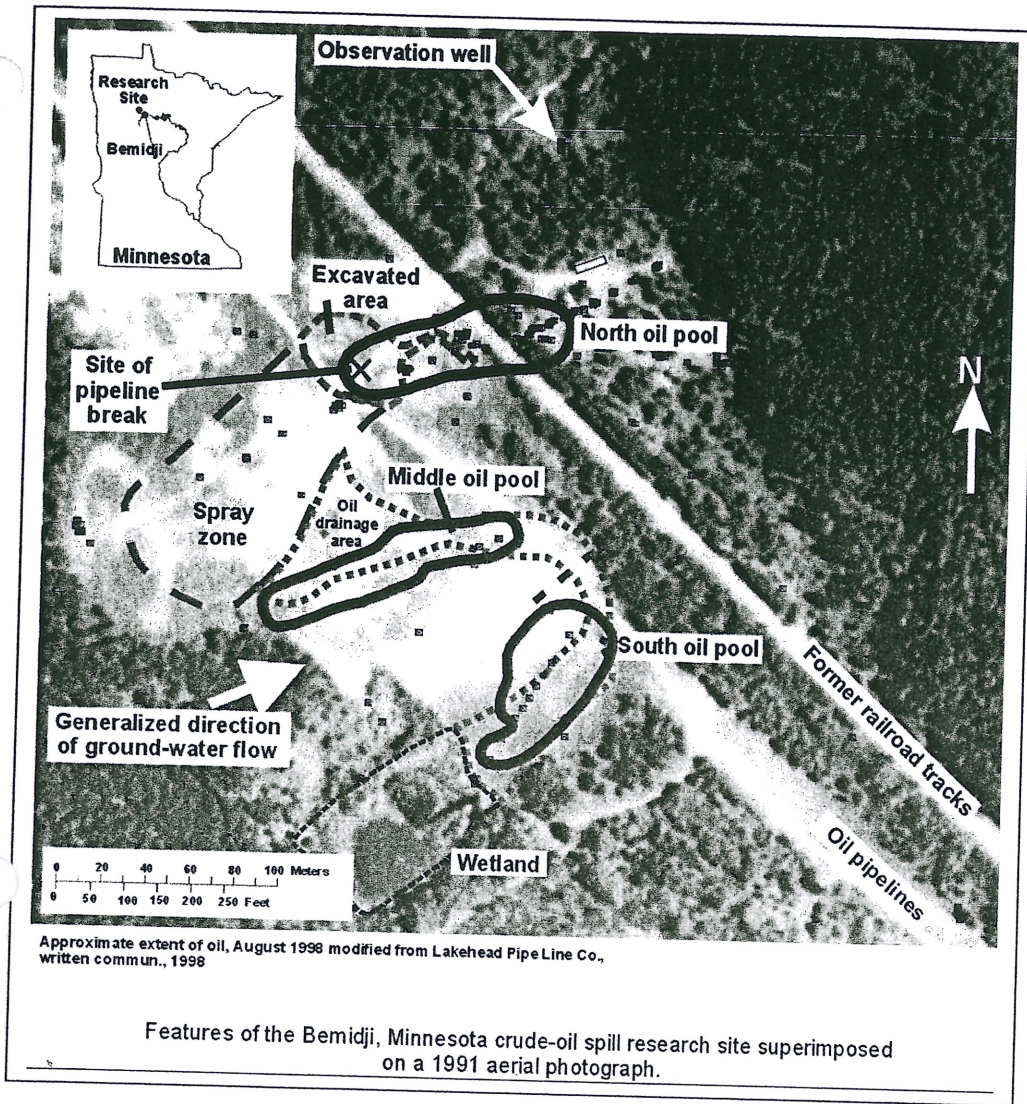


Figure 2. Processes critical to understanding the fate and transport of hydrocarbons in the subsurface at the Bemidji site.



Bellingham, Washington Olympic Pipeline Failure 1999



A pipeline failure near Bellingham, Washington at 3:28 pm on June 10, 1999 caused a quarter million gallon spill and an explosion that killed two 10-year old boys and an 18-year old man. Eight people were injured, one home was damaged, and the City water treatment plant was severely damaged.

Property damages were estimated at \$45 million and **criminal charges** were filed against several pipeline officials. Witnesses to the Bellingham explosion testified that the boys suffocated on the fumes and "every living thing in the creek was killed for a mile and a half."

The parents of the two boys killed in the Bellingham explosion were awarded \$75 million in settlement from Olympic Pipeline and its largest share holder, Shell Oil. Settlement with the family of the third man was not disclosed. (Sept. 16, 2002 - Oil & Gas Journal)



Figure 1. Postaccident aerial view of portion of Whatcom Creek showing fire damage.

The National Transportation Safety Board summary report NRSB # PAR-02/02 stated that about 1-1/2 hours after the rupture, the gas ignited and burned approximately 1-1/2 miles along the creek. The NTSB determined that the probable cause of the June 10, 1999, rupture of the Olympic pipeline in Bellingham, WA, was (1) **damage done to the pipe by a contractor** and Olympic Pipe Line Company's inadequate inspection of the contractor's work; (2) Olympic Pipe Line Company's **inaccurate evaluation of in-line pipeline inspection results**, which led to the company's decision not to excavate and examine the damaged section of pipe; (3) **Olympic Pipe Line Company's failure to test, under approximate operating conditions**, all safety devices associated with the products facility before activating the facility; (4) Olympic Pipe Line Company's **failure to investigate and correct the conditions leading to the repeated unintended closing of the inlet block valve**; and (5) Olympic Pipe Line Company's practice of performing database development work on the **Supervisory Control and Data Acquisition System (SCADA) while the system was being used to operate the pipeline, which led to the system's becoming non-responsive at a critical time during pipeline operations**. At the time of the pipe failure, the pressure near the rupture point increased from **215 psi to 1,494 psi within one minute** and then dropped back to 230 psi. (NTSB investigative report). **The pressure on the TransCanada Keystone Pipeline through South Dakota will be 1,400 psi to 1,700 psi, which is six to seven times higher than the pressure was at Bellingham, WA.** A TransCanada executive told the Argus Leader the pressure could go as high as 2,000 psi.

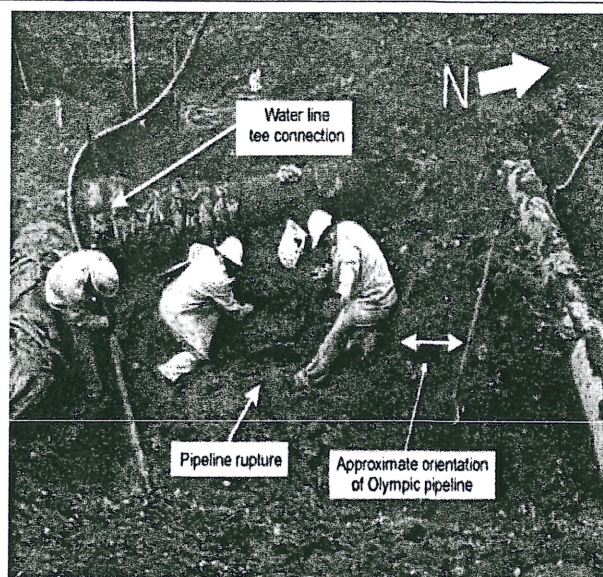
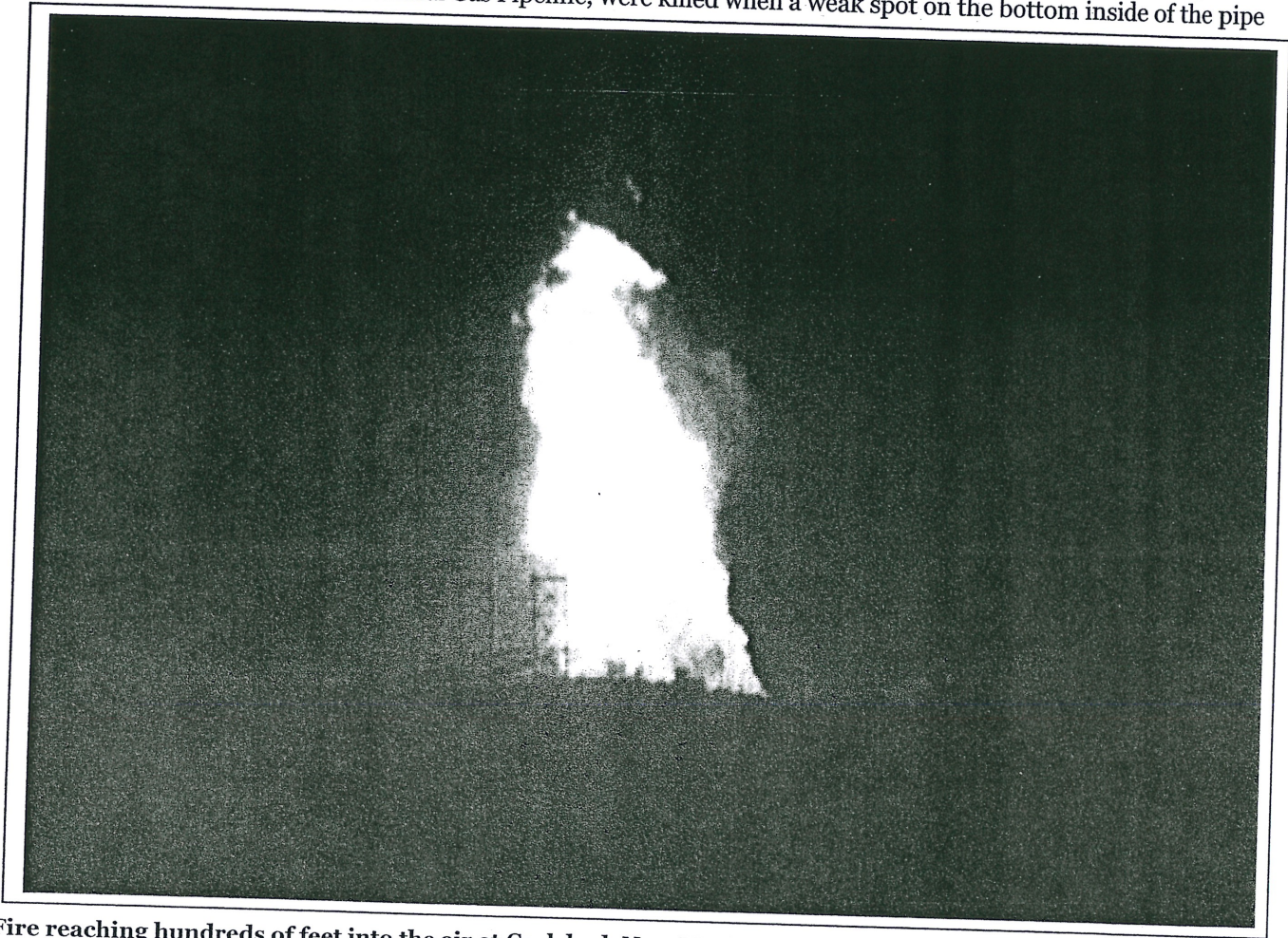


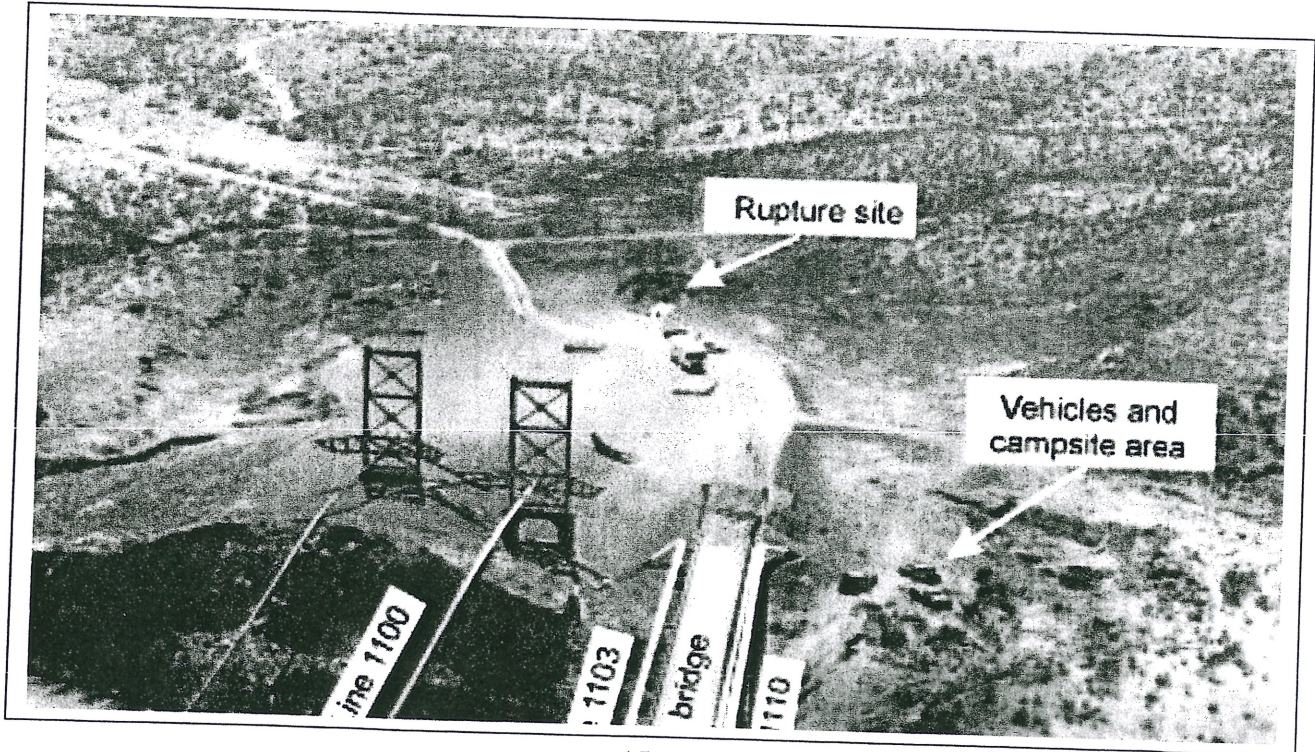
Figure 13. Rupture location before removal of pipe showing proximity of water line tee connection.

Carlsbad, New Mexico - El Paso Pipeline Failure August, 2000

On Saturday, August 19, 2000 at 5:26 am, a family of twelve people camping on the banks of the Pecos River, 675 feet away from the El Paso Natural Gas Pipeline, were killed when a weak spot on the bottom inside of the pipe



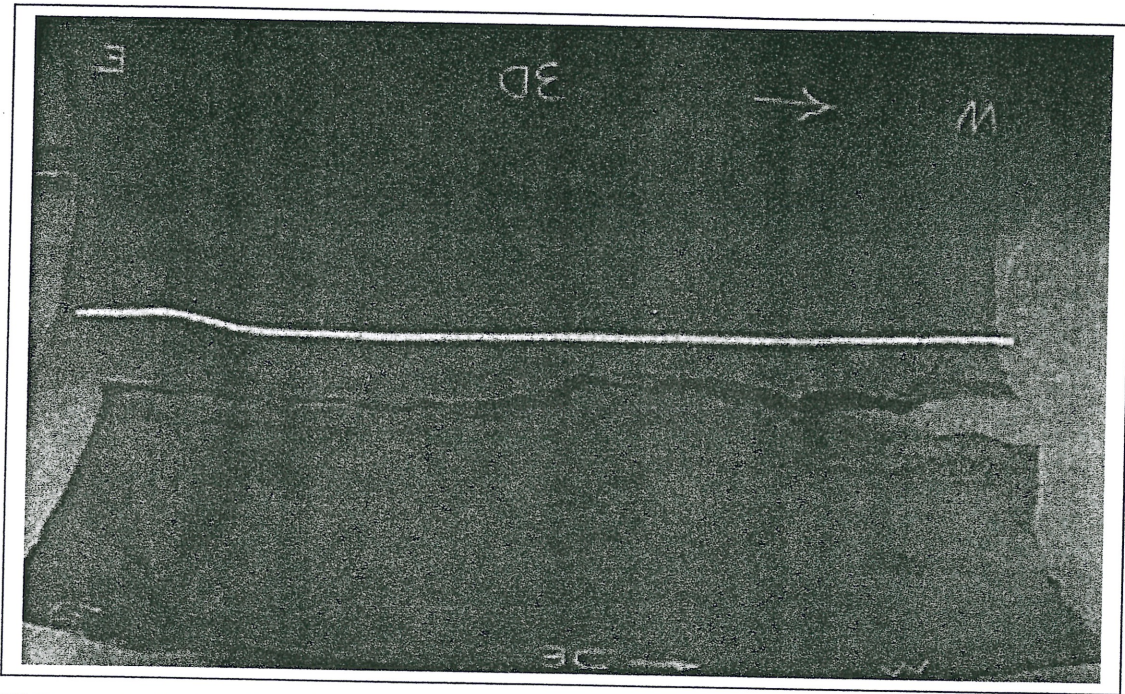
Fire reaching hundreds of feet into the air at Carlsbad, New Mexico pipeline failure August 19, 2000.



failed which caused an explosion and fire. The fire raged for 55 minutes before it could be shut down and caused \$1 million in property damage. An investigation by the National Transportation Safety Board (NTSB) found that the pipeline failure at Carlsbad, New Mexico was caused by (1) the design and construction of the pipeline, (2) the inadequacy of El Paso's *internal corrosion* control program, (3) the inadequacy of Federal safety regulations, and (4) the inadequacy of Federal oversight of the pipeline operator.

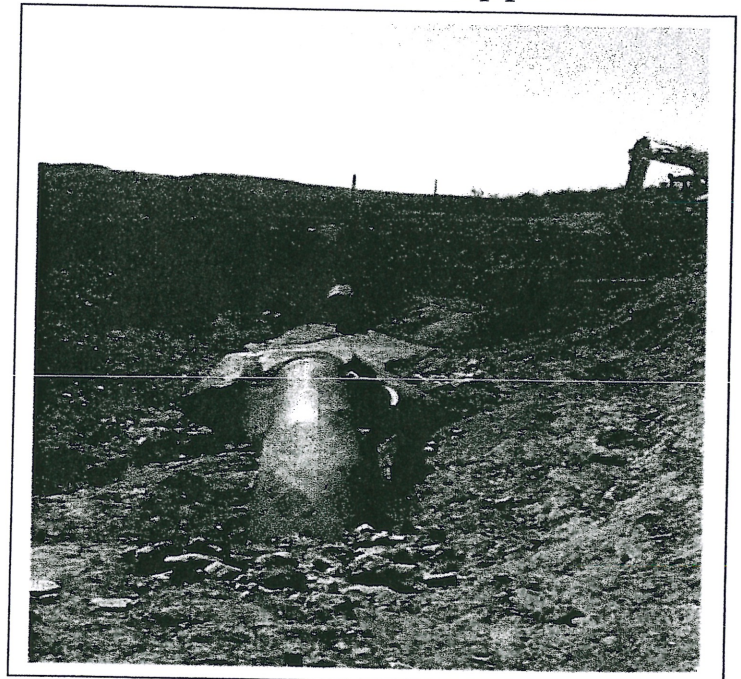
The National Transportation Safety Board report released on February 11, 2003 included the following statement.

"The National Transportation Safety Board determines that the probable cause of the August 19, 2000, natural gas pipeline rupture and subsequent fire near Carlsbad, New Mexico, was a significant reduction in pipe wall thickness due to severe internal corrosion. The severe corrosion had occurred because El Paso Natural Gas Company's corrosion control program failed to prevent, detect, or control internal corrosion within the company's pipeline." (NTSB Report)



El Paso steel pipe that failed due to corrosion from inside the bottom of the pipeline.

Of the 12 people who died at the Pecos River on August 19, 2000, there were four female children, two age 6 months, one age 21 months, and one age 5 years old; three adult women ages 18, 25 and 47 years old; one male child age 3 years old; and four adult men ages 20, 23, 43 and 55 years old. **According to the National Transportation Safety Board, the cause of death of all 12 people who died in the explosion was extensive thermal burns, carbon monoxide poisoning, and smoke inhalation.** The NTSB found that the force of the rupture and violent ignition created a 51 foot-wide crater about 113 feet long. A 49-foot section of the pipe was ejected from the crater in three pieces, with the largest found 287 feet from the crater. All three ejected pipe pieces showed evidence of internal corrosion damage. The most severely corroded area had reduced **the original 0.33 inch pipe wall**



thickness by 72 %, leaving only 28 % of the wall thickness, or about 0.0924 inch remaining. TransCanada's engineer L.A. "Buster" Gray told landowners at a May 10, 2007 meeting that **the pipe wall thickness for the Keystone Pipeline will be about 0.38 inch thick.** The pipeline in New Mexico was being operated at **approximately 675 psi when it failed.** **The pressure on the TransCanada Keystone Pipeline through South Dakota will be 1,400 psi to 1,700 psi, which is twice as high as the pipe pressure at the pipe failure at Carlsbad, New Mexico in 2000.**



Spiral steel pipe unraveled by explosion at Carlsbad, NM

Nine months later, on June 1, 2001, El Paso Natural Gas was fined \$2.25 million dollars in civil penalty by the U.S. Department of Transportation. Included in the civil penalty was the charge that El Paso Natural Gas had ...

“failed to minimize the possibility of a failure recurrence following a similar incident in 1996”. (USDOT news release)

Two years after the “*spill*”, El Paso Natural Gas Corp., reached an undisclosed settlement with the families of the 12 victims. The Houston newspaper reported that the family of one young victim was paid \$14 million. Two years after the pipeline failure, the New Mexico Public Regulation Commission (PUC) held public hearings and proposed more stringent pipeline safety. South Dakota's elected officials and the SDPUC could learn something from what happened with oil gas “spills” in New Mexico and other states. If oil and gas lines were as safe as TransCanada would have us believe, more Public Utilities Commissioners and oil company executives would be living next oil and gas lines and oil refineries.

Corporate - Investor Responsibility

According to the Sept. 16, 2002 - Oil & Gas Journal, the **pipeline industry's profits in 2001 reached a record high of 38.9% return on revenues and have averaged 32% return over the past 21 years** (www.ogj.com). After the type of accidents listed previously, one would hope that some of the profits and more man power resources will be dedicated to pipeline corrosion testing, maintenance, and public safety in the future. **At \$65 per barrel the 435,000 barrels of crude oil TransCanada plans to ship through South Dakota each day would be worth \$28 million per day (\$10.3 billion per year).** TransCanada can well afford to treat the landowners, resources and rural communities they cross in South Dakota fairly.

Fire & Spill Containment Response

Some spills may require assistance from local, state and federal agencies. The permit application filed by TransCanada with the U.S. State Department included the following statement.

"In the event of a large spill, TransCanada will be expected to take the lead in recovery and cleanup. A fire associated with a spill is relatively rare. According to historical data only about four percent (4%) of reportable liquid spills are ignited. In the event of a fire, local emergency responders will execute the roles listed above and firefighters will take actions to prevent the crude oil fire from spreading to adjacent foliage or structures. Fire departments might choose to extinguish a small or moderate-sized crude oil fire, but in many cases the best course of action may be to let the fire burn itself out." (TransCanada Construction Mitigation & Reclamation Plan, 2-50).

That last sentence could be a problem during the dry months of summer and fall during periods of high winds when the risk of wind driven grass fires are high in South Dakota. The question is do local fire departments in South Dakota have the training and equipment needed to fight oil fires? What are the environmental risks to volunteer fire fighters when fighting crude-oil fires? Would there be exposure to respiratory problems similar to what was experienced by U.S. soldiers who served in Desert Storm? Who will pay the cost, TransCanada or local taxpayers?

Surface Water

The TransCanada-Keystone Pipeline route across South Dakota lies entirely within the James River drainage basin with the exception of a small area near the Missouri River.

Crow Creek, Marshall County
Crow Creek Drainage Ditch, Marshall County
Renzienhausen Slough, Marshall County
Amsden Lake, Day County
Antelope Creek, Day County
Tributaries to Logan Dam/Reservoir, Clark County
Fordham Reservoir, Clark County
Sewage Disposal Ponds, Clark County
Foster Creek, Clark County & Spink County
Pearl Creek, Beadle County
Lake Iroquois, Kingsbury County
Twin Lakes, Miner County
Lake Eli, Hanson County
Wolf Creek drainage, Hanson County & Hutchinson County
Beaver Creek, Yankton County
James River and its tributaries
Missouri River and its tributaries

Accidents in pipeline transportation can result in a release of crude oil into water resources. Release of crude-oil into surface water would have toxic effects on fish and aquatic organisms, and water quality.

Things PROPERTY OWNERS & LOCAL GOVERNMENT Can Do

1. **Contact your elected officials.** The Public Utilities Commission, Governor, Legislators and Congressional Delegation are all elected to serve the voters of South Dakota, not TransCanada and their investors. Call or write and let them know how the TransCanada oil pipeline will impact your property, your community and your water supply.
2. **Require TransCanada to secure permits** for each road crossing and each utility crossing to assure that the pipeline construction complies with existing policy and easement requirements. TransCanada has assured the federal government in their permit application that they will comply with local permit requirements. Local permits should require that TransCanada install **pipe with double wall thickness (0.78 inch)** whenever the pipe is installed under or 800 feet either side of road crossings, and within 800 feet of homes, schools, parks and public places.
3. Require TransCanada to **post a cash bond and liability insurance coverage** to protect public and private property, public roads and utilities. Insurance coverage is required for water lines and utilities that cross railroads and public roads, why not the same requirement for high pressure oil and gas pipelines? Certificate of insurance should be filed with the South Dakota Secretary of State and with each County

Auditor of the counties crossed by the pipeline.

4. Require TransCanada to enter into an agreement to **pay the cost of grading, maintenance and repair of county and township roads** during the oil pipeline construction and for at least two years after the pipeline is completed and the farm ground and roads have settled back to their pre-project condition.
5. As a condition of the PUC permit and the construction/permanent easement, TransCanada should be required to **enter into an agreement with each landowner, County, Township, fire district, water system, drainage district or utility to pay the cost of any future damage to land, private property, wetlands, roads, water lines or other public facilities** that is caused by the operation of the TransCanada crude-oil pipeline, including a leak, spill, explosion, fire, accident or other failure during the operational life of the oil pipeline, which is estimated by TransCanada to be 50 years or more. Contract agreements and conditions should be filed in the County Courthouse.

Things TRANSCANADA Can Do

To make the crude-oil pipeline they are building and will operate through South Dakota safe and acceptable to the communities they cross for years to come, TransCanada should doing the following;

1. **Double the pipe wall thickness to at least 0.78 inch wall thickness** in those areas where the pipeline (a) comes within 900 feet of a home, business, town, park, school or public place, (b) crosses a public road or section line, (c) crosses municipal and rural water lines as well as private water lines, and (d) crosses a river, creek, stream, drainage or sensitive environmental area such as the crossing of the Missouri River near Yankton, SD.
2. **Increase the number of booster stations from 4 to 8 in South Dakota, to reduce the pressure** needed to move the oil through South Dakota **from 1,400 psi to 700 psi** or from 1,700 to 850 psi and could reduce the risk of a leak, pipe failure or oil spill.
3. **Increase the number of manual valves from 7 to 44** in South Dakota, which on 220 miles of crude-oil pipe would put a **valve every 5 miles**. Valves are used and will be needed to shut off the flow of oil during maintenance or in response to a leak, spill, accident or fire.
4. **Provide the training and specialized equipment that local volunteer fire departments** will need to contain an oil leak/spill or to fight a possible oil fire. Fire fighters should be informed of the health and environmental issues involved in fighting crude-oil fires and spills. TransCanada should enter into agreements with fire departments and districts to provide training and equipment, including personal air pack equipment, and agree to pay for the cost of spill containment and fire fighting.
5. **Deposit a cash bond with the state of South Dakota and each county and township crossed** by the crude-oil pipeline to cover the risk and potential cost of damage to private property and public property in the event of a pipe failure, oil spill or oil fire. The bond should remain in place for the life of the pipeline, which has been estimated by TransCanada at 50 years.
6. **Station 6 or more TransCanada operations staff at a central location** along the pipeline route in South Dakota to operate and maintain the system and to be available to respond to a leak, spill, fire or other emergency. The town of Iroquois, South Dakota appears to be a central location, with the larger towns of DeSmet and Huron close by. Even during fair weather, a distance greater than 100 miles can result in a delay in the emergency response that may be critical in the event of pipe failure, oil leak or fire. The response time could be even further delayed during the winter months when blizzard and ice conditions often impact highway travel throughout eastern South Dakota, such as the ice storm of 2006 or the recent blizzard conditions of March 2 and March 3, 2007.

Things The Public Utilities Commission, Governor & SD Legislature Can Do

1. TransCanada-Keystone could be required to design their high pressure oil pipeline with **double wall thickness of at least 0.78 inch thickness** whenever the high pressure crude-oil pipeline route comes within 900 feet of a town, school, housing development, private residence, farm, business, park, or other public gathering areas and where the pipe crosses a state highway or public road, to avoid the kind of tragedy and property damage that was caused at Carlsbad, New Mexico on August 19, 2000, Bellingham, Washington

on June 19, 1999, Bemidji, Minnesota on August 20, 1979, and Prudhoe Bay, Alaska in 2003.

2. The State could **tax gas and oil that flows through pipelines within the borders of the state** on a per-mile or per-barrel basis to help cover the costs associated with spills, accidents, fires, environmental impacts, clean-up, and property damage. A \$0.10 per barrel tax or toll on crude-oil transported through South Dakota by the TransCanada-Keystone Oil Pipeline would generate \$15,877,500 in revenue to the State (435,000 barrels per day x \$0.10 per barrel = \$43,500 per day x 365 days = \$15,877,500 per year). TransCanada's permit application predicts that there will be pipe failure and oil spills along the pipeline. Will the costs of emergency response and clean-up be paid by TransCanada or be left to the taxpayers? At \$65 per barrel of oil **TransCanada could make \$28 MILLION per day (\$10 BILLION per year) for the oil shipped through South Dakota**. They can afford to take care of any clean-up or oil spills that may occur.
3. TransCanada-Keystone could be required to provide the State of South Dakota and each County it will cross with annual information on their **track record of operating oil and gas pipelines** and the environmental impacts of any operational spills they have been involved in, which resulted in damage to private property, wetlands and water bodies during both construction and operation, as well as injury or loss of life.
4. **TransCanada-Keystone could be required to provide the written policy and procedures they will follow for the negotiating or condemnation of private land for easement right-of-way. Condemnation of privately owned land should be discouraged and used only as a last resort and then only after all other alternatives and options have been exhausted** and under the review and approval of the local County Commission or Public Utilities Commission. Rural water systems have installed thousands of miles of water lines using voluntary negotiated easements, without the use of forced condemnation. Out-of-state oil companies should be required to do the same.
5. TransCanada-Keystone could be required to provide the written policy and procedures they will follow for the **clean-up of any public or private property** that may be contaminated as a result of a crude-oil spill. This written policy should include the process for reimbursement of landowners, adjacent property owners, water utilities and public lands and resources that are impacted by an oil spill or pipeline operations. This document should be placed on file with the PUC and with every County crossed by the pipeline.
6. TransCanada-Keystone could be required to provide **proof of liability insurance coverage and a certificate of insurance** naming the State of South Dakota and the counties, rural water systems, townships, utilities and individual landowners crossed by the pipeline as "**additional insured**" on the policy. The insurance policy should cover the operating life of the crude-oil pipeline, which is estimated by TransCanada at 50 years or more and should obligate all partners involved in the crude-oil pipeline, including LLC and LP.
7. TransCanada-Keystone could be required to pay in advance for the cost of **construction of power lines** and electrical facilities needed to provide electricity to the pumping stations and mainline valves located in South Dakota. This is a cost of oil pipeline construction and should be paid by TransCanada, not local utility customers and rate payers.
8. TransCanada-Keystone could be required to provide a **construction and operations reclamation plan** that they and their contractors will follow for crossing private property, public property, public road right-of-way, rural water systems, and municipal drinking water pipelines throughout South Dakota, including a risk assessment completed by an independent consultant or the NTSB of the impacts an oil spill may have on South Dakota. The reclamation plan should cover the operating life of the oil pipeline, which is estimated by TransCanada at 50 years or more and should obligate all investors, partners and shippers involved in the crude-oil pipeline. The plan should be made available to landowners crossed by the pipeline as well as state and local emergency responders.
9. TransCanada-Keystone could be required to provide a remedial plan that they and their contractors will follow to **clean-up soil, surface water and ground water contaminated** by a construction spill or crude-oil spill during operations, both within the construction right-of-way and outside the right-of-way, including the clean-up of creek beds, ground water, drainage ways and soils that are impacted. The remedial plan should cover the operating life of the oil pipeline, which is estimated by TransCanada at 50 years or more and should obligate all partners involved in the crude-oil pipeline, including LLC and LP.

10. The permit application TransCanada filed with the federal government predicts that there will be oil leaks and pipe failure. (*Pipeline Risk Assessment pg 3-2*). TransCanada and its partners could be required by state law to **post a bond or cash payment** with the State of South Dakota, the Public Utilities Commission and/or the Department of Environment and Natural Resources to cover the cost of clean-up of any oil spill should one occur during the 50-year life of the TransCanada-Keystone Oil Pipeline.
11. The SD Public Utilities Commission could be given the authority and responsibility by the State Legislature to **arbitrate easement acquisition disputes** in an effort to reach reasonable settlement before TransCanada is allowed to use South Dakota eminent domain laws to condemn land held in private ownership. The process should include independent appraisers using methods to determine fair compensation for temporary and permanent right-of-way easements including loss of production. The rights of private property owners along the pipeline route in South Dakota should not be left to the mercy of professional land acquisition agents that TransCanada, an international oil company, have sent in to South Dakota to secure easements under the threat of condemnation using South Dakota eminent domain laws.
12. The SD Legislature could establish in law a process for evaluating damage to land, water and resources by a gas or crude-oil spill, and a method and process for determining compensation for property damage caused by a gas or crude oil spill. The plan should include a “no cost” administrative appeals process available to landowners and property owners who are not satisfied with the result of negotiations with TransCanada-Keystone or other gas and oil pipeline builders and operators.
13. The SD Legislature could require that oil and gas pipeline companies crossing South Dakota filed **detailed construction plans stamped by engineers licensed to do business in South Dakota**, with the Department of Environment and Natural Resources and the Public Utilities Commission for prior approval before any permits are approved and before eminent domain is granted to cross South Dakota. The Department of Environment and Natural Resources (DENR) must approve construction plans for all water and sewer systems built in the state, and farm feedlot runoff containment, then why not the same requirement for high pressure crude-oil and gas pipeline plans?
14. The PUC or DENR could require TransCanada to allow the state to **monitor the operating pressure and flow of the oil pipeline** at various locations to assure that the system is not exceeding the authorized pressure. The cost of this monitoring equipment and annual testing and calibration should be paid for by TransCanada.

Pipeline Permits, Inspection & Regulation In South Dakota

The federal government establishes minimum pipeline safety standards under U.S. CFR, Title 49, 190-199. The Office of Pipeline Safety, headquartered in Washington, DC, has overall regulatory responsibility for hazardous liquid and gas pipelines. Through OPS certification, the state of South Dakota regulates, inspects, and enforces intrastate gas pipeline safety requirements, performed by the Pipeline Safety Division of the SD Public Utilities Commission (PUC) which is directed by a 3 member commission elected by the voters. The address and phone number for the PUC is listed below and on page 1 of this document. (www.state.sd.us/puc/puc.htm).

Permit Approval - Agencies

The following local, state and federal agencies will review the TransCanada permit and have a role in reviewing the project and some agencies have the authority and responsibility to protect the public safety, private property, water, and natural resources of South Dakota.

Agency	Authority	Contact Person
SD State Historical Preservation Office	Preservation of cultural and historic resources	SD State Preservation Office 900 Governors Drive Pierre, SD 57501-2217 Phone (605) 773-3458 shpo@state.sd.us
SD Public Utilities Commission	Issuance of permit for pipeline transportation. Through OPS, the state of South Dakota regulates, inspects, and enforces intrastate gas pipeline safety requirements, performed by the Pipeline Safety Division of the SDPUC, Phone (605)773-3201 (www.state.sd.us/puc/puc.htm)	Public Utilities Commission Dusty Johnson, Chairman Gary Hanson, Vice Chairman Steve Kolbeck, Commissioner Capitol Bldg – 1 st Floor 500 E Capitol Ave Pierre, SD 57501-5070 Phone (605) 773-3201

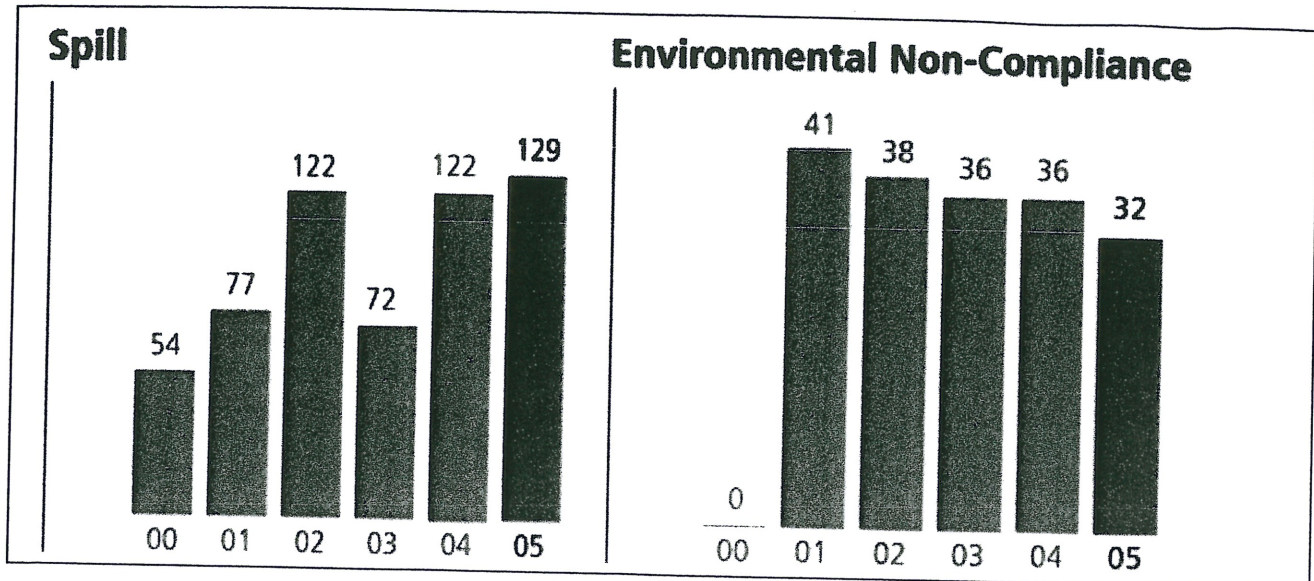
SD Department of Environment & Natural Resources.	Protect streams and wetlands, water quality, discharge permits. Issue permit for stream and wetland crossing, and discharge of water used for testing. Oil spills. Source Water Protection Program.	www.state.sd.us/puc/puc Steven Pirner, Secretary Dept of Environment & Natural Res. 523 E. Capitol Ave Pierre, SD 57501-3182 Phone (605) 773-3151 steve.pirner@state.sd.us • www.state.sd.us/denr
SD Department of Transportation	State highway crossings	Judy Payne, Secretary SD Department of Transportation 700 E. Broadway Ave. Pierre, SD 57501 Phone (605) 773-3265 judy.payne@state.sd.us
SD Fish & Game Department	Protect state game production areas	Jeff Vonk, Secretary or John Kirk, Environmental Review Department of Game Fish & Parks 523 East Capitol Ave Pierre, SD 57501 Phone (605) 773-6348 jeff.vonk@state.sd.us john.kirk@state.sd.us
US Fish & Wildlife Service	Protection of wildlife areas, and habitat of endangered species, the James River and the Missouri River	U.S. Fish & Wildlife Service 134 Union Blvd. Lakewood, CO 80228 Phone (303) 236-7905 MountainPrairie@fws.gov
US Environmental Protection Agency	Protection of water quality and wetlands	Regional Director-Region 8 US Environmental Protection Agency 1596 Wynkoop Street Denver, CO 80202-1129 Phone 1-800-227-8917
US Department of Interior	Missouri National Recreation River Missouri River crossing near Yankton,SD	Dirk Kempthorne, Secretary US Department of Interior 1829 C Street NW Washington, DC 20240 Phone (202) 208-3100 webteam@ios.doi.gov
County Government	Crossing of county and township roads	County Highway Supt. County Commissioners Township Officials of each county crossed by the pipeline

TransCanada – Who Are We Dealing With ?

As the group of oil company investors begin the process of seeking permit approvals for the construction of 217 miles of high pressure crude-oil pipeline through South Dakota, it's fair to ask, "**Who Is TransCanada**"?

TransCanada had 576 spills in the past 6 years according to their official website

Nearly 80 per cent of the spills were due to equipment-related leaks of hydraulic oil, lube oil, glycol and fuel typically of low volume (<5L). Four spills were classified as 'Serious' with 125 classified 'Minor' spill incidents. A minor spill is defined by TransCanada as: a spill, onsite that poses no adverse affect to the environment or impact to a water body or to groundwater. **TransCanada had 183 non-compliance incidents in the 6 years.** (<http://www.transcanada.com/social/responsibility/numbers.html>) . TransCanada is a Canadian oil and gas pipeline transmission and electric power generating company. The Oil Digest reports that Conoco holds 50% ownership in TransCanada's proposed pipeline (Oil Digest 7/5/06). TransCanada reported profits of \$1.2 Billion in 2005 and \$1.05 Billion in 2006¹. As of a Jan. 31, 2007 report, TransCanada posted a total share return, including stocks and dividends of 15% in the past year and 20% annually for the past five years. (www.transcanada.com) TransCanada, founded in 1951, is a large energy company based in Calgary, Alberta. The company is the largest shareholder of TransCanada PipeLines, LP, which owns many of Canada's natural gas pipelines, as well as a number in the United



States. TransCanada is also has electrical generating assets and owns or is involved in the Northern Border Pipeline, Tuscarora Gas Pipeline, and the ANR Pipeline. TC Pipelines, LP is 50% owner of the Northern Border Pipeline, which moves natural gas through South Dakota and was built in 1982.

TransCanada's-El Paso Connection

According to the December 2006 *Toronto Star*, TransCanada paid \$3.39 billion for the Houston, Texas based ANR Pipeline Company, a subsidiary of **El Paso Corporation**, one of the largest interstate natural gas pipeline systems. In the deal, TransCanada also secured gas storage facilities in Michigan and 50% share of Great Lake Gas Transmission (www.anrpl.com). El Paso Corporation has experienced at least **40 pipeline ruptures since 1985, including the pipeline corrosion failure and explosion that took place at Carlsbad, New Mexico on August 19, 2000, and resulted in the deaths of 12 people, 5 children and 7 adults.**

On February 7, 2007, the *Houston Chronicle* reported that **El Paso Corporation had reached a court settlement with the U.S. Department of Justice to pay more than \$7.7 million to settle claims that it helped the former Iraqi regime receive millions in kickbacks through a U.N. sponsored humanitarian "Food for Oil" program. The settlement includes \$5.48 million, which is the amount of illegal surcharges El Paso's oil purchases provided to the former government of Saddam Hussein and \$2.5 million in civil penalties to the Securities and Exchange Commission (SEC).**

The \$5.48 million fine collected by the U.S. Department of Justice from El Paso Corp., will be used to purchase humanitarian goods for the people of Iraq. **According to a 2005 report by former Federal Reserve Chairman Paul Volcker, about 2,200 companies in dozens of countries paid nearly \$1.8 billion in kickbacks to Saddam Hussein's government through the "Food for Oil" program. Other U.S. companies charged in the scam were Chevron, Texaco, Mobil, Coastal Corp, and Bayoil USA.**

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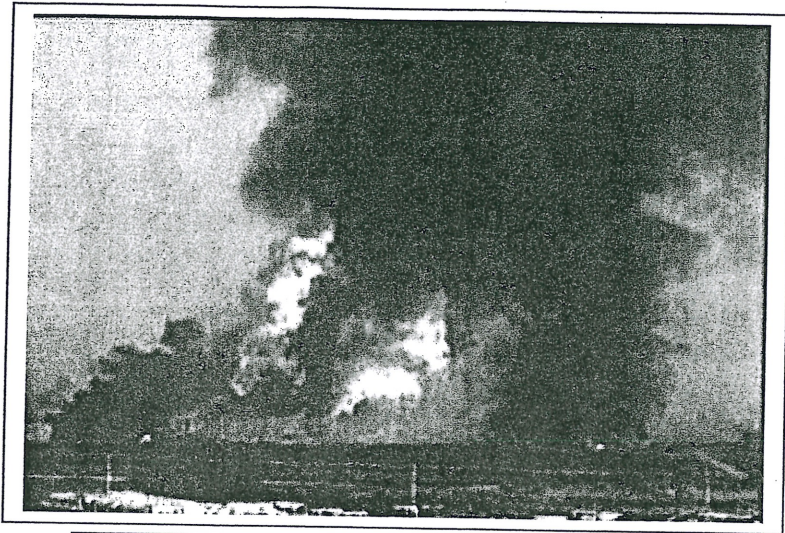
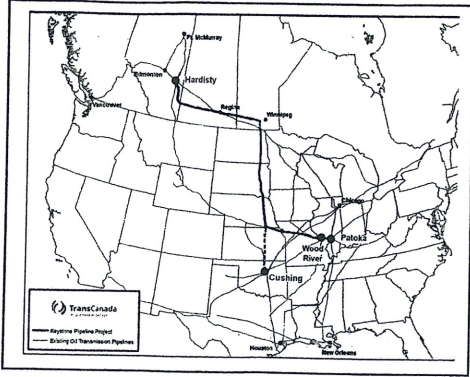
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WEB Water Development Association, Inc.

38462 US Hwy 12, PO Box 51

Aberdeen, South Dakota 57402-0051

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Aberdeen, SD
Permit No. 67



Will TransCanada-Keystone bring crude oil leaks and oil fires like this to South Dakota ?



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