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JOY FILIPSKI

JULIE K. KOHLER



August 2, 2007

Illona A. Jeffcoat-Sacco  
Executive Secretary  
Public Service Commission  
600 East Blvd., Dept 408  
Bismarck, ND 58505-0480

Re: TransCanada Keystone Pipeline Matter

Dear Ms. Jeffcoat-Sacco:

Enclosed please find the original transcript of proceedings for the July 24, 2007 PSC Hearing which was held in the above-entitled matter in Park River, North Dakota, along with the original exhibits and a word index.

Sincerely,

A handwritten signature in cursive script that reads "Julie K. Kohler".

Julie K. Kohler  
Court Reporter

Encs.

**44** **PU-07-152** Filed: 8/13/2007 Pages: 177  
Transcript of Hearing in Park River, ND on July 24,  
2007 (orig doc in PU-06-421)

Public Service Commission

**95** **PU-06-421** Filed: 8/13/2007 Pages: 177  
Transcript of Hearing in Park River, ND on July 24,  
2007

Public Service Commission

Ruth Ann Johnson Court Reporter Service

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

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IN RE THE MATTER OF:

TransCanada Keystone Pipeline, LP  
30-Inch Crude Oil Pipeline/Cavalier  
to Sargent Counties  
Siting Application

Case No. Pu-06-421

TransCanada Keystone Pipeline, LP  
Keystone Pipeline  
Public Convenience & Necessity

Case No. PU-07-152

**ORIGINAL**

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TRANSCRIPT OF PROCEEDINGS  
July 24, 2007

Take At: Park River, North Dakota

Before: Al Wahl  
Administrative Law Judge

Taken By: Julie K. Kohler, Court Reporter

1 A p p e a r a n c e s:

2 Public Service Commission:

3 Commissioner Kevin Cramer  
4 Commissioner Susan Wefald  
5 Commissioner Tony Clark

6 For the Public Service Commission:

7 WILLIAM W. BINEK, ATTORNEY AT LAW  
8 State Capitol  
9 Bismarck, North Dakota 58505-0480

10 For TransCanada Keystone Pipeline LP:

11 KELSCH KELSCH RUFF & KRANDA  
12 P. O. Box 1266  
13 Mandan, North Dakota 58554  
14 By: THOMAS D. KELSCH, ATTORNEY AT LAW

15 For Intervenors The Dakota Resource Council,  
16 Ramona Klein, Merle and Linette Kratochvil,  
17 John and Janie Capp, and Mark Novak:

18 RINKE NOONAN  
19 P. O. Box 1497  
20 St. Cloud, Minnesota 56302-1497  
21 By: NICHOLAS R. DELANEY, ATTORNEY AT LAW

22

23

24

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1 . . . The following is the  
2 transcript of proceedings, taken in the  
3 above-entitled cause, before the North Dakota  
4 Public Service Commission, pursuant to Notice,  
5 before Julie K. Kohler, a Notary Public within  
6 and for the State of North Dakota at the Park  
7 River City Hall Auditorium, Park River, North  
8 Dakota, on Tuesday, July 24, 2007, at 1:00  
9 o'clock a.m., at which time counsel appeared  
10 as hereinbefore set forth . . . .

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1                   MR. WAHL: Good afternoon. I am Al  
2 Wahl, the administrative law judge designated  
3 by the office of administrative hearings  
4 pursuant to the request of the North Dakota  
5 Public Service Commission to act as the  
6 hearing officer for the hearing of an  
7 application for a waiver of procedures and  
8 time schedules, and consolidated applications  
9 for a certificate of corridor compatibility  
10 and a route permit authorizing construction of  
11 approximately 218 miles of 30-inch crude oil  
12 pipeline and associated facilities in  
13 Cavalier, Pembina, Walsh, Nelson, Steele,  
14 Barnes, Ransom, and Sargent Counties North  
15 Dakota. This is Public Service Commission  
16 Case No. PU-06-421.

17                   Before proceeding with the hearing I  
18 will ask the Commissioners for their comments  
19 and for any directions for the hearing.

20                   Commission President Susan Wefald.

21                   MS. WEFALD: Good afternoon. It's a  
22 pleasure to be here in Park River and to be  
23 able to hold this hearing.

24                   The Commission has been preparing  
25 for this hearing ever since we received the

1 application from TransCanada on approximately  
2 April the 10th of 2007. So we've had this  
3 before us for several months. And of course  
4 just as you have known that TransCanada has  
5 been planning this pipeline for some time the  
6 Commission has also been aware of that due to  
7 what we always receive, it's called a letter  
8 of intent, at least a year before the  
9 application is filed. And sometimes it can  
10 come in sooner than that.

11 But we have been very aware of this  
12 project for quite some time. So now we're  
13 here and we're able to hold a public hearing  
14 on this application.

15 This is a very important project for  
16 the state of North Dakota. It affects many of  
17 you, and that's why you're here. A 30-inch  
18 pipeline in a new pipeline route is a big step  
19 for the state of North Dakota. And so we want  
20 to make sure that we address any concerns that  
21 people have in the public, and we try to,  
22 then, find ways that we can work through those  
23 concerns that you have.

24 This, this particular hearing is,  
25 may be a little different than what you

1 anticipated. It is a formal hearing that the  
2 Commission holds. We have to establish a  
3 record that can be used. It's more like a  
4 courtroom proceeding than it is just a public  
5 meeting.

6 We have lawyers here representing  
7 their parties. We have intervenors in the  
8 case. All have specific rights.

9 The Commission's responsibility in  
10 this case is to make a final decision on  
11 behalf of the Public Service Commission, and  
12 we're prepared to do that in a timely manner.  
13 The state law gives us six months to make a  
14 decision on siting a pipeline.

15 We do have different things that we,  
16 many different things that we're asked to  
17 consider in the siting of a pipeline. And  
18 those are assigned to us by state law, so we  
19 have very specific issues that we need to  
20 address in a case like this.

21 I'm so glad that you're all here  
22 today. The hearing officer is going to go  
23 over a little bit later just exactly when you  
24 can expect to have your chance to participate  
25 in this hearing this afternoon. But welcome,

1 and I'm very glad that you're all here to  
2 participate in this important issue.

3 MR. WAHL: Commissioner Tony Clark.

4 MR. CLARK: Let me add my thanks for  
5 everyone turning out today. We do look  
6 forward to your public testimony.

7 As Commissioner Wefald said, and  
8 certainly with something that was a bit of a  
9 surprise to me I suppose, the first time I  
10 attended a regulatory proceeding like this a  
11 number of years ago is it probably is a little  
12 bit different than the format you're used to  
13 if you're used to a county commission meeting  
14 or a city commission meeting or even a  
15 legislative hearing. These tend to be formal  
16 settings. Formal procedures.

17 And the reason that we do that is  
18 because Commission orders, unlike say a, a  
19 legislative bill or something like that, they  
20 have to be based on a record which is  
21 developed in a very formal way, with witnesses  
22 under oath and an opportunity for questions to  
23 be given to those witnesses. And the reason  
24 is, is because any of our orders can be  
25 appealed to a court, and the courts, then,

1 have the opportunity to review the record.

2 In other words, when they look at,  
3 at whatever we decide we have to be able to  
4 tie it back to the things that were said on  
5 the record, both here in Park River and in  
6 Valley City yesterday. So that's why we take  
7 this type of hearing very seriously, because  
8 it's the only thing that we have on which to  
9 make a decision.

10 When, when Commissioners enter into  
11 a case like this technically we're supposed to  
12 be like blank slates. When we enter the room  
13 we're not supposed to have any preconceived  
14 notions about the application.

15 The applicant has an opportunity to  
16 present its side of the case and develop a  
17 record, and the intervenors and the public has  
18 an opportunity to place things on the record  
19 and do that as well. And it's, it's through  
20 this that we come up with a way of due process  
21 that everyone can feel that they have a fair  
22 opportunity.

23 Let me just say that we do take and  
24 I do take our role very seriously in this  
25 because we know that in a lot of ways the

1 Public Service Commission on cases that are as  
2 important as this, they are the, the last  
3 stop. They're the opportunity for folks, the  
4 general public, to come to a meeting like  
5 this, air their concerns, compile all of the  
6 information that's out there, and, and have  
7 one place where a final decision is made on,  
8 on investments like this.

9 And please note that I do enter this  
10 with an open mind. I look forward to hearing  
11 your comments, hearing the, the case of the  
12 applicant, and being able to develop a full  
13 record so that the decision that we make is in  
14 the best interest of North Dakota.

15 Thank you.

16 MR. WAHL: Commissioner Kevin  
17 Cramer.

18 MR. CRAMER: Thank you, Judge Wahl,  
19 and thank all of you for being here.

20 I have been preparing for this for  
21 at least a couple of years. The pipeline  
22 portfolio is one of the portfolios that I  
23 carry on the Commission.

24 And I remembered fondly today as  
25 your former mayor, those of you from Park

1 River, picked me up at the airport, that it  
2 was at the open house in Grafton that the  
3 mayor came, went up to one of the officials  
4 and said: wait a minute, this pipeline goes  
5 through the Fordville aquifer and that is the  
6 municipal water source for the city of Park  
7 River. And the company made the decision then  
8 to move it.

9 Of course every time you move  
10 something like that you move it to someone  
11 else's land. And of course that has other  
12 consequences.

13 But I've been living with this  
14 project for quite a while, keeping up on it  
15 not only with the company, but with their  
16 website and other things. But, but this is  
17 where the real work gets done.

18 There is a reason that long ago the  
19 legislature decided that when there is a  
20 siting of a major facility that the hearings  
21 would be held in the counties that are  
22 affected. You all sit here as testimony to  
23 that wise decision by the legislature.

24 And I want you to know that whatever  
25 else happens today, and the Commissioners, my

1 fellow Commissioners are exactly right, this  
2 is a very formal proceeding. It can even be  
3 to some intimidating. And let me just tell  
4 you let it not intimidate you if you have  
5 something to say.

6 We are here because this is where  
7 you live, and we want to take whatever time is  
8 necessary to hear whatever it is on your  
9 mind related to this. And although some of  
10 the public input may not serve as specific  
11 evidence for the record let me tell you it has  
12 to this point, and will continue, to form the  
13 questions in our minds and in our hearts, so  
14 that whatever your concerns are, even though  
15 you might not be able to answer the question  
16 we'll make sure that it gets asked and  
17 answered appropriately.

18 We live in extraordinary times. We  
19 see 3 dollar plus gasoline becoming the norm.  
20 We see 70 dollar plus barrel of oil becoming  
21 the norm. We see 6 to 8 dollars and more per  
22 decatherm of natural gas becoming the norm.  
23 And the kilowatt price of electricity  
24 continues to rise. We're a consuming nation  
25 that has a hunger for energy.

1                   In North Dakota we're blessed  
2 because we sit on a lot of natural resources  
3 that help, including the alternatives that are  
4 beginning to become very popular. Things like  
5 wind, biofuels, including ethanol. We also  
6 have natural fossil fuels in our state, as you  
7 know.

8                   Well, one of the things that we find  
9 very disturbing, of course, is that with a lot  
10 of these increased prices we also have a lot  
11 of political unrest in our world. And the  
12 vast majority of the oil supply is controlled  
13 by unfriendly dictators and cartels.

14                   So we try to view all of this within  
15 the whole. But at the same time we represent  
16 you. We represent you. And so your concerns  
17 become our concerns. And we want to make sure  
18 that whatever type of energy development is  
19 done and involves North Dakota, that it's done  
20 well and it's done right. So that's what we  
21 are here to do today.

22                   I want to acknowledge while I have  
23 this opportunity, there are a number of  
24 legislators here and I'm not going to begin to  
25 introduce them all because I'll miss some,

1 there are a number of county commissioners  
2 here. I know many of you and have, have met  
3 several, and city officials as well as the  
4 landowners and other affected parties. We  
5 thank you all for your support in, in this  
6 endeavor, whatever your position is we  
7 appreciate your attention and your attendance  
8 here today, and look forward to a very  
9 thorough record being built throughout today.

10 Thank you.

11 MR. WAHL: Thank you, Commissioners.

12 The record will show that it is a  
13 little after 1:00 o'clock p.m., July 24, 2007,  
14 the time and the date noticed for a hearing of  
15 the application of TransCanada Keystone  
16 Pipeline LLC for a waiver of procedures and  
17 time schedules and consolidated applications  
18 for a certificate of corridor compatibility  
19 and a route permit authorizing construction of  
20 approximately 218 miles of 30-inch crude oil  
21 pipeline and associated facilities referred to  
22 as the Keystone Pipeline, in Cavalier,  
23 Pembina, Walsh, Nelson, Steele, Barnes, Ransom  
24 and Sargent Counties North Dakota, as shown by  
25 the map which is a part of the notice of

1 filing and notice of hearing.

2 The Commission's notice of hearing  
3 specified the following issues to be  
4 considered and determined upon this hearing.

5 First, will the location,  
6 construction, and operation of the proposed  
7 pipeline produce minimal adverse affects on  
8 the environment, natural resources, and upon  
9 the welfare of the citizens of North Dakota.

10 Second, is the proposed pipeline  
11 compatible with the environmental preservation  
12 and the efficient use of resources.

13 Third, will the proposed pipeline  
14 corridor and route minimize adverse human and  
15 environmental impact while ensuring continuing  
16 system reliability and integrity and ensuring  
17 that energy needs are met and fulfilled in an  
18 orderly and timely fashion.

19 And fourth, is it appropriate for  
20 the Commission to waive the procedures as  
21 requested in the application, including the  
22 request for a single consolidated application  
23 for corridor certificate and route permit.

24 I want to talk with you just for a  
25 few minutes about how I will conduct the

1 hearing and the opportunity that you will have  
2 to testify as a member of the public. Your  
3 public testimony, the opportunity for public  
4 testimony is a very important part of this  
5 hearing. And the Commissioners are each  
6 particularly interested in hearing what you  
7 have to say as members of the public, as  
8 landowners, whatever your interests may be.

9           There are a lot of people here and I  
10 expect a lot of testimony, and it's important  
11 to the Commission that everyone have an  
12 opportunity, everyone who wishes to testify  
13 will have an opportunity to testify.  
14 Accordingly, I'm going to change the procedure  
15 usually followed to conduct the hearing.

16           Ordinarily TransCanada Keystone goes  
17 first, goes forward to advise and inform the  
18 Commission and the public about the project.  
19 They will do that here. They have a, a  
20 graphic presentation, a slide presentation,  
21 that will generally cover and inform you about  
22 the project, and will have some people to  
23 testify under oath to talk about that.

24           We would then ordinarily continue  
25 with cross-examination by the intervenors,

1 Dakota Resource Council, and with questions by  
2 the lawyers for the Commission. I'm going to  
3 change that to permit public testimony at the  
4 completion of TransCanada's presentation of  
5 their overview of the pipeline project.

6 We'll move this lectern back out to  
7 here. If there's anyone who's unable to come  
8 to the lectern you should let me know and  
9 we'll get one of these things for you to use.

10 I would start with public testimony  
11 with persons who support the pipeline  
12 project. Is anyone here to testify as a  
13 member of the project in support -- or as a  
14 member of the public in support of the project  
15 I will ask for those people first.

16 Then I will ask for people who wish  
17 to offer testimony opposing the pipeline  
18 project. Or not necessarily opposing it, but  
19 suggest you may not be opposed to the pipeline  
20 but you may want something different done, or  
21 you may have some particular concern, whatever  
22 it is.

23 Public testimony must be under  
24 oath. And I'm required by law to advise you  
25 regarding perjury before administering the

1 oath. To shorten the time a little bit I'm  
2 going to advise everybody about perjury.

3 That being said when those people  
4 come forward to testify I will simply ask you  
5 whether you heard the advice regarding perjury  
6 and then I can proceed immediately to  
7 administer the oath. And then you can proceed  
8 to testify.

9 There will be a clipboard on the  
10 lectern. I'd like you to put your, print your  
11 name and address on that form, on the register  
12 before you testify, so that we'll have a paper  
13 record of your appearance. I'll ask you to  
14 state your name and address for the record, so  
15 on the recordings and for the court reporter  
16 they will have that record. And then I'll  
17 simply tell you to proceed with your  
18 testimony.

19 And you should feel comfortable.  
20 Nobody -- well, let me say this the Commission  
21 and the lawyers may ask you questions, they  
22 may have additional information, they may not  
23 have understood something that you have said,  
24 so the Commissioners and lawyers may ask you  
25 questions. But they will, I promise you they

1 will not cross-examine you.

2           Forget what you saw, see on  
3 television about testifying in court. This is  
4 not like testifying in court. This is like,  
5 like talking to the PTA or talking to the  
6 church congregation or the city or council or  
7 the county commission.

8           If you have, if you have some  
9 papers, some documents, something of that sort  
10 that you wish the Commissioners to have, to  
11 see as part of your testimony, when you refer  
12 to them let me, bring them to my attention,  
13 we'll mark them as an exhibit, and we'll get  
14 them also placed as part of the record.

15           Does anyone have any questions about  
16 how I will conduct the hearing or about your  
17 testimony?

18           All right. Let me tell you, then,  
19 let me advise you, give you the advice  
20 regarding perjury. Perjury is a false  
21 statement of material fact which you do not  
22 believe to be true. In other words generally  
23 speaking a lie.

24           In North Dakota perjury is a Class C  
25 felony punishable by a fine of up to \$5,000,

1 imprisonment for a period of up to five years,  
2 or both. So when you come to testify I'll  
3 simply ask you if you heard that advice and we  
4 will proceed.

5 Mr. Kelsch, will you identify or  
6 will you state your appearance for the record,  
7 please.

8 MR. KELSCH: Thank you, your Honor.  
9 Thomas D. Kelsch, attorney for TransCanada  
10 Keystone. Along with me I have Todd Kranda,  
11 and Jim White sitting behind me.

12 MR. WAHL: Mr. Delaney?

13 MR. DELANEY: Nicholas R. Delaney  
14 with the Rinke Noonan Law Firm. I'm here on  
15 behalf of the intervenors which include the  
16 Dakota Resource Council, Ramona Klein, Merle  
17 and Linette Kratochvil, Janie and John Capp,  
18 and Mark Novak.

19 And your Honor, I just have a couple  
20 of preliminary things. Number one, I want to  
21 note an objection on the record. I would  
22 object to the procedure that's been put in  
23 place to the extent that any member of the  
24 public is precluded from testifying or  
25 offering comments to the Commission after

1 hearing all of the testimony, including  
2 cross-examination and rebuttal testimony.

3 Secondly, I have one witness that I  
4 would like to have testify. And after we met  
5 I spoke with that witness, his name is Jim  
6 Horner from the Department of Health, he has  
7 to leave at 3:00 o'clock today.

8 And I'm not trying to throw a monkey  
9 wrench in the procedure but I don't anticipate  
10 his testimony would be very long, but if there  
11 is any way we could accommodate him, I'd  
12 appreciate it.

13 MR. WAHL: But Mr. Horner is  
14 available to testify at a continued hearing.

15 MR. DELANEY: He would be if there  
16 is going to be a continued hearing. If,  
17 if --

18 MR. WAHL: Yes. My, my purpose, Mr.  
19 Delaney, as I stated, is to ensure that the  
20 Commissioners have an opportunity to hear all  
21 of the public testimony.

22 If there is, if there, depending on  
23 the time that's available, we of course will  
24 proceed with the remainder of the hearing.  
25 But I'm concerned that, that the members of

1 the public who have come to this hearing will  
2 have an opportunity to present their  
3 testimony.

4 Your objection is, is overruled.

5 Mr. Kelsch, did you have something  
6 for the record?

7 MR. KELSCH: No, your Honor. We  
8 agree with the court's ruling on this issue.  
9 We think it's important that the public have a  
10 right to have their input here today. I think  
11 they will be able to give their input today  
12 without needing to hear all of the other  
13 testimony.

14 Thank you.

15 MR. WAHL: All right, Mr. Kelsch,  
16 you may proceed when you're ready.

17 MR. KELSCH: Thank you, your Honor.  
18 I would call Dean Cowling.

19 MR. WAHL: Mr. Binek, I'm sorry I  
20 overlooked Mr. Binek.

21 Mr. Binek, state your appearance  
22 please, and identify the Commission staff that  
23 are attending the hearing.

24 MR. BINEK: My name is William  
25 Binek. I'm chief counsel for the Public

1 Service Commission. I would like to advise  
2 that the, that the Commission staff is  
3 appearing in this proceedings as advisors to  
4 the Commission. The staff is not taking an  
5 advocacy position in, in the case.

6 Seated to my left is Patrick Fahn.  
7 Pat is a public utility analyst with the  
8 Commission.

9 MR. WAHL: Now Mr. Kelsch you may  
10 proceed when you're ready. Mr. Kelsch, also,  
11 just to mention, it's not necessary for the  
12 witnesses to be sworn again. This is a  
13 continuation of the hearing yesterday in  
14 Valley City.

15 If you will just give me an  
16 opportunity before they begin to caution them  
17 with regard to perjury we can proceed more  
18 quickly.

19 MR. KELSCH: I would call Dean  
20 Cowling to the stand.

21  
22 D E A N C O W L I N G,  
23 having being previously sworn, testified on  
24 his oath as follows:

25

1 MR. WAHL: Mr. Cowling, you  
2 understand, of course, that your testimony  
3 continues under oath and subject to penalties  
4 of perjury.

5 MR. COWLING: Yes, I do.

6 MR. WAHL: You may proceed, Mr.  
7 Kelsch.

8 MR. KELSCH: Thank you, your Honor.  
9 Mr. Cowling, could you state your  
10 name for the record.

11 MR. COWLING: My name is Dean  
12 Cowling.

13 MR. KELSCH: And, and could you  
14 state what your position is with TransCanada  
15 Keystone.

16 MR. COWLING: I am the project  
17 director for the Keystone Pipeline project.

18 MR. KELSCH: And I understand that  
19 you've prepared a PowerPoint presentation to I  
20 guess inform the public about the Keystone  
21 Pipeline.

22 MR. COWLING: Yes, we have. And  
23 there will be, I believe, myself and two other  
24 presenters presenting.

25 MR. KELSCH: Okay, thank you. You

1 may start the presentation.

2 MR. COWLING: First of all I'd like  
3 to thank everybody for coming out today. And  
4 we look forward to presenting our project to  
5 you this afternoon.

6 The first slide that we have that  
7 we'll go through here with you this afternoon  
8 is just a little bit of the background with  
9 regards to who TransCanada is. TransCanada is  
10 one of North America's leading energy  
11 infrastructure companies with currently  
12 approximately 24 billion dollars worth of  
13 assets.

14 Currently today, focusing on  
15 pipelines, today TransCanada owns  
16 approximately 36,500 miles of pipeline. And  
17 associated with that pipeline we currently  
18 have relationships with approximately 40,000  
19 landowners.

20 Real briefly I just wanted to, to  
21 provide everybody a little bit of, of  
22 background with regards to supply, world  
23 supply for oil. I just wanted to highlight  
24 here that, as indicated on the slide, Canadian  
25 supply is second only to Saudi Arabia. And we

1 currently have approximately 175 billion  
2 barrels worth of proven reserves in Alberta.  
3 Or actually in Canada.

4 Another point, just to point out, is  
5 I believe the US economy consumes  
6 approximately 20 million barrels of crude oil  
7 per day. As of today the Canadian imports  
8 into the United States, we currently import I  
9 believe approximately 1.6 million barrels of  
10 oil today into the US, which is approximately  
11 11 percent of, of the consumption in the  
12 United States.

13 Real quickly, and part of this  
14 presentation is, is linked into our, the  
15 application that we have before the Public  
16 Service Commission, as we went through the  
17 process and the regulatory process, both at  
18 the federal level and at the state level, we  
19 actually did an analysis comparing different  
20 alternatives to ship oil into the, to the  
21 marketplace that, that we were focusing on.

22 And, and, and after the analysis we  
23 believe, and we have before, and we have  
24 before regulators, we believe Keystone is the  
25 only alternative in a, in a position, to, to,

1 to deliver the increased demand for crude oil  
2 in, in the United States, and in particular in  
3 the areas of the United States the Midwest.  
4 That area of the United States.

5 Just a little bit of background with  
6 regards to where we are at commercially on the  
7 project. To date TransCanada has now secured  
8 495,000 barrels of firm, long-term contracts  
9 for the project. In our opinion these  
10 long-term binding contracts clearly  
11 demonstrate that Keystone is required to serve  
12 US energy needs.

13 Just a picture with regards to the  
14 project. Keystone is an approximately 1,800  
15 mile pipeline project that originates in an  
16 area called Hardisty, Alberta. And that is  
17 essentially a supply hub for crude oil in  
18 Alberta.

19 The pipeline then traverses across,  
20 across Canada. And I would note just the blue  
21 line there that that, that pipe there is  
22 actually a converted pipe that TransCanada is  
23 converting from, from gas service to oil  
24 service. And part of that conversion actually  
25 helped us make the decision, or, or, or did

1 make the decision as it relates to where we  
2 were going to come into the United States.

3 Part of that decision, and part of  
4 the thought process we had was it was an  
5 environmentally sound decision by reutilizing  
6 pipe. And of course it reduces the overall  
7 cost of the project, which, which hopefully,  
8 hopefully gets back to the, to the end user.

9 As far as the United States once we  
10 get into North Dakota the first phase of the  
11 project is approximately, approximately 1,100  
12 miles. That starts in North Dakota, through  
13 South Dakota, Nebraska and into Kansas.

14 And you'll see once we, once we get  
15 into the top of Kansas we actually turn east.  
16 And the first phase of the project will, will  
17 turn east through Kansas, Missouri and  
18 Illinois. And that part of the project would  
19 deliver today about 340,000 barrels of crude  
20 oil into the Wood River and Patoka areas of  
21 Illinois. That would, our plans are to place  
22 that project into service in Q4 of 2009.

23 Subsequent to that in 2010 we will  
24 also, we were successful with an open season  
25 that we went through earlier this year, we

1 will extend the system, you'll see, downward  
2 through Kansas and into Oklahoma where we will  
3 deliver oil into Cushing, Oklahoma which is a,  
4 is a delivery hub in the US.

5 Just want to highlight a of things,  
6 that Keystone pipeline is regulated and  
7 reviewed by numerous federal and state  
8 regulators. In order to construct the  
9 pipeline facilities across the international  
10 border Keystone is required to obtain a  
11 presidential permit from the United States  
12 Department of State. And we are currently  
13 working through that process right now.

14 The DOS is also responsible for, for  
15 preparing an environmental impact statement  
16 which is a requirement by the National  
17 Environmental Policy Act. And, and again, the  
18 Department of State is taking the lead in, in  
19 that environmental review at the federal level  
20 and we continue to work through that process  
21 as well.

22 Real quickly, the project is also  
23 reviewed by the Corps of Engineers, Fish and  
24 Wildlife Service and the Department of  
25 Transportation, as well. Moving into North

1 Dakota, the North Dakota Energy Conversion and  
2 Transmission Facility Siting Act to authorize  
3 the siting and construction of the project,  
4 the oversight and approval is with the North  
5 Dakota Public Service Commission as, as  
6 discussed today.

7           As far as schedule, again we are  
8 seeking all of our regulatory approvals and  
9 permits in order to proceed with construction  
10 in Q1, in, in, in May of 2008 is our, is right  
11 now our construction schedule.

12           Just in closing for myself, just  
13 wanted to highlight some of the benefits to  
14 North Dakota. Short-term construction  
15 benefits. Food and lodging during, during  
16 construction we estimate at approximately 3.25  
17 million. And again that construction we would  
18 anticipate constructing two spreads of, of, of  
19 work in North Dakota in 2008.

20           Construction materials and other  
21 supplies. We have estimated about \$750,000.  
22 And also we would anticipate 10 to 15 percent  
23 of the total construction workforce for the  
24 project would be hired locally as we, as we  
25 move through, move through the counties in

1 North Dakota.

2 The long-term operating benefits.  
3 Approximately 5.2 million in property tax  
4 revenues in the first year, and then, in the  
5 first full year of operations and then  
6 subsequent to that revenue for every year that  
7 we're in operation.

8 Just lastly, once we move into  
9 operations we will also, of course, require  
10 additional staff. And we would anticipate  
11 that direct and contract employees to support  
12 operations we would be looking for from North  
13 Dakota, as well.

14 And with that --

15 MR. KELSCH: Thank you, Mr.  
16 Cowling.

17 I would then call Mike Koski.

18  
19 M I C H A E L K O S K I,  
20 having been previously sworn, testified on his  
21 oath as follows:

22

23 MR. WAHL: Mr. Koski, you  
24 understand, of course, that your testimony  
25 continues under oath and subject to penalties

1 of perjury.

2 MR. KOSKI: Yes, I do.

3 MR. WAHL: Mr. Kelsch.

4 MR. KELSCH: Mr. Koski, could you  
5 state your name for the record.

6 MR. KOSKI: It is Michael Koski.

7 MR. KELSCH: And what is your  
8 position with the TransCanada Keystone  
9 Pipeline?

10 MR. KOSKI: I'm the lead for the  
11 consulting team responsible for the  
12 engineering, environment and land activities  
13 associated with the Keystone project in the  
14 US.

15 MR. KELSCH: Thank you. You may  
16 continue with your presentation.

17 MR. KOSKI: Thank you.

18 I just want to start with a brief  
19 summary of the facilities that are proposed in  
20 North Dakota. We're proposing 218 miles of  
21 30-inch crude oil pipeline, 5 pumping  
22 stations, 13 mainline valves, 4 check valves,  
23 and the system will have a maximum allowable  
24 operating pressure of 1,440 psi.

25 Now there are hundreds of thousands

1 of miles of pipeline in the United States.  
2 There are several thousand miles of pipeline  
3 in the state of North Dakota. And I just want  
4 to describe how it is we site these  
5 facilities, and how they end up where they  
6 are. So I'll run through a route selection  
7 process followed by Keystone and its typical  
8 pipelines in general.

9 We start with the identification of  
10 the project objectives. That is what is it  
11 the project is to accomplish. And in this  
12 case it is to move crude oil from supply in  
13 northern Alberta to markets in Illinois and  
14 Oklahoma.

15 We next identify what we would call  
16 control points. Control points are those  
17 points along the route that the route must  
18 pass through. Obviously the supply point is  
19 the beginning of the system. That's a control  
20 point. And delivery points are control  
21 points. The project must pass through those.

22 On the Keystone project there's two  
23 important control points that define largely  
24 where the route ends up, particularly in North  
25 Dakota. Mr. Cowling described earlier the

1 conversion of an existing natural gas line in  
2 Canada from gas service to oil service. The  
3 use of that facility largely determines where  
4 we enter the US. That fixes a control point  
5 roughly 30 miles west of I-29.

6 Another control point that affects  
7 this portion of the route is the Missouri  
8 River crossing. River crossings represent  
9 considerable challenges to pipelines,  
10 particularly large rivers such as the  
11 Missouri, and there's a limited number of  
12 places that are suitable for crossing.

13 Keystone has identified a crossing  
14 at Yankton, South Dakota as an optimal  
15 location. And that is located roughly 30 to  
16 35 miles west of I-29, and again serves as a  
17 control point.

18 Based on these control points and  
19 objectives we establish what we refer to as a  
20 study area. This is the area within which  
21 we're going to start looking for, for routes.

22 The study area begins very large.  
23 It's basically a region within which these  
24 points are established. And then we begin a  
25 process of collecting data and input to feed

1 into our analysis.

2 Data that's collected is extensive  
3 environmental data, wetlands data, biological  
4 data, soils data. Anything we can get our  
5 hands on that's relevant to the siting of a  
6 pipeline. And then we solicit input from  
7 agencies and, and other groups that can  
8 provide suggestions on, on, on where  
9 appropriate routing can be, and where certain  
10 features can be found.

11 Based on these data we establish  
12 what we call constraints and opportunities.  
13 Constraints are areas that we prefer to  
14 minimize or avoid entirely. Opportunities are  
15 areas that, that, that are good for, for us as  
16 a suitable location for a pipeline.

17 Based on those constraints and  
18 opportunities we develop a number of  
19 alternatives. And this begins a  
20 multi-disciplinary review process of  
21 alternatives.

22 This includes environmental  
23 resources, biologists, soil scientists,  
24 engineers, land people. And we develop and  
25 assess a number of alternatives to arrive at

1 an initial preferred alternative.

2 We then take that alternative, our  
3 preferred alternative, and conduct extensive  
4 consultation with the public, with agencies,  
5 and other interested groups to solicit  
6 additional input. We take that input, we  
7 refine our alternatives further and go back  
8 through the entire process again. It is a  
9 recurring, repetitive process involving  
10 numerous considerations to eventually arrive  
11 at the preferred alternative that we then  
12 submit for scrutiny through the regulatory  
13 processes.

14 Now you need to -- North Dakota, the  
15 North Dakota PSC has defined exclusion areas  
16 for the purpose of routing a transmission  
17 facility such as Keystone. Exclusion areas  
18 are defined as areas that are to be excluded  
19 for consideration of a transmission facility.

20 The proposed Keystone route does not  
21 involve any exclusion areas in North Dakota.  
22 There is one exclusion area that's located  
23 within the one mile PSC corridor, however the  
24 route does not impact it. And that's the Fort  
25 Ransom State Park.

1           Now the PSC also specifies avoidance  
2 areas. These are areas that are to be avoided  
3 by a transmission facility unless there is no  
4 reasonable alternative.

5           Keystone involves a few avoidance  
6 areas. There's a state forest located,  
7 associated with the Pembina River. The  
8 Keystone route does cross that state forest.  
9 We have been working with the North Dakota  
10 Forest Service, though, on developing  
11 construction techniques which avoids the  
12 forested area associated with the, with that  
13 crossing.

14           In essence we're using a technique  
15 called horizontal directional drilling. We  
16 will be drilling underneath the forested  
17 components of that state forest.

18           Now other avoidance criteria  
19 involves residences. The transmission  
20 facility is to be routed at least 500 feet  
21 away from residences.

22           Now the Keystone route as, as  
23 proposed involved twenty-three potentially  
24 affected residences within 500 feet. Pursuant  
25 to North Dakota law Keystone has obtained

1     waivers from the landowners of eighteen of  
2     those residences. Reroutes and route  
3     refinement has resulted in the movement of the  
4     line away from four of those residences, and  
5     we have one additional residence that is  
6     marginally within the 500 foot avoidance  
7     criteria, details of which I will present in  
8     formal testimony later.

9             Now as Mr. Cowling mentioned the  
10    project undergoes extensive environmental  
11    review through a number of regulatory  
12    processes and agencies. Also as Mr. Cowling  
13    mentioned the project is, is the subject of a  
14    NEPA review, National Environmental Policy Act  
15    review, with Department of State as the lead  
16    federal agency.

17            To initiate that process Keystone  
18    submitted an application complete with  
19    extensive environmental surveys, cultural  
20    resource surveys, to the Department of State.  
21    That application involved, again, extensive  
22    studies and very detailed field surveys of all  
23    of the major resource areas applicable to  
24    environmental impact assessment. And these  
25    data are also submitted in support of the

1 North Dakota PSC application.

2           Impacts associated with these  
3 studies and the proposed project are  
4 summarized in Table 3 of the North Dakota PSC  
5 application. And that table covers all major  
6 environmental resource areas applicable to the  
7 project.

8           Now another key component or key  
9 activity that we undertake during this period  
10 of time is planning our environmental  
11 mitigation practices. We do this so that we  
12 can be proactive in making commitments for  
13 environmental mitigation to minimize the  
14 impact associated with the project.

15           Keystone has developed what we call  
16 a construction mitigation and reclamation  
17 plan. This plan contains all of the, the  
18 specifications and procedures for crossing  
19 various types of land uses, such as  
20 agriculture, cultivated areas, forested  
21 areas. It also includes specifications and  
22 procedures for crossing features such as water  
23 crossings, wetlands.

24           And these are very detailed  
25 procedures that form the basis of commitments

1 Keystone has made through the regulatory  
2 processes. These, these commitments will,  
3 having been part of the applications, will  
4 form part of the conditions of approval.

5 Now the construction mitigation  
6 reclamation plan has also been filed in  
7 support of the North Dakota PSC process. Now  
8 the PSC and other regulators may also attach  
9 additional conditions, in addition to what we  
10 have committed to in our construction  
11 mitigation reclamation plan. And we feel that  
12 the adoption of these procedures will minimize  
13 the impact associated with the project.

14 And with that I'd would like to turn  
15 it over to Buster Gray for some discussion on  
16 land requirements and construction.

17 MR. KELSCH: Thank you, Mr. Koski.

18 We would call Mr. L.A. Buster Gray  
19 to the stand.

20

21 L. A. B U S T E R G R A Y,  
22 having been previously sworn, testified on his  
23 oath as follows:

24

25 MR. WAHL: Mr. Gray, you understand,

1 of course, that your testimony continues under  
2 oath and subject to penalties of perjury.

3 MR. GRAY: I do.

4 MR. WAHL: Mr. Kelsch.

5 MR. KELSCH: Mr. Gray, could you  
6 state your name for the record.

7 MR. GRAY: My name is Loys, that's  
8 L-o-y-s, Gray, with the nickname Buster.

9 MR. KELSCH: Thank you.

10 And what is your position with the  
11 TransCanada Keystone Pipeline project?

12 MR. GRAY: I'm the engineering and  
13 construction manager for the, for the US  
14 portion of the pipeline.

15 MR. KELSCH: You may continue with  
16 the presentation.

17 MR. GRAY: For, for the pipeline and  
18 its construction we'll utilize an approximate,  
19 or 110 foot construction right-of-way that's  
20 depicted in this graphic. That's comprised of  
21 a 60 foot temporary workspace and a 50 foot  
22 permanent right-of-way.

23 The 60 foot temporary workspace at  
24 the completion of construction will revert to  
25 the landowner. The permanent easement will

1 remain for the life of the pipeline.

2 We also will be acquiring additional  
3 temporary workspace and that's typically in  
4 areas that we have to perform large  
5 excavations. Stream, river crossings, road,  
6 railroad type crossings and other topographic  
7 areas. And it's simply needed to have area to  
8 place spoil or dirt.

9 The last item of land use that we  
10 will be acquiring here in North Dakota is for  
11 pipe yards. We, and contractor yards. Pipe  
12 yards are located approximately every 30 miles  
13 along the pipeline route, typically in  
14 proximity to rail sitings, to bring our pipe  
15 close to the right-of-way. Those yards will  
16 typically be in the range of 20 to 30 acres.

17 We try and seek sites that might  
18 have been used for some type of commercial  
19 activity, like a trucking company or some type  
20 of equipment company that might have acreage.  
21 However, if we cannot find that we will seek  
22 land from, from our, or undeveloped land for,  
23 for use.

24 Contractor yards in North Dakota, we  
25 anticipate there being two to three in the

1 state for our contractors for building the  
2 pipeline would be located. These are  
3 warehousing facilities and they typically  
4 would utilize approximately 20 acres. They  
5 are typically located in larger communities  
6 that have lodging and other facilities  
7 available for the construction workers.

8 Mr. Koski discussed the  
9 construction, mitigation and reclamation  
10 plan. It covers all types of lands that we  
11 cross. And certainly here in the Midwest the  
12 most prominent feature that we deal with is  
13 agricultural and cultivated land, as well as  
14 range and pasture land.

15 This is quite an extensive document  
16 that has procedures and requirements that we  
17 place upon ourselves, with the key item being  
18 is to mitigate damage to the land in order  
19 that we can restore and reclaim it and return  
20 it to its original productivity. It covers a  
21 number of items that are listed here but, but  
22 key things are not just land activities.  
23 Things like noise during construction, dust  
24 control, and actually control of noxious  
25 weeds. But a number of things are spelled out

1 that through our industry over time have  
2 proven to be very successful in allowing us to  
3 return the land.

4 This graphic represents pipeline  
5 construction and it's a graphic representation  
6 of what we call construction spread which is  
7 essentially a construction contract. And I  
8 use the terminology of an assembly line, and I  
9 always relate it to something like Ford Motor  
10 Company, in that Ford Motor Company the  
11 product or the car moves through the warehouse  
12 facility by workers that are stationary that  
13 will perform a specific task in the assembly  
14 of an automobile. For a pipeline the  
15 difference for us is, is that the pipe once  
16 it's to the right-of-way it stays stationary  
17 and our assembly line moves along the, along  
18 this construction right-of-way.

19 A few comments about this slide are,  
20 is that, that from the initial operations of  
21 surveying and clearing, to the back end  
22 operations of burying the pipe and cleaning  
23 up, some key things here are, oh, that's  
24 typically a distance, it might be 50 to 60,  
25 maybe 70 miles. The crews typically work

1 about four days to a week apart that so they  
2 don't run up on each other. And this  
3 operation will progress, we're estimating in  
4 North Dakota at about a mile-and-a-half per  
5 day.

6 The operation will consist of an  
7 estimated, between construction supervision,  
8 construction workers, inspectors for safety,  
9 environment quality control, and surveyors we  
10 estimate the workforce to be about 500 workers  
11 per construction spread. We anticipate two  
12 construction spreads in North Dakota.

13 One would start at the Canadian  
14 border working southerly to about mile pole  
15 130, which is in northeastern Barnes County.  
16 At that point the second contractor working  
17 simultaneously would be working southerly  
18 towards the South Dakota Border. Those, those  
19 two operations going at the same time would  
20 equate to approximately a thousand workers  
21 during the construction of the pipeline.

22 I missed one other comment to, and  
23 I'll back up to it on the slide. Many  
24 landowners interested, this operation from  
25 front end to back end, always dependent upon

1 weather, we would anticipate your land would  
2 be impacted about eight to twelve weeks, if we  
3 had relatively decent weather.

4           The next series of slides are really  
5 photographs of that assembly line. And they  
6 show you some of the components of the  
7 construction to give you kind of an idea of  
8 what, what, what our construction looks like.

9           I mentioned in mitigation in the  
10 Midwest conservation of topsoil is, is one of  
11 the absolutely key criteria to returning your  
12 land to its original productivity. This slide  
13 represents what we call trench and spoil  
14 topsoil stripping.

15           We actually have three methods. One  
16 is the trench line only, trench and spoil, or  
17 if you requested the full right-of-way we can  
18 strip the topsoil. There's a lot of different  
19 experts' opinions about which one of these  
20 methods is the best. But we're here to, to  
21 say we will do the method that you think is  
22 best for your property or describe to us that  
23 you would like to be done.

24           Pipe from the pipe yards, I  
25 mentioned we haul the pipe to the

1 right-of-way. We have an operation called  
2 stringing. It's where we place the pipe along  
3 the right-of-way, along the trench line.

4           And then this operation is called  
5 bending. And actually this pipe, as large as  
6 it is, has to be bent to, to follow the  
7 topography of the earth, as well as to where  
8 we make horizontal turns in the pipeline. And  
9 we have large hydraulic machines that perform  
10 that operation.

11           The next operation of trenching, two  
12 methods that we typically use are, are with a  
13 large bucket or wheel trencher or backhoes.  
14 And in North Dakota, particularly with your  
15 groundwater, we feel like probably a large  
16 portion of this will be dug with backhoes and  
17 not the wheel trenchers.

18           Next in our operation the welding of  
19 the pipe. We utilize either a manual or stick  
20 welding much like is used in rural  
21 communities, but we also may utilize automatic  
22 welding technology.

23           And, and both of the technologies  
24 would be inspected upon completion of welds  
25 for defects. And defects are either repaired

1 or removed. And the technologies for that are  
2 radiographic or x-ray inspection or ultrasonic  
3 inspection. And those technologies are very  
4 similar to what you see in a medical facility.

5 In our next operations once the pipe  
6 is welded, the pipe comes to the right-of-way  
7 with a preapplied mill coating. And this  
8 technology has really advanced over the past  
9 10 to 15 years. These coatings are fused to  
10 the pipe.

11 And with your automobiles and your  
12 farm equipment is, is you've also noticed in  
13 that equipment that these coatings are much  
14 superior to what they were 10, 15, 20 years  
15 ago. You don't have near the issues with rust  
16 and things to equipment as you used to have.

17 Once the coating, weld is made we  
18 have to coat the field joint we call it, where  
19 the weld was completed. And this is done with  
20 either a spray applied coating or a brush  
21 applied coating to this weld area.

22 Once that's completed we have an  
23 electronic device called a jeep or a holiday  
24 detector. It travels along the pipe with an  
25 electric current and if there's a, a damage in

1 the coating it, it creates a short that will  
2 give an, actually a jeep kind of beeping  
3 sound.

4 The technician will locate the  
5 anomaly and will repair it. Once the pipeline  
6 has passed that inspection it's ready for  
7 lifting and lowering into the trench.

8 Our next operation of backfill, the  
9 spoil that we remove from the trench line is  
10 typically what we backfill the pipe with. And  
11 occasionally where we run into rock or an  
12 angle or certain diameter we will use machines  
13 called padding machines to separate the finds  
14 from the, from the spoil material, place it  
15 around the pipe to 6 to 8 inches above the  
16 pipe before putting the remainder of the spoil  
17 in.

18 Mentioned the topsoiling. And this  
19 photograph is actually from the central  
20 Minnesota area, and with the topsoil being  
21 replaced where I don't know if you, you have  
22 has distinct of coloration differential in  
23 North Dakota between your topsoil and subsoil  
24 as, as in central Minnesota, but it's hugely  
25 apparent in Minnesota.

1           Some concerns that we hear about  
2 typically are road and utility crossings. And  
3 with utilities by our standards we typically  
4 go beneath existing utilities.

5           We are required by our codes to have  
6 a 12 inch basin. And a lot of that's dictated  
7 because the depth of existing utilities will  
8 not allow us to cross over and have the amount  
9 of cover that we need to meet the requirements  
10 of our standards.

11           Utilities are contacted formally to,  
12 to request the requirements to cross the  
13 facilities. And, and typically we will work  
14 to an agreement of, of the methods and the  
15 inspection if a third-party utility wants to  
16 be present during that operation.

17           Road crossings. Any paved, well  
18 maintained, well highly used roads will be  
19 bored. Here in North Dakota we, from prior  
20 work in the state for myself, you have some  
21 section lines and township roads that are, I  
22 call them two-track, that are not necessarily  
23 well maintained. And we may very likely come  
24 to you and seek permission to open cut those  
25 types of roads. But again, we have to seek

1 your permission to do that.

2           Once the pipeline's completed we  
3 have to fill it with water. And it's  
4 typically with water taken from rivers and  
5 streams along the pipeline route. I might add  
6 that we have to get the appropriate permits  
7 for the allocation of that water. Once the  
8 pipe's tested it's returned to the streams and  
9 rivers, and, and through filtration and  
10 things, but also we have to be meet permit  
11 requirements to return the water to the  
12 streams.

13           The, the testing operation is, is,  
14 Mr. Koski mentioned the maximum operating  
15 pressure is 1,440 pounds per square inch of  
16 pressure. We're required by law to test it to  
17 125 percent of that pressure. And that  
18 equates to 1,800 psi. These, these test  
19 records as well as many other records about  
20 the pipeline are required to be maintained by  
21 the operating company for the life of the  
22 pipeline.

23           This device that you see that's, is  
24 what we call a caliper pig. It's a geometry  
25 type device that's electronic that's run down

1 the pipe at the completion of construction.

2 Its primary purpose is to, to locate  
3 any, any dents, any, any wrinkles, any  
4 deformation or ovality in the pipe from our  
5 construction operations. If that type of  
6 damage is discovered those sections or areas  
7 of pipe are removed prior to the pipe being  
8 put in, or pipeline being put into operation.

9 These are just two or three of the  
10 items concerning reclamation. And, and I  
11 touch upon them because compaction is the most  
12 series thing that, that we do during  
13 construction that can damage the land, in my  
14 opinion. We run trucks and heavy equipment  
15 along the pipeline right-of-way creating  
16 compaction.

17 Relieving that compaction, much like  
18 you guys rip your soil on some periodic basis  
19 we do as well. And, and we'll rip with  
20 ripping tools or para plows to relieve  
21 compaction. And we will test the right-of-way  
22 with a penetrometer for compaction versus the  
23 adjacent land to the right-of-way to reach an  
24 equivalent level of compaction that existed  
25 prior to construction.

1                   Rock removal in the Midwest of  
2                   glacial till with cobble, certainly during our  
3                   construction we will create rock and our  
4                   cleanup operations, our requirements that we  
5                   work to is a density less than the, the  
6                   adjacent right-of-way in your field, and a  
7                   diameter or size of stone that is less, in  
8                   other words a cleaner strip on our  
9                   right-of-way than exists in the adjacent  
10                  field.

11                  Lastly with seeding, particularly in  
12                  nonagricultural areas, what we, what we want  
13                  to do is get ground cover back on the  
14                  right-of-way as quickly as possible. And  
15                  working with local soil conversation services  
16                  for seed mixes we will, we will seed the  
17                  right-of-way as quickly as possible to get  
18                  vegetations, to prevent erosion in, in the  
19                  event of rain and rainfall.

20                  This photograph's purpose is a  
21                  during construction and an after construction  
22                  look of a similar area. And it's got a couple  
23                  of purposes for me and that is one, we will  
24                  work very diligently under our requirements  
25                  and the mitigation requirements to return your

1 land to its function and productivity. And we  
2 believe we can successfully do that over a  
3 short period of time. One to two to three  
4 years.

5 The, the key message in this  
6 picture, though, is we cannot return your land  
7 to what it looked like exactly before. And we  
8 will, we don't expect anybody to, to have any  
9 expectation that we have that capability. But  
10 our goal is to get it back to its productivity  
11 as quickly as possible.

12 The construction mitigation and  
13 reclamation plan has, it's a document that's  
14 filed with the Public Service Commission and  
15 the Department of State, it's available to  
16 you, but I, I strongly suggest to you that  
17 those requirements our, our industry follows.  
18 It's my responsibility as the engineering and  
19 construction manager of the project to see  
20 that they're implemented and followed.

21 We've done it on previous projects  
22 and we will see that it's done on these  
23 projects. And we're confident that we can  
24 return your land to its original productivity.

25 MR. KELSCH: Thank you, Mr. Gray.

1 I would call Mr. Cowling back.

2

3 D E A N C O W L I N G,  
4 having been previously sworn, testified on his  
5 oath as follows:

6

7 MR. WAHL: Mr. Cowling, I hesitate  
8 to keep saying this but I must, you  
9 understand, of course, that your testimony  
10 continues under oath and subject to penalties  
11 of perjury.

12 MR. COWLING: I do.

13 MR. WAHL: Mr. Kelsch.

14 MR. KELSCH: Mr. Cowling, you can  
15 continue with the presentation.

16 MR. COWLING: Thank you.

17 The, the next line I just wanted to  
18 highlight, that Keystone is subject to both  
19 compliance with both federal and state  
20 regulations. And we've identified those  
21 regulations on the slide.

22 These regulations are intended to  
23 ensure protection of the public and prevent  
24 pipeline failures. And at TransCanada we  
25 commit to meet or exceed all of these federal

1 and state regulations.

2 Just want to go through very quickly  
3 a couple of the design futures for, for the  
4 project. The first design feature that we  
5 have for the project is depth of cover.

6 Typically pipeline construction in,  
7 in other pipelines across the United States  
8 are buried to a, to a 3 foot depth of cover.  
9 Within our construction mitigation plan that  
10 Mr. Gray just went through we will be burying  
11 the pipe to a depth of 4 feet.

12 Other key considerations are we will  
13 utilize high strength steel for corrosion  
14 protection. We will use external protective  
15 coatings and cathodic protection, marker  
16 signs, isolation valves, et cetera.

17 Just want to talk real briefly about  
18 the last bullet on the last slide, and that  
19 was leak detection and SCADA leak detection  
20 design. The entire pipeline transmission  
21 system is monitored 24 hours a day, 365 days a  
22 year by highly trained employees from a  
23 computerized control center.

24 It's important also tonight to note  
25 that the computerized control center will be

1 fully redundant. The SCADA computer system  
2 will detect changes in pressure along the  
3 pipeline and ensure the facilities are  
4 operating correctly.

5 A dedicated leak detection system  
6 detects volume and balances on a real-time  
7 basis. We can check, essentially, essentially  
8 what it means is what goes in the pipeline is  
9 what we expect to go out the pipeline, and we  
10 have real-time data that we actually manage  
11 every day.

12 TransCanada has an extensive  
13 pipeline maintenance program to monitor,  
14 inspect and repair our pipeline facilities.  
15 Regular activities include in-line inspection,  
16 also referred to as pigging. As Mr. Gray  
17 discussed earlier before we put the pipe into  
18 operation we use a pigging tool to detect  
19 dense or other anomalies in the pipe, and we,  
20 we will repair those before we place it into  
21 service.

22 Once we're placed into operations we  
23 will also use that technology on an ongoing  
24 basis in pipeline operations. If we find any  
25 anomalies Keystone will investigate and repair

1 anomalies reported by the in-line inspection  
2 as per federal regulations.

3 Another area is currently we've  
4 actually filed with both the Department of  
5 State, and I believe with the Public Service  
6 Commission our preliminary emergency response  
7 plan. This response plan will, this response  
8 plan discusses the following matters.

9 It prepositions response equipment  
10 at locations based on a spill analysis that we  
11 have also completed as it relates to  
12 supporting the requirements of, of, of our  
13 regulatory requirements. Responders will be  
14 located along the route and able to respond  
15 within the regulations, and Keystone will  
16 remediate the area of a spill in coordination  
17 with federal and state agencies, including the  
18 Department of Health.

19 Right now Keystone, as I mentioned  
20 earlier we have filed a preliminary response  
21 plan with, with our regulators, and we are  
22 currently scheduling or forecasting that we  
23 will have our final emergency response plan  
24 completed in Q1 of 2009 of which we would take  
25 that forward to the regulators to review.

1           Lastly I just wanted to close by  
2 saying our commitment to you folks is to  
3 design and construct and operate a safe  
4 pipeline, to build and operate in a socially  
5 and environmentally responsible manner, to  
6 meet or exceed government standards, to  
7 consult with all stakeholders on a regular  
8 basis, whether that's government at the  
9 federal and state level, county commissioners  
10 and landowners. And lastly, to treat all  
11 stakeholders with respect and fairness.

12           And I think that's it.

13           MR. KELSCH: Thank you, Mr.  
14 Cowling.

15           We've completed the presentation,  
16 your Honor.

17           MR. WAHL: Thank you, Mr. Kelsch.

18           Let's move the lectern back to the  
19 center, and we can proceed with public  
20 testimony. This may be a good time if you  
21 wish to stand up and stretch your legs while  
22 we move this equipment around a little bit.

23           (Whereupon, a brief recess was  
24 taken.)

25           MR. WAHL: Let's be in order

1 please. We can begin with the public  
2 testimony portion of the hearing.

3 I will ask first for those who speak  
4 in favor of the pipeline. I would ask you  
5 please to print your name and address.

6 What is your name, sir?

7 MR. BERGQUIST: I'm Harold Bergquist  
8 from Lakota.

9 MR. WAHL: All right, Mr. Bergquist,  
10 did you hear me, hear my advice regarding  
11 perjury?

12 MR. BERGQUIST: I did.

13 MR. WAHL: Will you raise your right  
14 hand, please.

15

16 H A R O L D B E R G Q U I S T,  
17 of Lakota, being first duly sworn, was  
18 examined and testified on his oath as follows:

19

20 MR. WAHL: You may proceed with your  
21 testimony, Mr. Bergquist.

22 MR. BERGQUIST: As stated I'm Harold  
23 Bergquist from Lakota, North Dakota. I'm a  
24 native of western Walsh County but now live in  
25 Nelson County where I also serve as county

1 commissioner.

2 Today I speak only as a  
3 representative of my own interests. I'm in  
4 favor of this project.

5 As a Nelson County Commission we  
6 have asked, requested of the Keystone pipeline  
7 project that we receive some \$300 per crossing  
8 of our section lines for the maintenance of  
9 any damage that might occur during the  
10 construction period. We've not had a response  
11 to that request as, as I understand it.  
12 However we're optimistic that that will be a  
13 positive response.

14 In the broader sense it seems to me  
15 that people in North Dakota really do need to  
16 cooperate with this venture. We know there's  
17 a need for energy and the alternative energy  
18 sources which many of us support as an  
19 alternative, and as a future source of energy  
20 will not be fulfilled in the immediate  
21 future. So therefore, I think it's only  
22 reasonable that we do whatever we can to  
23 facility the construction of this pipeline for  
24 our own selfish benefit and also for the  
25 benefit of the people of the nation.

1 Thank you.

2 MR. WAHL: Just a moment please, Mr.  
3 Bergquist.

4 Mr. Kelsch, any questions for the  
5 witness?

6 MR. KELSCH: No questions, your  
7 Honor.

8 MR. WAHL: Mr. Delaney?

9 MR. DELANEY: I have a couple.

10 Mr. Bergquist, how much, how much  
11 money is the county that you serve as  
12 commissioner in expected to receive as a  
13 result of the project.

14 MR. BERGQUIST: We are asking for  
15 only \$300 per section line. I believe there  
16 are some 28 section lines to be crossed by  
17 this project.

18 MR. DELANEY: Okay. And has, has  
19 your commission reviewed any documents filed  
20 by the pipeline company?

21 MR. BERGQUIST: Only the standard  
22 documents which have been made available  
23 through the public media, et cetera. And  
24 we've also had a hearing in Nelson County  
25 attended by, or forumed basically by

1 representatives of the project.

2 MR. DELANEY: I have no other  
3 questions.

4 MR. WAHL: Mr. Binek?

5 MR. BINEK: I have no questions.

6 MR. WAHL: Do the Commissioners have  
7 any questions?

8 MR. CRAMER: I don't have any.

9 MS. WEFALD: None, thank you.

10 MR. CLARK: Thank you.

11 MR. WAHL: Thank you very much, Mr.  
12 Bergquist.

13 Is there anyone else who wishes to  
14 speak in favor of the proposed pipeline  
15 project?

16 Is there anyone who wishes to speak  
17 against the proposed project? Or as I said  
18 anyone who has, who may not be opposed to the  
19 project but who may wish to comment on it, in  
20 one particular or another.

21 MR. WAHL: Mrs. Capp, will you  
22 please state your name and address for the  
23 record.

24 MS. CAPP: I'm Janie Capp, from  
25 12466 60th Street Northeast, Lankin, North

1 Dakota.

2 MR. WAHL: And Mrs. Capp, I  
3 understand your testimony is also directed to  
4 the hearing yesterday in Valley City which you  
5 attended, with regard to the certificate of  
6 public convenience and necessity.

7 MS. CAPP: Yes.

8 MR. WAHL: You may proceed, Ms.  
9 Capp.

10 MS. CAPP: Should I be sworn in?

11 MR. WAHL: Very good.

12 Did you hear, Ms. Capp, did you hear  
13 my advice regarding perjury?

14 MS. CAPP: Yes, I did.

15 MR. WAHL: Will you raise your right  
16 hand, please

17

18 J A N I E C A P P,  
19 of Lankin, North Dakota, being first duly  
20 sworn, was examined and testified on her oath  
21 as follows:

22

23 MR. WAHL: Now you may proceed.

24 MS. CAPP: It needs to be stressed  
25 again how is this pipeline going to benefit

1 North Dakota. I believe it is just a  
2 pass-through route and no North Dakota oil  
3 will be shipped or shipped back to North  
4 Dakota.

5 It is like a highway running from  
6 Montana to Minnesota. Will it benefit, would  
7 it be a benefit to North Dakota if no one from  
8 North Dakota can get on or off of it.

9 If North Dakota cannot put oil into  
10 it than it is not a common carrier to North  
11 Dakota. If Keystone had planned on letting  
12 North Dakota put in our oil than we would,  
13 then they would have planned the route in the  
14 western part of North Dakota where the oil  
15 is.

16 We have our own oil that is untapped  
17 in the United States and it would be cheaper  
18 and more feasible to use it as the tar sands  
19 is very crude oil and more costly to refine.  
20 First let me explain that the oil supposedly  
21 coming into the pipe is heavy crude oil coming  
22 from tar sands. Tar sands contain very toxic  
23 chemicals. Nickel, mercury, lead, arsonic and  
24 benzene. One teaspoon of benzene can  
25 contaminate two hundred and sixty, six hundred

1 and sixty gallons of water. The EPA allows no  
2 more than .005, which is one teaspoon, in  
3 ground and surface water.

4 Most of these chemicals are  
5 extremely flammable. Oil sands such as these  
6 are extracted not drilled like you would  
7 think. Keystone pipeline with a high pressure  
8 pipeline operating at 1,400 psi's may be  
9 raised to 1,700 psi's, and may go as high as  
10 2,000 psi's means a high risk to the people in  
11 North Dakota.

12 For example, a pipeline -- a  
13 waterline operates at 100 to 209 psi's. And a  
14 natural gas line operates at 675 psi's failed  
15 and killed 12 people in Karlsbad, New Mexico.  
16 And TransCanada has had no experience in  
17 operating high pressure oil pipelines,  
18 according to L.A. Buster chief engineer and  
19 Nicholas Atkin, stakeholder relations  
20 manager. And they said that at their May 10,  
21 2007 public meeting in Britton, South Dakota.

22 Keystone has admitted to leaks. 596  
23 spills, an average of 97 a year. They may not  
24 detect a leak less than 1.5 percent of the  
25 maximum amount for up to 90 days which could

1 result in a spill of several barrels of oil.

2           The pipeline is close to small rural  
3 towns that depend on aquifers for water not to  
4 mention the high water table and shallow  
5 wells. Not to be concerned about a spill into  
6 the water and the slope of the land.

7           Also a spill on prime farmland will  
8 make it sterile forever, meaning the section  
9 of the land where the pipe lies is the most  
10 expensive land. You cannot stop the drill  
11 from seeding or the spreading of fertilizer or  
12 the plane from spraying over that section but  
13 you will get no crop off of it, making it the  
14 most expensive.

15           In Coffeyville a leak in Kansas  
16 spent, sent 333,000 gallon of crude into the  
17 river and it flowed for 13 miles before it was  
18 discovered. It was discovered because of a  
19 strong petroleum odor causing them, caused  
20 what they think it is by stress of the line  
21 when the crack moved in the ground.

22           Just where is this man going to be  
23 stationed to man the pipeline? In Canada? In  
24 Grand Forks, which is still an hour away?  
25 That is way too long to keep a major spill

1 from draining out on our productive farmland.

2 I believe any surface and  
3 groundwater associated with the Red would be  
4 contaminated by a spill because highly  
5 mineralized water and saline soils are common  
6 throughout North Dakota, and therefore  
7 corrosion of a pipeline is a problem. North  
8 Dakota has a shortage of good drinking water  
9 so surface and groundwater needs to be  
10 protected.

11 There is article after article on  
12 the website about oil spills and contaminating  
13 water. How the spills are never totally  
14 cleaned up.

15 For instance a bullet ricocheted in  
16 the sands of Kuwait puncturing the seam of an  
17 oil pipeline found days later by a soldier  
18 when he noticed a bubbling coming out of the  
19 sand. That could just as well have been us  
20 when a rock moves in the spring of the year.  
21 We need to save our water resources and our  
22 land, not just for us but for the future  
23 generations.

24 Keystone has said statements that  
25 all the communities will benefit. Well, I

1 don't think our small community of Lankin  
2 better start planning to build any motels.  
3 They might spend a Pugsley, money for a  
4 Pugsley or so. Because they said they will be  
5 in and out of the area very quickly. So who  
6 is going to benefit.

7           Keystone talks about tax revenue for  
8 the state, the county, schools and townships.  
9 How are our landowners going to benefit?

10           We are suppose to supply the land.  
11 I understand that some of the landowners that  
12 have signed easements have gotten paid 7,600,  
13 7,800 per quarter. If the easement is for 99  
14 years that works out to be \$77 a year.

15           Landowners are scapegoats and are  
16 getting a raw deal. Again this section of  
17 land will be the most expensive to maintain,  
18 with the least amount of profit on it.

19           Keystone needs to post cash bonds  
20 and have liability coverage to protect private  
21 public property and public roads and  
22 utilities. There will be crop loss, property  
23 values, global warming and future earnings,  
24 environmental concerns. Not only does it take  
25 a large amount of energy to produce a barrel

1 but it also creates a significant amount of  
2 greenhouse gas pollution, about three times  
3 the pollution it takes to make a barrel of  
4 conventional crude.

5           Again, and the most important of all  
6 is the water supply for now and the future  
7 generations.

8           In closing, my men cut hay a couple  
9 days ago. It should have been dry enough  
10 today to bale, but it rained last night. So  
11 that is nature. We can't do anything about  
12 it. So it is something that farmers deal  
13 with. But a pipeline crossing in the middle  
14 of our fields is not nature. And it isn't  
15 something that we accept, and something can be  
16 done about it. That is why I am here.

17           Thank you.

18           MR. WAHL: Mr. Kelsch, do you have  
19 any questions for Ms. Capp?

20           MR. KELSCH: Yes, I have a couple,  
21 your Honor. Thank you.

22           Ms. Capp, you made a couple  
23 statements, and I just would like to know if  
24 you can tell us what your source for these  
25 statements or data were. I guess the first

1 one was that the pipeline pressure could  
2 increase to 1,700 or 2,000 pounds per square  
3 inch.

4 MS. CAPP: That is from Robert  
5 Jones, VP for TransCanada.

6 MR. KELSCH: And, and where, where  
7 did that come in? Is it something he said or  
8 something that was --

9 MS. CAPP: That is something that I  
10 had read off of the website, or an e-mail that  
11 I had received.

12 MR. KELSCH: Either on the  
13 TransCanada website --

14 MS. CAPP: Yes. Yes.

15 MR. KELSCH: -- or an e-mail you  
16 would have received from Mr. Jones?

17 MS. CAPP: No. No. From the other  
18 concerned citizens.

19 MR. KELSCH: An e-mail from  
20 TransCanada or --

21 MS. CAPP: No, no. The, the people  
22 opposing it.

23 MR. KELSCH: Okay. When did Mr.  
24 Jones -- he may have said this to you? Have  
25 you talked to Mr. Jones?

1 MS. CAPP: No. Like I said I read  
2 it.

3 MR. KELSCH: Okay, excuse me. I'm  
4 not trying -- so you read it in an e-mail.

5 MS. CAPP: Yes.

6 MR. KELSCH: Okay, thank you.

7 How about the issue, the question  
8 on, or the statement that in prime farmland a  
9 spill will make the soil sterile forever.  
10 Where did that statement come from?

11 MS. CAPP: My own thoughts. I mean,  
12 it's logic. You can't clean it up.

13 MR. KELSCH: The -- okay, that was  
14 going to be my next question. What is your  
15 source for the statement that spills can never  
16 be cleaned up or are never cleaned up?

17 MS. CAPP: Any oil spill, whether  
18 it's cooking oil or whether it's crude oil or  
19 any oil spill cannot be thoroughly cleaned  
20 up. It's just being a mother. I know that.

21 MR. KELSCH: No further questions.

22 MR. WAHL: Mr. Delaney?

23 MR. DELANEY: I have no questions.

24 MR. WAHL: Mr. Binek?

25 MR. BINEK: I have no questions.

1 MR. WAHL: Commissioners?

2 Commissioner Cramer.

3 MR. CRAMER: Thank you, Judge. I  
4 have one, Ms. Capp.

5 At the beginning of your testimony,  
6 now realizing that you have more than one  
7 objection to this obviously, but you made  
8 quite a strong point about the fact that North  
9 Dakota crude isn't evidently going to be  
10 allowed on this pipeline. If it was, if this  
11 was a North Dakota crude oil pipeline going in  
12 the exact same place would you be supportive  
13 of it?

14 MS. CAPP: I don't think so.

15 MR. CRAMER: Okay. I have nothing  
16 further.

17 MR. WAHL: Any further questions for  
18 -- Commissioner Wefald.

19 MS. WEFALD: Yes. I just want to  
20 make sure that I heard you correctly on a few  
21 things.

22 Did you say that you're from  
23 Lankin?

24 MS. CAPP: Yes.

25 MS. WEFALD: All right, thank you.

1           And then where is your home located  
2 on the pipeline route?

3           MS. CAPP: Okay, we live two miles  
4 south and a half a mile west off of Highway  
5 14. We have three-and-a-half quarters in the  
6 pipeline route going right down the field.

7           I have a map. I thought you might  
8 ask that.

9           MS. WEFALD: About how many miles or  
10 half miles, or what's the distance?

11          MS. CAPP: From Lankin like?

12          MS. WEFALD: No, from, of the  
13 pipeline on your property. How many miles --

14          MS. CAPP: Three-and-a-half  
15 quarters.

16          MS. WEFALD: Three-and-a-half  
17 quarters.

18          MS. CAPP: Yeah.

19          MS. WEFALD: Okay. So it's  
20 approximately --

21          MS. CAPP: Well, my husband will  
22 testify, too, --

23          MS. WEFALD: Okay.

24          MS. CAPP: -- and he knows more --

25          MS. WEFALD: That's fine.

1 MS. CAPP: -- on that so, --

2 MS. WEFALD: Okay, thank you.

3 MS. CAPP: -- but I do have a  
4 description of the lands or of the sections  
5 and that if you'd want to look them up.

6 MS. WEFALD: If the pipeline were  
7 able to be moved from crossing your, your  
8 property --

9 MS. CAPP: Yes.

10 MS. WEFALD: -- would that alleviate  
11 some of your concerns or not?

12 MS. CAPP: Well, personally I would  
13 like to see it back in Canada.

14 MS. WEFALD: You, you would like to  
15 not see the pipeline come through North  
16 Dakota.

17 MS. CAPP: Correct. Correct.

18 MS. WEFALD: All right.

19 MS. CAPP: But if it did have to, I  
20 think it should be, like go along a roadway  
21 where, is already owned.

22 MS. WEFALD: Um-hum.

23 MS. CAPP: And it would have like,  
24 almost like a retainer wall where you could  
25 hold the oil back. Maybe along I-29 or any

1 one of the major highways.

2 MS. WEFALD: You would rather have  
3 it moved so that it is near one of the major  
4 highways.

5 MS. CAPP: Yes. Where it can be  
6 easily contained.

7 And I believe that the emergency  
8 response, I mean Lankin and Dahlen and  
9 Fordville and all of that are very small  
10 communities.

11 MS. WEFALD: Yes.

12 MS. CAPP: And they don't have the  
13 manpower or even the training to deal with a  
14 major leak or a fire.

15 MS. WEFALD: Now it's Highway 32,  
16 isn't it, that runs north and south? I'm  
17 looking at my map. Is it Highway 32?

18 MS. CAPP: Yeah. But where we live  
19 it's along, it's along the 14.

20 MS. WEFALD: Okay. All right. How  
21 far is it from your home?

22 MS. CAPP: How far is the pipeline  
23 from our home?

24 MS. WEFALD: Um-hum.

25 MS. CAPP: Well, it's a little bit

1 more than 500 feet.

2 MS. WEFALD: Okay.

3 MS. CAPP: Not even -- okay, I walk  
4 the quarter mile all the time, so roughly a  
5 quarter of a mile.

6 MS. WEFALD: Okay. And if you --  
7 help me because I'm having trouble finding  
8 Highway 14 on my highway map as I'm looking at  
9 this, approximately how far is Highway 14?

10 Is it --

11 MS. CAPP: It would be about --

12 MS. WEFALD: -- to the west or to  
13 the east?

14 MS. CAPP: -- it would be about  
15 three miles --

16 MS. WEFALD: Three miles.

17 MS. CAPP: -- from 32.

18 MS. WEFALD: To the east or to the  
19 west?

20 MS. CAPP: To the west.

21 MS. WEFALD: To the west.

22 MS. CAPP: But like I says I do have  
23 these maps if you would like them. I made  
24 copies.

25 MS. WEFALD: Yes.

1 MS. CAPP: And they would show you  
2 exactly where it is.

3 MR. WAHL: I'll come and get them  
4 from you, Ms. Capp.

5 MS. WEFALD: I have no further  
6 questions, thank you, once those, that is  
7 received as an exhibit.

8 MS. CAPP: Okay.

9 (Whereupon, Exhibits JC1, JC2 and  
10 JC3 were marked for identification.)

11 MR. WAHL: For the record I am  
12 handing counsel what has been marked for  
13 identification as Exhibits JC1, JC2 and JC3  
14 which are aerial photographs, photocopies of  
15 aerial photographs showing the location of the  
16 pipeline through lands owned by Janie and John  
17 Capp, or lands in which Janie and John Capp  
18 have an interest.

19 MR. KELSCH: No objection, your  
20 Honor.

21 MR. DELANEY: I have no objection.

22 MR. BINEK: No objection.

23 MR. WAHL: Exhibits marked JC1, JC2  
24 and J3 -- JC3 are each received.

25 Commissioner Clark?

1           MR. CLARK: Just briefly, I assume  
2 you've been approached about easements. Have,  
3 have you signed those easements?

4           MS. CAPP: No, we have not. And we  
5 have really not been approached, either.

6           MR. CLARK: You haven't been asked  
7 at this point to sign an assessment?

8           MS. CAPP: No. They, it's kind of  
9 like a phone tag. They say they're coming  
10 out, they don't come out. Whatever.

11          MR. CLARK: Okay. Have you had  
12 folks on your property to survey it or have  
13 you given permission for that?

14          MS. CAPP: They did ask, a year ago  
15 or whatever a gentleman did call up and he did  
16 ask. I believe he came out to the farm, I was  
17 at work, then, and asked for permission to  
18 what you call a walk-on survey. And the men  
19 did not sign.

20          MR. CLARK: Okay. So they, they  
21 asked for permission, it was declined --

22          MS. CAPP: Yes.

23          MR. CLARK: -- and they haven't  
24 been on your property to your knowledge.

25          MS. CAPP: To our knowledge.

1           There is stakes on the roadway and  
2 this here where it would go. And those maps  
3 that I just gave you are from Keystone itself  
4 showing that, where the line would go.

5           MR. CLARK: Okay. Thank you.

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

7           MR. KELSCH: No, no further  
8 questions.

9           MR. WAHL: Mr. Delaney?

10          MR. DELANEY: No, your Honor.

11          MR. WAHL: Mr. Binek?

12          MR. BINEK: No.

13          MR. WAHL: Thank you very much, Ms.  
14 Capp.

15          MS. CAPP: You're welcome.

16          MR. WAHL: Mr. Capp, I understand  
17 that your testimony is also for the hearing  
18 for the certificate of public need and  
19 convenience which was held yesterday in Valley  
20 City, as well as for the hearing for the  
21 siting application. Is that correct?

22          MR. CAPP: Correct.

23          MR. WAHL: Mr. Capp, will you please  
24 raise your right hand. Did -- well, did you,  
25 you heard -- well, you've heard several times

1 now my advice regarding perjury, I'm sure.

2 MR. CAPP: Yes, I have.

3

4 J O H N C A P P,  
5 of Lankin, North Dakota, being first duly  
6 sworn, was examined and testified on his oath  
7 as follows:

8

9 MR. WAHL: You may proceed, sir.

10 MR. CAPP: We depend on our water  
11 supply for everything in North Dakota here.  
12 We have a real high water table and shallow  
13 wells. We keep hearing about all of the  
14 benefits that this pipeline is, is going to do  
15 for us. We do admitted that it will help our  
16 power companies to where they will be able to  
17 sell some more power, but what will happen to  
18 our water supply if we have a leak.

19 Keystone admits to 97 leaks a year,  
20 and they're small leaks they cannot detect.  
21 How will our rural water which gets water from  
22 our aquifers or cities that depend on it get a  
23 different water supply? Who's going to pay  
24 for it?

25 You claim that you will, Keystone

1 thinks that they will hire 10 to 15 percent of  
2 the labor force from North Dakota. Isn't that  
3 up to their contractors?

4 How can a Canadian company come in  
5 and declare it's a common carrier and just  
6 ship oil from Canada? We will not ship our  
7 own oil. Who grants the power of eminent  
8 domain? How did Keystone ever get this?  
9 They're not from the United States.

10 Why do you want a 99, why does  
11 Keystone want a 99 year lease when they claim  
12 the life of the pipeline is only 50 years?  
13 Which I really doubt, with the corrosive oil  
14 that they are planning on pumping.

15 Is it so they can sell or abandon or  
16 add pipelines without compensation to the  
17 landowners?

18 They, Keystone claims they are  
19 giving us a fair compensation. We understand  
20 that they are offering 99 year easements for  
21 \$7,700 or give or take, which amounts to about  
22 \$77 a year. Everyone is making a profit but  
23 the landowner.

24 Will our taxes go down? In essence  
25 the state of North Dakota is assessing the

1 same property twice, for taxes twice.

2 Our agriculture commissioner who is  
3 a member of the Industrial Commission states  
4 if we take care of the land, it will take care  
5 of us. Think about this. This is also about  
6 our water.

7 That is my comments. Thank you.

8 MR. WAHL: Mr. Kelsch, do you have  
9 any questions for the witness?

10 MR. KELSCH: No questions, your  
11 Honor.

12 MR. WAHL: Mr. Delaney?

13 MR. DELANEY: No.

14 MR. WAHL: Mr. Binek?

15 MR. BINEK: No.

16 MR. WAHL: Questions from the  
17 Commissioners? Commissioner --

18 MR. CRAMER: I don't have any.  
19 Thank you for your interest and your  
20 intervention and your comments. Thank you.

21 MR. WAHL: Commissioner Wefald?

22 MS. WEFALD: Yes.

23 I was told by the last witness that  
24 you could perhaps help me with  
25 three-and-a-half quarters, what distance that

1 is. I'm sorry, I need that help.

2 MR. CAPP: What distance it is from  
3 where?

4 MS. WEFALD: It is -- how far would  
5 the pipeline cross your property in miles?

6 MR. CAPP: About a mile and three  
7 quarter.

8 MS. WEFALD: A mile and three  
9 quarter. That's all I needed to know. Thank  
10 you.

11 MR. CAPP: It goes, to goes on the  
12 west side of County Road 14 and then it  
13 switches over and catches our 80 on the other  
14 side, east side of 14.

15 MS. WEFALD: Okay. Thank you so  
16 much.

17 MR. WAHL: Commissioner Clark?

18 MR. CLARK: Just briefly, the -- I  
19 know a number of witnesses, and you had  
20 mentioned it, and Mrs. Capp did as well, and a  
21 number yesterday, had talked about the, the  
22 leak data. That there have been a number of  
23 leaks reported on the existing Keystone  
24 lines.

25 Could you provide where we can get

1 that information?

2 MR. CAPP: I think Keystone website.

3 MR. CLARK: Anywhere in particular  
4 you can sort of direct us to, so we can look  
5 that up?

6 MR. CAPP: No.

7 MR. CLARK: Okay. But on the  
8 website is where you understand that data is.

9 MR. CAPP: Yep.

10 MR. CLARK: Okay. Thank you.

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

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: Thank you very much, Mr.  
18 Capp.

19 Is there anybody else who wishes to  
20 testify?

21 What is your name, sir?

22 MR. BORGESON: Terrel Borgeson.

23 MR. WAHL: Morgenson?

24 MR. BORGESON: Borgeson. With a B.

25 MR. Wahl: Mr. Borgeson, did you

1 hear my advice regarding perjury?

2 MR. BORGESON: Yes, I did.

3 MR. WAHL: Will you raise your right  
4 hand, please.

5

6 T E R R I L B O R G E S O N,  
7 of Park River, North Dakota, being first duly  
8 sworn, was examined and testified on his oath  
9 as follows:

10

11 MR. WAHL: Will you please state  
12 your name and address for the record.

13 MR. BORGESON: It's Terril Borgeson,  
14 6307 Highway 32, Park River, North Dakota.

15 MR. WAHL: I also ask you please to  
16 spell your name for the record.

17 MR. BORGESON: B-o-r-g-e-s-o-n.

18 MR. WAHL: You may proceed with your  
19 testimony, Mr. Borgeson.

20 MR. BORGESON: First I want to  
21 welcome you to Park River. It's wonderful  
22 that you take the time out to come to a local  
23 venue as opposed to everyone having to go to  
24 Bismarck or some faraway place. So I welcome  
25 all of you from Keystone, too, that, that are

1 here in Park River.

2 I want to state that I have no land  
3 where the pipeline will be sited. And I'm not  
4 a part of any group. I'm just an individual  
5 that has some concerns.

6 Our farm and home is  
7 three-and-a-half miles east, downstream from  
8 the north branch of the Forest River where the  
9 proposed route crosses the river. So we live  
10 three-and-a-half miles east of that.

11 The problem area that I see is  
12 Section 11, 14, 23, 26, 35 in Norton Township;  
13 Section 2, 11, 14, 23, and 24 in Cleveland  
14 Township. All in Walsh County. This totals  
15 about nine miles.

16 The route, the proposed route  
17 crosses the north branch of the Forest River  
18 pretty close to the north end of the  
19 description I gave you, and crosses the middle  
20 branch of the Forest River pretty close to the  
21 south. And I basically want to talk about the  
22 north branch of the Forest River, because  
23 that's the one I'm most familiar with. The  
24 one I've lived on that farm my entire life.  
25 My great-grandfather homesteaded it 125 years

1 ago. So we do know the area and we know the  
2 land. We know what happens up there.

3 Now there's about a 200 foot drop in  
4 elevation between the proposed pipeline route  
5 and my place. Approximately three,  
6 three-and-a-half miles. I don't know exactly  
7 where the pipeline route is there, but it  
8 would be close.

9 Now the route was moved out of the,  
10 out of the Fordville aquifer. Initially when  
11 I went to the meeting in Grafton they had it  
12 running right through the middle of the  
13 Fordville aquifer. And believe me I was one  
14 of them jumping up and down on them.

15 And they moved that out of there.  
16 Didn't take them long. That was a good  
17 thing.

18 But then they put it right on the  
19 edge of a 200 foot drop. Three-and-a-half  
20 miles sounds like a fairly long ways away.  
21 They actually moved it about four-and-a-half  
22 miles west, but they were in the middle of the  
23 aquifer. I am right on the west edge of the  
24 aquifer.

25 If they would have moved it three

1 miles and the terrain was flat, probably would  
2 have been sufficient. But it's not. It's  
3 right on the edge of the escarpment.

4 Now that river winds its way down,  
5 comes to my place. If there is any kind of a  
6 major event, a spring flood, '97 type deal,  
7 1997 type snowstorm, big rain in the  
8 summertime, it floods my fields, about 200  
9 acres. I've got a 5 foot dike around my  
10 farmstead. That has been overtopped. I've  
11 seen more floods around my place than I care  
12 to remember. Doesn't happen every year,  
13 sometimes it's twice in one year.

14 Then the water goes through a bridge  
15 on Highway 32, and slices right into the  
16 aquifer. You've got a V channel going right  
17 into the aquifer.

18 There is no overburden. As you  
19 think of safety factors that an oil spill  
20 seeping out over the land and there's 5, 10,  
21 15 feet of overburden before it would  
22 percolate down into the aquifer. Because of  
23 the Forest River this slices right into the  
24 aquifer. The bottom of the river is the top  
25 of the aquifer.

1           It goes about a half a mile east and  
2 then turns and goes to the south, southeast  
3 angles. Off that way.

4           Now the aquifer is shallow, and it's  
5 very course material. It's not as you think.  
6 Some aquifers can be a real fine sand. Real  
7 dense. Things move real slow. This is very  
8 course material.

9           The Walsh Water District, the City  
10 of Park River, the City of Minto, and just  
11 numerous farms and ranches depend on this  
12 water. Tens of thousands of people I think  
13 you could safely say use this aquifer as their  
14 main source of water.

15           So moving the route, you know, a  
16 mile west, just kind of scrunching it west a  
17 little bit, that really isn't going to take  
18 care of the problem because it's still 200  
19 feet. You move it a, a mile west it's 250  
20 feet. It just gives you a little more time to  
21 react to a spill.

22           The State Health Department has an  
23 in-depth study of the Fordville aquifer. They  
24 done that for Park River when they bought the  
25 government wells, and got a grant in for a

1 municipal water system out of the aquifer. So  
2 that's available. Topographical maps are  
3 available. Ladar maps are available.

4 All these things, I could have  
5 gotten hold of all of these things and  
6 presented them for evidence. Kind of wished I  
7 would have. But I thought you certainly have  
8 got access to all this material right in  
9 Bismarck. Go upstairs, downstairs, around the  
10 corner or wherever it takes, you can find it.

11 But no matter where the route is  
12 approved there should be an emergency response  
13 plans. And I see you're working on that. But  
14 I'm saying it should be in writing and  
15 approved by the PSC and other appropriate  
16 agencies before the permit is granted.  
17 Because that way you know what you're talking  
18 about.

19 Got to have, if we're going to have  
20 this thing here we got to know who to call and  
21 who's going to respond. Because we don't  
22 have, well, I think I'll give somebody a call  
23 in the morning because it looks like I've got  
24 oil running down the river. We don't have  
25 that kind of time in this situation. In this

1 specific spot. 200 foot drop, it's down in  
2 hours.

3 Now TransCanada said it chose this  
4 route to reflect market, engineering and  
5 construction efficiencies. I got this out of  
6 the Grand Forks Herald 7-22-07, Janelle Cole  
7 was the writer. And I hope she got it right  
8 because I'm quoting her on it.

9 Now according to the North Dakota  
10 Siting Act, which I just about had memorized  
11 25 years ago, but now I'm just going off my  
12 memory, and correct me if I'm wrong, the PSC  
13 is supposed to kind of use as its standard a  
14 route that minimizes adverse effect on  
15 landowners, people, environment. So I think  
16 I've got it right, I'm sure.

17 Now when the two concepts are  
18 compatible, that's wonderful. I mean when you  
19 have engineering efficiencies and minimized  
20 adverse effects that's wonderful. But when  
21 not, when they are not compactible, as in this  
22 situation on this eight, nine mile strip, then  
23 the PSC Siting Act of minimizing adverse  
24 effects must trump engineering and efficiency,  
25 engineering and construction efficiencies.

1           The legislature I know worked on  
2   that siting act, I'm sure it was 30, 35 years  
3   ago already. And they move slow sometimes,  
4   but they spent a lot of time on things, a lot  
5   of testimony, a lot of effort. And if the  
6   procedure is followed as they set out it  
7   should produce a satisfactory result. I mean  
8   that's what we're working with.

9           Okay, bottom line. Maybe there just  
10   isn't a straight line route for TransCanada  
11   through the whole state of North Dakota.  
12   Maybe it just isn't there. Maybe to minimize  
13   the adverse effects they might have to zig and  
14   zag a little bit.

15           So, what I'm saying is let's roll up  
16   our sleeves and get to work and do this thing  
17   right. Let's avoid the significant areas,  
18   let's minimize the adverse impacts,  
19   investigate the concerns that you hear today,  
20   and let's do it right.

21           So I want to thank very much for the  
22   opportunity to speak, and I'd be willing to  
23   entertain any questions.

24           MR. WAHL: Mr. Kelsch, do you have  
25   any questions for Mr. Borgeson?

1 MR. KELSCH: No questions.

2 MR. WAHL: Mr. Delaney?

3 MR. DELANEY: No.

4 MR. WAHL: Mr. Binek?

5 MR. BINEK: No.

6 MR. WAHL: Commissioners?

7 Commissioner Cramer.

8 MR. CRAMER: I would just -- I have  
9 no questions, but just thank you for your  
10 thoughtful testimony. And I also want to  
11 assure you, one of the things the legislature  
12 did do in its wisdom is create a very short  
13 time frame by which we can make a, in which we  
14 can make a, a decision. But we do have broad  
15 authority, and you're exactly right.

16 I want to assure you, though, that  
17 any permitting, even if it would be after the  
18 decision, such as, such as you referred to  
19 with regard to the emergency plan, even a  
20 decision made prior to those being in place  
21 can, in fact, and, and usually do, are  
22 contingent upon those plans being not only  
23 done and in place, but to our satisfaction and  
24 the satisfaction of other agencies. So I  
25 always like to remind people that don't, don't

1 get too hung up on what comes first or  
2 second.

3 Our decision, although it may come  
4 earlier than other decisions, often has those  
5 contingencies in it. And, and we go to, you  
6 know, to great lengths to make sure that all  
7 appropriate permits and safeguards are in  
8 place before the permit, even though it would  
9 be again passed and voted on, before it would  
10 become active. So I want to assure you of  
11 that.

12 But thank you very much for your  
13 thoughtful testimony.

14 MR. BORGESON: Thank you.

15 MR. WAHL: Commissioner Wefald?

16 MS. WEFALD: Yes.

17 You said that you've identified an  
18 eight to nine mile strip that is a problem.

19 MR. BORGESON: Um-hum.

20 MS. WEFALD: Isn't that correct?

21 Now if you were me, where would you  
22 put that pipeline in this vicinity?

23 You don't like the present route. I  
24 assume you don't want it east of that because  
25 you've said that the Fordville aquifer is a

1 problem. So are you recommending, can you  
2 tell us where you think that eight or nine  
3 mile stretch of pipeline should be located?  
4 And be specific please.

5 MR. BORGESON: Well, --

6 MS. WEFALD: As specific as you  
7 can.

8 MR. BORGESON: There is actually two  
9 ways of getting around the aquifer. You can  
10 either move the north, from this problem area  
11 all the way to the border --

12 MS. WEFALD: To the border of?

13 MR. BORGESON: Canada or United  
14 States.

15 You could move that whole segment of  
16 line east enough to bypass the Fordville  
17 aquifer on the east side.

18 MS. WEFALD: All right.

19 MR. BORGESON: And then swing back  
20 west to catch up. Because you've also got the  
21 Inkster aquifer and you've got the other Elk  
22 Valley aquifer. You've got to get west of  
23 them.

24 So that would be one alternative is  
25 to go eight miles, ten miles, I'm just

1 guessing, east all way to the border and hook  
2 onto their pipeline up there.

3 MS. WEFALD: Okay.

4 MR. BORGESON: Or, I don't know what  
5 problems you run into if you went eight, ten  
6 miles west. I'm sure there would be some.  
7 But that would alleviate this problem.

8 MS. WEFALD: Why you need to go, in  
9 your, in your thinking process, why would you  
10 need to go eight to ten miles west?

11 What, what -- could it be solved,  
12 your concerns, if it went, since you're, I  
13 hear you saying that it's on a ridge, and  
14 you're concerned about it being on that ridge,  
15 what if it was moved like a half a mile or a  
16 mile west, would that address your concerns  
17 and, if not tell me why.

18 MR. BORGESON: No, it wouldn't  
19 because the drainage area extends west on the  
20 Forest River about, and I'm only guessing at  
21 eight or ten miles, I don't, I didn't, I don't  
22 know for sure. And then it actually starts to  
23 drain the other way. It starts to drain  
24 west. Then you can go to the Devils Lake.

25 MS. WEFALD: Um-hum.

1 MR. BORGESON: So you've got a whole  
2 new set of problems.

3 MS. WEFALD: Okay. All right.

4 MR. BORGESON: And I'm not --

5 MS. WEFALD: It isn't easy.

6 MR. BORGESON: It's not easy and  
7 it's not a magic bullet.

8 MS. WEFALD: All right.

9 MR. BORGESON: But these are things  
10 that should be looked at.

11 MS. WEFALD: I know. That's my job,  
12 right?

13 MR. BORGESON: Right.

14 MS. WEFALD: Right. Thank you so  
15 much for your testimony.

16 MR. BORGESON: Thank you.

17 MR. WAHL: Commissioner Clark?

18 MR. CLARK: I also just want to  
19 thank you for your thoughtful testimony, and,  
20 and be assured that when Keystone has  
21 witnesses available for, for witness  
22 questioning it's one of the things that I'm  
23 certainly going to be following up on is this  
24 idea of why this specific route was picked as  
25 opposed to say something further east. It was

1 one of the things that I think has, has come  
2 out in the course of this hearing is questions  
3 about the elevation drop, especially along  
4 this northern section of line in this part of  
5 North Dakota with the escarpment.

6 And it sounds like you're fairly  
7 familiar with the aquifers in this area, how,  
8 and you talked a little bit about it with  
9 Commissioner Wefald's questions, but how far  
10 east do you have to get to get on the other  
11 side of that, that Fordville aquifer?

12 MR. BORGESON: Oh, I would say you  
13 need to get about five to seven miles east of  
14 32.

15 MR. CLARK: And then you're pretty  
16 well in the Valley at that point. Is that --

17 MR. BORGESON: Well, you'd be maybe  
18 a mile or two east of Park -- well, no, you  
19 wouldn't be that far. Somewhere around Park  
20 River to be safe.

21 MR. CLARK: Okay. To what degree  
22 have, have you been involved with say the  
23 State Water Commission in sort of looking at  
24 this project or perhaps just followed their  
25 procedures there?

1           MR. BORGESON: Well, I'm the Vernon  
2 Township zoning officer.

3           MR. CLARK: Okay.

4           MR. BORGESON: And one of my duties  
5 is to monitor the aquifer in our township  
6 because we have several gravel pits and most  
7 of the Fordville aquifer is in Vernon  
8 Township.

9           MR. CLARK: Um-hum.

10          MR. BORGESON: So we have a  
11 permitting system for gravel pits, and one of  
12 my duties is to go around and check on these  
13 pits to make sure there's no waste or nobody  
14 is dumping anything that shouldn't be. Just  
15 trying to make the farmers a little cognizant  
16 in the area that yes, we have an aquifer here  
17 that we have to protect.

18                 And I've kind of taken it upon  
19 myself to study up on the aquifer. I've had  
20 access to that book that the State Health  
21 Department --

22          MR. CLARK: Sure.

23          MR. BORGESON: -- put out on the  
24 Park River project. I've read that  
25 thoroughly. It's just kind of an interesting

1 concept, the aquifer.

2 I've not worked with the State  
3 Health Department, but I kind of have been  
4 fascinated by geology and how it was formed  
5 and things like that.

6 MR. CLARK: Thank you. And I think  
7 one of the parts of the record that we're  
8 obviously going to want to develop very  
9 strongly is that issue of, of groundwater  
10 protection, which actually is something that  
11 with a lot of other pipelines the Commission  
12 has sited recently, like CO2 pipelines, I mean  
13 it isn't as much of an issue because if  
14 there's a problem it dissipates into the air,  
15 as opposed to the groundwater.

16 And understanding that to, to a  
17 degree the Commission has to defer in some  
18 respects to the health department. I mean  
19 they're the experts on this, and so it's  
20 difficult for us to second guess their  
21 judgment. But I, I do think that it's an area  
22 that we are going to want to delve into a  
23 great deal with the health department on, you  
24 know, exactly if they were looking at optimal  
25 to place a pipeline where were you place it.

1 And so I appreciate your, your input in that  
2 regard.

3 MR. BORGESON: Thank you, very much.

4 MR. CRAMER: If I could, your Honor.

5 MR. WAHL: Commissioner Cramer.

6 MR. CRAMER: One other thing I  
7 wanted to address that you brought up, and  
8 that was the reference to a lot of geological  
9 data, spatial data. And in fact as recently  
10 as early this morning before we left the  
11 capitol I asked staff in their analytical  
12 duties to start building those GIS maps that  
13 include much more water data than we have to  
14 this point, and to be able to separate a lot  
15 of the other more intrusive data that tends to  
16 kind of clutter a map, if you will, so that we  
17 have everything from aquifers to intermittent  
18 streams to permanent rivers to lakes.

19 And so you can be sure that not only  
20 will we be requesting as much of that  
21 information from the company, if we don't have  
22 it already our analysts will certainly be  
23 digging into that topic with, with a lot of  
24 data and information. So I appreciate your  
25 reference to that. Thank you.

1 MR. BORGESON: Thank you. And thank  
2 you for your due diligence on this subject  
3 because it could really screw us up in this  
4 part of the state if it's not done right.

5 MR. CRAMER: We understand.

6 MR. BORGESON: Like I said, let's do  
7 it right.

8 MR. WAHL: Just a moment please, Mr.  
9 Borgeson. One more go-around.

10 MR. BORGESON: Oh, I'm sorry.

11 MR. KELSCH: No questions, your  
12 Honor.

13 MR. DELANEY: I have no questions.

14 MR. WAHL: Mr. Binek.

15 MR. BINEK: I do have a question.

16 MR. WAHL: I thought so.

17 MR. BINEK: And, and I just -- you  
18 had, you had listed these section numbers and  
19 townships where you have, particular, where  
20 you have particular concern. And I didn't get  
21 all of those down, the, the section numbers.

22 MR. BORGESON: Do you want me to  
23 repeat them for you?

24 MR. BINEK: I would appreciate  
25 that.

1 MR. BORGESON: Section 11, Section  
2 14, Section 23, Section 26, Section 35 in  
3 Norton Township. And Section 2, Section 11,  
4 Section 14, Section 23 and 24 Cleveland  
5 Township. That's all in Walsh County.

6 MR. BINEK: Thank you.

7 MR. BORGESON: Thank you.

8 MR. WAHL: Thank you, Mr.

9 Bjorgenson.

10 MR. BORGESON: Thank you. It's  
11 Borgeson.

12 MR. WAHL: Borgeson, I'm sorry.

13 MR. CRAMER: We're used to German  
14 names in Bismarck.

15 MR. WAHL: Yeah, we are. We are.  
16 I'm sorry.

17 I'm going to -- go ahead and sign  
18 in, sir, but we need, and the court reporter  
19 certainly needs a brief recess. So let's take  
20 just five minutes to stretch your legs and  
21 walk around, and then we'll resume, we'll  
22 resume at 10 minutes after 3:00.

23 (Whereupon, a brief recess was  
24 taken.)

25 MR. WAHL: Let's be in order,

1 please.

2 All right, before we begin with  
3 further public testimony Mr. Borgeson has  
4 been, has asked to be recalled to provide some  
5 additional information to the Commission.

6 Mr. Borgeson?

7 You understand of course, Mr.  
8 Borgeson, that your testimony continues under  
9 oath and subject to penalties of perjury.

10 MR. BORGESON: Yes, I do.

11 MR. WAHL: You may proceed.

12 MR. BORGESON: I was just informed  
13 during the break that I misspoke when I said  
14 that aquifer investigation was from the North  
15 Dakota Health Department. It was not. It  
16 was from the North Dakota State Water  
17 Commission.

18 I have the, the report number, and  
19 the hydrologist Jon Patch that done the work,  
20 and I'd like to enter this into evidence right  
21 now so that it clears up, because I was going  
22 off memory and you should never do that when  
23 you are 61 years old.

24 (Whereupon, Exhibit TB1 was marked  
25 for identification.)

1           MR. WAHL: I've marked for  
2           identification Exhibit TB1 which is, looks  
3           like the title page of a report. Water Supply  
4           Investigation for the City of Park River,  
5           Fordville Aquifer, Walsh County, North Dakota,  
6           by Jon C. Patch, P.E., Hydrologist, 2002.

7           Mr. Kelsch?

8           MR. KELSCH: No objection.

9           MR. WAHL: Mr. Delaney?

10          MR. DELANEY: No objection.

11          MR. WAHL: Mr. Binek?

12          MR. BINEK: I have no objection.

13          MR. WAHL: Exhibit TB1 is received.

14          Thank you, very much.

15          MR. BORGESON: Thank you.

16          MR. WAHL: Will you state your name,  
17          please.

18          MR. HYLDEN: Mark, M-a-r-k, Hylden,  
19          H-y-l-d-e-n.

20          MR. WAHL: Mr. Hylden, did you hear  
21          my advice regarding perjury?

22          MR. HYLDEN: Yes, sir, I did.

23          MR. WAHL: Will you raise your right  
24          hand, please.

25

1                   M A R K   H Y L D E N ,  
2   of Park River, North Dakota, being first duly  
3   sworn, was examined and testified on his oath  
4   as follows:

5  
6                   MR. WAHL:   Please state your name  
7   and address for the record.

8                   MR. HYLDEN:   Mark Hylden, address is  
9   6900, Highway 32, Park River, North Dakota,  
10  58270.

11                  MR. WAHL:   You may proceed with your  
12  testimony, Mr. Hylden.

13                  MR. HYLDEN:   I would like to stand  
14  in support of what my neighbor Terry Borgeson  
15  just was testifying about.   We've been there  
16  125 years, as have the Borgesons.   I think,  
17  small argument I think the Borgesons were  
18  there a year before us.

19                  But we've been good neighbors for  
20  all of these years.   Fourth generation on the  
21  farm.

22                  I need to tell you three stories  
23  that relate to this pipeline and my experience  
24  as a 50-plus-year-old farmer growing up and  
25  living there my entire life.

1           One of the more recent times, as a  
2 farmer covering central Walsh Country, on  
3 three separate occasions I've come across the  
4 waterline leaks. One was the Zurn pipeline  
5 buried that serves the Cavalier Air Force  
6 station and that radar base, and two were  
7 Walsh water leaks.

8           I was the first to report them. I  
9 call them in. I don't know how long they had  
10 been leaking, but it relates to the pipeline,  
11 a greater pressure, more corrosive, et  
12 cetera. And it ties in to what Mr. Borgeson  
13 was saying.

14           And this is a story I need to tell  
15 you as a boy. I used to love to fish, don't  
16 have time now as a farmer, but this little  
17 river that Terry was talking about goes  
18 between the Borgeson farmstead and the Hylden  
19 farmstead. And I would fish there, it's  
20 roughly, from Borgesons' place to our place  
21 three-quarter mile, and the river maybe is, is  
22 a quarter mile west of my parents' farmstead  
23 where I grew up as a boy.

24           I was fishing there late one morning  
25 and it rained, no big deal. But it was out,

1 out west. I could see the dark clouds. Mom  
2 blew the horn three times. That meant come  
3 home for dinner.

4 Well, I came home for dinner, had a  
5 good meal, thanked Mom for the dinner, went  
6 back to fish, could not find my fishing pole.  
7 The truth is the water come from the west so  
8 fast it was gone. I lost my birthday present,  
9 which was a nice fishing pole.

10 That's the elevation drop that Terry  
11 is talking about. And there is a real life  
12 application, things to the west move there and  
13 they come right across the Fordville aquifer.

14 Another story I need to tell you  
15 about, and I've seen this more just because  
16 now as, as a farmer I'm more intrigued by  
17 these things, I didn't catch those as a boy,  
18 but Terry agreed when I talked to him. I have  
19 on numerous occasions seen water coming past  
20 Terry's place heading towards my parents'  
21 place, he refers to this bridge that's on  
22 Highway 32, and all that land on the east side  
23 gets to be the Hylden farmland, it will go  
24 some distance but it will not even make it to  
25 the bridge that's near my parents' farmstead.

1           Where does to go? Like Terry said  
2 that aquifer is right there, the gravel is so  
3 course you can literally see the water  
4 disappear. And that's a lot of water. And it  
5 will just dive right into the aquifer.

6           And if we get contamination in a  
7 spill that can't be stopped like that, you're  
8 not going to shift the whole topography of  
9 that area of Walsh County. I think you're  
10 going to have to find another safer route.  
11 Because all of us, and Terry sited a few  
12 towns, but I think there's even more than the  
13 towns he sited, that are tying in to this  
14 Fordville aquifer for their supply. And it's  
15 right over our farm and our wells are shallow,  
16 it's going to affect a lot of people very  
17 adversely.

18           And I'll tell you one last thing as  
19 a farmer. Nothing ever breaks on my farm. We  
20 start out in the morning, we go to the end of  
21 the season never a breakdown. I suppose it's  
22 the same with a pipeline.

23           No, that, I'm supposed to tell the  
24 whole truth and nothing but the truth, right?

25           Okay, we have breakdowns all the

1 time. We have to fix them. I just suspect  
2 the truth is also that these folks are going  
3 to have breakdowns, and I think the truth is  
4 in the breakdowns there's oil that spills.  
5 And Mother Nature doesn't lie, water, oil,  
6 whatever, it's going to run downhill, it's  
7 going to run into that river, and is going to  
8 go right into that aquifer.

9 That's the end of my testimony.

10 MR. WAHL: You have questions for  
11 Mr. Hylden, Mr. Kelsch?

12 MR. KELSCH: No questions.

13 MR. WAHL: Mr. Delaney?

14 MR. DELANEY: No questions.

15 MR. WAHL: Mr. Binek?

16 MR. BINEK: No questions.

17 MR. WAHL: Commissioners?

18 MR. CRAMER: Did you really thank  
19 your mother for dinner?

20 MR. HYLDEN: I do every day. In  
21 fact when I played college football, sir, I  
22 thanked the cooks in college. They fed me  
23 well.

24 MR. CRAMER: Nothing further. Thank  
25 you.

1 MR. HYLDEN: Okay.

2 MR. WAHL: Commissioner Wefald?

3 MS. WEFALD: No, questions, thank  
4 you so much.

5 MR. WAHL: Commissioner Clark?

6 MR. CLARK: No. Thank you.

7 MR. WAHL: Thank you very much, Mr.  
8 Hylden.

9 MR. HYLDEN: Thank you.

10 MR. WAHL: What is your name, sir?

11 MR. BURES: My name is Francis,  
12 F-r-a-n-c-i-s, Bures, B-u-r-e-s.

13 MR. WAHL: Mr. Bures, did you hear  
14 my advice regarding perjury?

15 MR. BURES: Yes, I did.

16 MR. WAHL: Will you raise your right  
17 hand please

18

19 F R A N C I S B U R E S,  
20 of Grand Forks, North Dakota, being first duly  
21 sworn, was examined and testified on his oath  
22 as follows:

23

24 MR. WAHL: Please state your names  
25 and address for the record.

1                   MR. BURES: Francis Bures,  
2 B-u-r-e-s, 1005 Reeves, R-e-e-v-e-s Drive,  
3 Grand Forks, 58201.

4                   MR. WAHL: You may proceed with your  
5 testimony, Mr. Bures.

6                   MR. BURES: Well, years ago our  
7 father always told us about the Indian mounds  
8 that were located on, located on the farm by  
9 Lankin. The area they were talking about is  
10 that notorious, one of that notorious Section  
11 11 that everybody else has been talking about  
12 here, Range 156, 157, which, which is just  
13 north of Lankin.

14                   He told us that the Native Americans  
15 had had two large mounds which were very  
16 unusual. If you really paid attention to the  
17 topography you'd see that there was something  
18 different about them. And been told by  
19 neighbors that there has also been artifacts  
20 found in the fields nearby that it goes  
21 through.

22                   Anyway, I have a map here from the  
23 TransCanada pipeline. And I had asked the, I  
24 had allowed them to come through and do a  
25 survey about a year ago.

1           They, I, I was very emphatic about  
2 telling them about the mounds. These mounds  
3 are not registered as far as I know in the  
4 state of North Dakota, but they probably  
5 should be. Because the Native American  
6 heritage is very important for North Dakota  
7 and the history that, that goes with them.

8           Along with this, the, I have this  
9 map here that indicates an area different than  
10 what I had told them. And it went, the, shows  
11 the pipeline going right between the mounds  
12 and right through the field that had the  
13 Indian artifacts.

14           Now, I, I was very emphatic  
15 initially to tell them that they should, you  
16 know, avoid those mounds when they came  
17 through on their survey. But evidently there  
18 had been some problem with, if they had gone  
19 straight through they would have passed  
20 through a farmstead next to the neighbor to  
21 our south. So evidently they had changed it.

22           This map is supposedly acquired  
23 three, three months ago. So it's relatively  
24 new. And I see it's an aerial of 2006, an  
25 aerial view here.

1                   So what I'm concerned about is  
2 preserving the heritage of the Indians or the  
3 Native American people here. And in fact  
4 that, I think it's against the law, to, to  
5 really disrupt any of their, you know, any of  
6 their heritage, or burial grounds or  
7 supposedly burial grounds. So that's my  
8 really greatest concern here.

9                   And at the same time the pipeline at  
10 this point does go in that tributary that, of  
11 the river supposedly will go underneath the  
12 river there at this point, or the creek. And,  
13 and like everybody has been saying when the  
14 water comes from, you know, when it rains  
15 heavily water does come down that creek.

16                   I've seen it just, just roaring down  
17 there so. And otherwise it's mostly dry  
18 except for a few low spots. But when it does  
19 rain it does, and in the spring the runoff is  
20 usually quite heavy.

21                   So that's my --

22                   MR. WAHL: Did you want the  
23 Commission to have that map, Mr. Bures?

24                   MR. BURES: I think that you  
25 should.

1                   (Whereupon, Exhibit FB1 was marked  
2 for identification.)

3                   MR. WAHL: For the record I am  
4 marking for identification a map which Mr.  
5 Bures has as FB1. And Mr. Bures, if you  
6 would, can you, if you just circle an area  
7 that you, where the Indian mounds are located,  
8 and --

9                   MR. BURES: And then this field is,  
10 artifacts have been found.

11                  MR. WAHL: All right, let's do one  
12 at a time. Now this, let's just draw some  
13 arrows to those circles.

14                  MR. BURES: Okay.

15                  MR. WAHL: Okay, so I've, I've drawn  
16 some lines to the circles you've indicated.  
17 And those are, the circles are where the  
18 Indian mounds are located. Is that correct?

19                  MR. BURES: That is correct.

20                  MR. WAHL: And then there's a field  
21 to the, which I'm not sure which --

22                  MR. BURES: This is south.

23                  MR. WAHL: That's the south. So  
24 there's a field to the south of the Indian  
25 mounds, and that's the field where you

1 testified the artifacts have been found. Is  
2 that correct?

3 MR. BURES: That is correct.

4 MR. WAHL: All right.

5 Mr. Kelsch, I'm showing you what is  
6 Exhibit FB1.

7 MR. KELSCH: Which was the field?

8 MR. WAHL: This is the field.

9 MR. KELSCH: Okay.

10 MR. WAHL: South.

11 MR. KELSCH: Okay. I have no  
12 objection.

13 MR. WAHL: Mr. Delaney?

14 MR. DELANEY: I have no objection.

15 MR. WAHL: Mr. Binek.

16 MR. BINEK: I have no objection.

17 MR. WAHL: Exhibit FB1 is received.

18 Do you have anything further to say,  
19 Mr. Bures?

20 MR. BURES: No, no, I don't. Is  
21 that all, then?

22 MR. WAHL: No. Just a moment,  
23 please.

24 Mr. Kelsch?

25 MR. KELSCH: Thank you, your Honor.

1 I just have a couple of questions.

2 Mr. Bures, looking at this map, the  
3 line between the, the mounds and the field,  
4 that's all your property there?

5 MR. BURES: Yes, that is on my  
6 property. May come there?

7 MR. KELSCH: Sure.

8 MS. WEFALD: He has to talk into the  
9 mike.

10 MR. WAHL: Mr. Kelsch, why don't you  
11 stand up and approach the lectern and do it  
12 that way, if that's helpful.

13 MR. KELSCH: Your Honor, if I might  
14 suggest could I have Mr. Bures maybe in a  
15 yellow highlight highlight the Exhibit FB1 to  
16 show, outline his land.

17 MR. WAHL: Oh, sure.

18 MR. KELSCH: Mr. Bures, if you could  
19 just outline your land on that map.

20 MR. BURES: Yes.

21 MR. KELSCH: Thank you.

22 MR. BURES: (Complied.) Okay.

23 MR. KELSCH: You've outlined, you've  
24 outlined those areas in yellow of the land  
25 that you own there?

1           MR. BURES: The area that I outlined  
2 is the land that we owned.

3           MR. KELSCH: Thank you.

4           Mr. Bures, did, did you attend the  
5 recent meeting, Keystone meeting at, that was  
6 held in Dahlen?

7           MR. BURES: Yes, I did.

8           MR. KELSCH: Did you raise these,  
9 some of these same concerns to the Keystone  
10 people at that meeting?

11          MR. BURES: Not at that meeting, no,  
12 because I didn't have the map with me at that  
13 time.

14          MR. KELSCH: Did, did the Keystone  
15 people indicate that they would be looking  
16 into this matter?

17          MR. BURES: I believe I did talk to  
18 Mr. Jim, a Keystone representative there. And  
19 asked him about it. Asked if he would give me  
20 a current map, and if it was any different  
21 than this.

22          MR. KELSCH: Current map as to where  
23 the proposed location of the route was?

24          MR. BURES: Pardon me?

25          MR. KELSCH: You asked for a current

1 map showing the proposed location of the  
2 route?

3 MR. BURES: Well, I just wanted to  
4 see what, you know, I wanted a map for  
5 myself. This I obtained from Mr. Kratochvil,  
6 Mr. Merle Kratochvil.

7 MR. KELSCH: Did you, or, or, did  
8 you or do you have a different route on your  
9 property that would not go through what you  
10 feel to be the, the Native American areas?

11 MR. BURES: Well, I, initially I  
12 had told the individuals that came through for  
13 the survey that it was a little bit east of  
14 the barn. But I think because of the fact  
15 that it was going through Mr. Kratochvil's  
16 farmstead if it came through straight south it  
17 would, they moved it over.

18 That's different than what I had  
19 initially asked them to do.

20 MR. KELSCH: And if you'd like to  
21 refer to FB1, initially if, if the line would  
22 have gone more straight --

23 MR. BURES: It would have gone  
24 through Mr. Kratochvil's land right near his  
25 house.

1 MR. KELSCH: Would that have missed  
2 the Native American property?

3 MR. BURES: I don't know how  
4 extensive they are, but it would have missed  
5 the mounds. Let's put it that way.

6 MR. KELSCH: No further questions.

7 MR. BURES: Okay.

8 MR. WAHL: Mr. Delaney?

9 MR. DELANEY: No questions.

10 MR. WAHL: Mr. Binek.

11 MR. BINEK: No questions.

12 MR. WAHL: Commissioners?

13 MR. CRAMER: I have none, thank you.

14 MR. WAHL: Commissioner Wefald?

15 MS. WEFALD: The company has to have  
16 a route survey done for any type of cultural  
17 sites. And that's a requirement for them to  
18 have the pipeline go through North Dakota.  
19 And they've had a couple of, they have spent  
20 extensive time doing these route surveys for  
21 cultural sites.

22 But what I'm interested in knowing  
23 is with the route switching perhaps they  
24 didn't check this area. So how long has it  
25 been since the route was switched so that, for

1 example, I'm wondering whether a survey that  
2 was done October 13th, 2006 has the route been  
3 switched since that time?

4 MR. BURES: That I don't know. And  
5 that's what I was trying to find out something  
6 about it. But this map was obtained about  
7 three months ago from, by Mr. Kratochvil so I  
8 assume, I'm assuming that the route is  
9 currently what I see, you know, on the map  
10 there now.

11 MS. WEFALD: Have you talked to the  
12 state historic preservation agency at all  
13 about your concerns about these cultural --

14 MR. BURES: I, I have had not.

15 MS. WEFALD: All right. And that's  
16 just fine. You're bringing it up here and so  
17 we can address it and, and find out whether,  
18 what those mounds are on your property.

19 MR. BURES: Okay.

20 MS. WEFALD: Thank you.

21 MR. BURES: And thank you for your  
22 indulgence.

23 MR. WAHL: Commissioner Clark?

24 MR. CLARK: And I would just thank  
25 you as well. The, just like we're somewhat

1 dependent on the scientists at the water  
2 commission to analyze water data we're  
3 dependent on archeologists and historians at  
4 the state historic preservation office to deal  
5 with some of those issues.

6 So the extent that you brought those  
7 to the floor we'll certainly be asking about  
8 that in the tactical part of the hearing.

9 MR. BURES: It would probably be a  
10 good idea to look into them. And maybe they  
11 should be registered, you know. Okay.

12 MS. WEFALD: Thank you. And if you  
13 would like to see the reports that have  
14 already been done on cultural resources they  
15 are a part of the application that has been  
16 filed with the Commission.

17 MR. BURES: Oh.

18 MS. WEFALD: And so there's disks  
19 that are available that you could look at, put  
20 in your computer --

21 MR. BURES: Um-hum.

22 MS. WEFALD: -- and go through the  
23 complete reports. They total about 400 pages  
24 of culture resource reports along the length  
25 of the pipeline.

1 MR. BURES: Okay.

2 MR. CLARK: The only other, the only  
3 other thing I would note as well, above and  
4 beyond you mentioned potential human remains  
5 there. Above and beyond any state --

6 MR. BURES: Well, I assume there's  
7 human remains, yes. Um-hum.

8 MR. CLARK: Sure. Sure.

9 The, beyond this permitting process  
10 there are separate state laws where whether  
11 it's, you know, somebody building a road, a  
12 house, or in a project like this if they run  
13 into human remains construction has to stop at  
14 that point. So that would --

15 MR. BURES: Um-hum.

16 MR. CLARK: -- in as well. Just as  
17 information for the audience.

18 MR. BURES: Okay. Thank you.

19 MR. WAHL: Thank you very much, Mr.  
20 Bures.

21 What's your name, please?

22 MR. MEBERG: Luther Meberg.

23 MR. WAHL: Spell your last name for  
24 me, please.

25 MR. MEBERG: M as in Mary - e - b as

1 in boy - e-r-g.

2 Mr. Meberg, did you hear my advice  
3 regarding perjury?

4 MR. MEBERG: Yes, I did.

5 MR. WAHL: Will you raise your right  
6 hand, please.

7

8 L U T H E R M E B E R G,  
9 of Park River, North Dakota, being first duly  
10 sworn, was examined and testified on his oath  
11 as follows:

12

13 MR. WAHL: Please state your name  
14 and address for the record.

15 MR. MEBERG: I'm Luther Meberg from  
16 7204 134th Avenue Northeast, Park River, North  
17 Dakota 58270-9330.

18 MR. WAHL: You may proceed with your  
19 testimony, Mr. Meberg.

20 MR. MEBERG: I'm a resident, a  
21 landowner and a chairman of the Walsh County  
22 Board of Commissioners, and as commissioners  
23 we've been involved with this proposed  
24 Keystone project from the very first road show  
25 in March of 2005. Other members of our board

1 or I have attended all the information  
2 meetings that they've put on. We wanted to be  
3 fully informed so we could keep our citizens  
4 informed.

5 I have personally received several  
6 calls from the Walsh County people who've had  
7 questions regarding this pipeline. If I  
8 didn't have the information I used the cards I  
9 collected at their road shows and, and got  
10 most of the answer.

11 But we realized very early in the  
12 process that as commissioners we had no  
13 decision making in this process, and only  
14 minor input. TransCanada has never asked us  
15 for an endorsement of this project and we have  
16 never given an endorsement. And if the  
17 proposed pipeline gets the proper permitting  
18 and proceeds we as commissioners will be  
19 watching the treatment of our citizens and our  
20 infrastructure very closely.

21 The huge work crews and movement of  
22 steel pipe will stress our roads. We have  
23 other buried assets such as power lines and  
24 waterlines to protect.

25 And TransCanada must meet or exceed

1 all guidelines for construction and  
2 maintenance. They've talked about  
3 construction a lot, but, and maintenance in  
4 this project and transfer this neighborly  
5 spirit down to the lowest employee of their  
6 work crews to do this. Far too often the  
7 engineering firm is full of promises and when  
8 the construction crew shows up things worsen  
9 as they try to profit and move on.

10 Thank you for your time.

11 MR. WAHL: Mr. Kelsch, any questions  
12 for Mr. Meberg.

13 MR. KELSCH: No questions.

14 MR. WAHL: Mr. Delaney?

15 MR. DELANEY: No questions.

16 MR. WAHL: Mr. Binek?

17 MR. BINEK: No questions.

18 MR. WAHL: Commissioners?

19 MR. CRAMER: I don't have any.

20 Thank you.

21 MS. WEFALD: Thank you.

22 MR. CLARK: None, thank you.

23 MR. WAHL: Thank you very much, Mr.  
24 Meberg.

25 What is your name?

1 the Commission?

2 MS. WEFALD: None.

3 MR. CLARK: Thank you.

4 MR. WAHL: Thank you very much, Mr.  
5 Kratochvil.

6 MR. KRATOCHVIL: Thank you.

7 MR. WAHL: What is your name,  
8 please?

9 MS. KRATOCHVIL: Linette Kratochvil.

10 MR. WAHL: Ms. Kratochvil, you heard  
11 my advice regarding perjury?

12 MS. KRATOCHVIL: Yes.

13 MR. WAHL: Will you raise your right  
14 hand, please.

15

16 L I N E T T E K R A T O C H V I L,  
17 of Lankin, North Dakota, being first duly  
18 sworn, was examined and testified on her oath  
19 as follows:

20

21 MR. WAHL: Will you please state  
22 your name and address for the record.

23 MS. KRATOCHVIL: Linette Kratochvil,  
24 6355 County Road 14, Lankin, North Dakota  
25 58250.

1 MR. BERGSRUD: It's Cory Alexis  
2 Marvin Bergsrud.

3 MR. WAHL: Spell your last name for  
4 me.

5 MR. BERGSRUD: B as in boy -  
6 e-r-g-s-r-u- d as in dog.

7 MR. WAHL: Mr. Bergsrud, did you  
8 hear my -- I've mispronounced your name,  
9 haven't I.

10 MR. BERGSRUD: Just call me Cory.

11 MR. WAHL: Fair enough, Cory. Did  
12 you hear my advice regarding perjury?

13 MR. BERGSRUD: Several times.

14 MR. WAHL: Will you raise your right  
15 hand, please.

16

17 C O R Y B E R G S R U D ,  
18 of Devils Lake, North Dakota, being first duly  
19 sworn, was examined and testified on his oath  
20 as follows:

21

22 MR. WAHL: You may -- please state  
23 your name and address for the record.

24 MR. BERGSRUD: Cory Alexis Marvin  
25 Bergsrud, P. O. Box 461, Devils Lake, North

1 Dakota 58301. That's my parents' permanent  
2 address and I'm currently a student at UND  
3 during the school year, so.

4 MR. WAHL: You may proceed with your  
5 testimony.

6 MR. BERGSRUD: Thank you.

7 Okay, I'm going to take a slightly  
8 different approach to all of this. Life is  
9 but a journey, wisdom is gathered along the  
10 way. Many of you before me have much more  
11 gathered wisdom than I, obviously. Fine. But  
12 it not does not take a wise person to have, to  
13 have an instinctive sensibility that water is  
14 a necessity for life.

15 Keystone pipeline cannot give a 100  
16 percent guarantee that the product it could be  
17 transporting will be 100 percent when it  
18 reaches its destination through space and  
19 time. And space and time is kind of my own  
20 terminology. And it's, I used the method of  
21 space and time analysis to -- I'll explain.

22 It's like a threshold of intervals  
23 into the evolutionary future by using pure  
24 logic and reason by means of the human mind to  
25 predict future outcomes from present space and

1 time. The process from a point A, arbitrary  
2 point A, to some arbitrary point B.

3           There's always the factor of  
4 potential product loss to the environment as a  
5 whole. Nature evolves continuously, so  
6 science would have to evolve with evolutionary  
7 nature to prevent the so many factors that  
8 could cause an accident to the pipeline which  
9 leads to potential contamination into nature's  
10 ground, air and especially water systems.

11           Ask the question can the human mind  
12 and science have complete control, and are  
13 they able to stay up with evolving nature.  
14 This potential is too much of a risk  
15 especially when the pipeline has to cross  
16 river sources which flow into and become a  
17 part of the Red River of the North, which  
18 flows then north to Canada.

19           Much water is associated with this  
20 whole process, obviously. Also consider the  
21 fact of extreme water rises because of the  
22 earthly cyclic processes. Flooding, potential  
23 to become closer to the pipeline.

24           Another thought is the fact that the  
25 Red River Valley of the North contains within

1 its existence very fertile, rich soil where a  
2 comparison is the Nile River Valley of  
3 Africa. Such a rarity only exists for  
4 millions of years of nature's extremes. This  
5 fertility is relative to the whole earth's  
6 surface. One should not disturb this sacred,  
7 precious land.

8           The potential harms is focused for  
9 the future generations. With the lingering of  
10 global warming and pollution it is now that we  
11 need to rehabilitate this damage we humans  
12 have caused for, and created for so very  
13 long. It is now we must begin to stop  
14 increasing potential harmful extremes, such as  
15 the topic at present, relative to the richness  
16 and dependence of the location on earth to so  
17 many people.

18           I'm not saying that we should stop  
19 it all together, but I'm saying that the land  
20 is, this land is so fertile and so nutritious  
21 that we should try to avoid disrupting it.

22           What we do in the present space and  
23 time helps form future space and time. Future  
24 space and time need their water as clean as it  
25 can be and their food to continue as a human

1 species as long as we can.

2 It seems as if we are going to be on  
3 plant earth for a very long space and time.  
4 We need to consider this factor very  
5 seriously.

6 Remember this fact, the earth does  
7 not need us, we need the earth.

8 That's it, thank you.

9 MR. WAHL: Mr. Kelsch?

10 MR. KELSCH: No questions, your  
11 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 from the  
17 Commission?

18 MR. CRAMER: None that we could get  
19 through today because I'm fascinated. I'd  
20 love to have a long debate but I'll resist.

21 MR. WAHL: Commissioner Kelsch?

22 MS. WEFALD: Commissioner Wefald.

23 MR. WAHL: I'm sorry.

24 MS. WEFALD: That's all right.

25 MR. WAHL: Commissioner Wefald.

1 MS. WEFALD: I would like to thank  
2 you for coming. And you, I had a telephone  
3 conversation with you, and you told me that  
4 you would be coming to this hearing.

5 MR. BERGSRUD: Yes.

6 MS. WEFALD: And I've always  
7 encouraged young people, especially students  
8 from UND, to come and to share their thoughts  
9 with the Commission. Thank you very much.

10 MR. BERGSRUD: Thank you for having  
11 me.

12 MR. WAHL: Commissioner Clark?

13 MR. CLARK: None, thank you.

14 MR. CRAMER: Come on. You're not  
15 going to say something about especially  
16 students from NDSU?

17 Thank you.

18 MR. CLARK: That's a debate for  
19 another time.

20 MR. WAHL: What is your name?

21 MR. KRATOCHVIL: Merle Kratochvil.

22 MR. WAHL: Spell your last name for  
23 me, please.

24 MR. KRATOCHVIL: K-r-a-t-o-c-h-v-i-l.

25 MR. WAHL: Mr. Kratochvil, did you

1 hear my advice regarding perjury?

2 MR. KRATOCHVIL: Yes, I did.

3 MR. WAHL: Will you raise your right  
4 hand, please.

5

6 M E R L E K R A T O C H V I L,  
7 of Lankin, North Dakota, being first duly  
8 sworn, was examined and testified on his oath  
9 as follows:

10

11 MR. WAHL: Will you please state  
12 your name for the record.

13 MR. KRATOCHVIL: Merle Kratochvil.

14 MR. WAHL: And your address?

15 MR. KRATOCHVIL: 6355 County Road  
16 14, Lankin, North Dakota.

17 MR. WAHL: You may proceed with your  
18 testimony, Mr. Kratochvil.

19 MR. KRATOCHVIL: Well, a lot of the  
20 testimony has already been presented so we'll  
21 take a little bit of a shortcut. We're the  
22 family that lives in Section 14 that you've  
23 been hearing about, and Section 11.

24 Basically I have a problem with the  
25 Keystone operation. We haven't been

1 approached either, like the Capps.

2 One of the reasons, the first time I  
3 found out that we were getting a pipeline  
4 through our back pole shed was when I seen  
5 stakes at the neighbors on each side. My wife  
6 will what you call it talk a little bit about  
7 the process of somebody calling over. I'll  
8 let her do that.

9 So the next deal was I couldn't get  
10 any information on it so I attended the  
11 scoping meeting, or we did, in Michigan. When  
12 I look at the GPS maps, I recall the maps that  
13 Mr. Bures presented. I was the one that gave  
14 them to that, those maps, because I couldn't  
15 find anything out about where this line was  
16 going after Michigan's scoping meeting because  
17 it was basically right through our back pole  
18 shed, taking out a quarter mile of our  
19 shelterbelt or windbreak the way the line was  
20 drawn in on their GPS map.

21 So the process is you get up and  
22 stand and say something. And I did. And I  
23 couldn't find out anything.

24 And, and Mr. Novak that testimony,  
25 or testified yesterday, he happened to be

1 having one project engineer Dana Greene come  
2 over in January, so I found out about it and I  
3 asked Mr. Novak if I could come over and visit  
4 with him at the same time and he agreed.

5 So Dana Greene and Mr. Jeff Roe came  
6 in, the consultant for Keystone, over to Mr.  
7 Novak's place and met with them. And I  
8 brought up these Indian artifacts and showed  
9 them a route which possibly would have gotten  
10 around it, which caught three quarters of a  
11 mile to the west right in between because  
12 there isn't, there's more than Section 11 that  
13 there's artifacts out there that aren't  
14 recorded. And some of them bodies been buried  
15 but these people never recorded it. And  
16 they're themselves long gone, you know so.

17 And I did have one guy, Jon McMillan  
18 from the Walsh County Historical Society  
19 taking note of it last fall, in that area. I  
20 don't know what the outcome was in Bismarck,  
21 what, but he's affiliated with them quite  
22 regular.

23 Now my biggest concern is we've got  
24 high water table. Right now today we can  
25 drive, go out there with a post hole auger 4

1 feet and we're going to hit water on most of  
2 my land. And if you go out there with a  
3 payloader and try dig a hole, dig a rock, your  
4 chances are you'll be stuck. That's how mushy  
5 we are.

6 I mean yes, you get over the top,  
7 but it just, and the slope is so great, the  
8 sheds in our yard we're 6 inches on one side  
9 and 3-and-a-half to 4 feet on the other on a  
10 60 foot shed to make them level. So you know  
11 what Mr. Borgeson said, the drop is  
12 tremendous. The water moves real fast.

13 And we do run a livestock operation,  
14 both breeding and meat, beside. I'm also  
15 over-the-road vehicle transport so a lot of  
16 times when people try to get ahold of me I am  
17 a little tough, unless it's on the cell  
18 phone. Because farming hasn't been the  
19 greatest so you've got to make your living  
20 some way. And we also farm some ground.

21 But I take a look at what you call  
22 it on the other part, yesterday I attended the  
23 meeting in Valley City, and the biggest thing  
24 that also concerns me is what you call it  
25 Conoco, it's written, I should read the

1 article. It's a little easier because I'll  
2 present it for evidence.

3 That be all right?

4 MR. WAHL: Yes.

5 MR. KRATOCHVIL: It says nearly 80  
6 percent -- TransCanada had 576 spills in the  
7 past six years, according to their official  
8 website. Nearly 80 percent of the spills were  
9 due to equipment related leaks hydraulic oil,  
10 lube oil, osiant (phonetic) fuel and typical  
11 of low volume 5L. Four spills were classified  
12 as serious with 125 classified minor spills  
13 incidents.

14 A minor spill was defined by  
15 TransCanada as a spill on site that poses no  
16 adverse affect to environment or impact,  
17 impact to a water body or to groundwater.  
18 TransCanada had 183 noncompliance incidents in  
19 six years.

20 The website is list here,  
21 <http://www.transcanada.com.socialresponsibility/number.html>.

22 TransCanada is Canada, Canadian oil  
23 and gas pipeline, transmission, electric power  
24 generating company. The Oil Digest reports  
25 that Conoco holds 50 percent ownership in the

1 TransCanada proposed pipeline. Oil Digest  
2 7/5/06 is where this came from.

3 TransCanada reports profit of 1.2  
4 billion in 2005 and 1.5 billion in 2006. That  
5 really makes the company well worth having a  
6 lot of money, so the report we received  
7 yesterday from North Dakota, we can't deny  
8 that.

9 And in that as of January 31st, 2007  
10 report TransCanada posted a total share return  
11 including stocks and dividends of 15 percent  
12 in past year and 20 percent annually for the  
13 past five years. [www.transcanada.com](http://www.transcanada.com).

14 TransCanada founded in 1951 is a  
15 large energy company based out of Calgary,  
16 Alberta. The pipeline is the largest  
17 shareholder of TransCanada Pipelines, LP,  
18 which owns many of Canada's natural gas  
19 pipelines.

20 I guess what I'm trying to say here  
21 is when you take a look at the previous  
22 testimony that in North Dakota for a half a  
23 mile a landowner gets 77 to 78 hundred dollars  
24 top dollar for half a mile. Now you take, it  
25 only, you do the calculation, and Keystone can

1 correct me if I'm wrong on this calculations  
2 here, because you take that times 218 miles,  
3 that's 3 million dollars, a one shot deal, you  
4 know. Not a heck of the lot if you divide  
5 that over 99 years that's \$30,000 they're  
6 giving the landowner.

7           You know they're saying they've got  
8 40,000 landowners involved here. Granted my  
9 feeling is that if you want a pipeline like  
10 this, I'm not in favor of it, but if you do  
11 treat the landowner correctly. They should  
12 have an annual income coming off there per  
13 footage of the pipeline, because hey, you want  
14 tax dollars? You want economic development?  
15 You have to put some dollars in at the right  
16 spot. That's at the bottom not the top.

17           Tax dollars, I shouldn't say it, we  
18 have a lot of political arena here, but to me  
19 that's for politicians, career politicians so  
20 they can get reelected, because tax dollars  
21 gives them money to spend in the communities  
22 to bring things back. And that, that's sort  
23 of my feeling on that, on that issue, you  
24 know, so.

25           And I have the same concern as, what

1 you call it environmental as far as for  
2 water. Because if we contaminate the Red  
3 River Valley with the overland flooding in our  
4 area, you can look, it's looks like being on a  
5 hill, but we've had overland flooding that  
6 through the small town of Lankin there, seen a  
7 foot-and-a-half of water come through the Main  
8 Street of the town. You know, the railroad  
9 track held it back but still the railroad  
10 bridges broke in '76 and created chaos.

11 You know now this pipeline's right  
12 in the same area. You know, the, what you  
13 call it elevation just drops too great.

14 And like I say, thank you for your  
15 time. And I have many more concerns, but the  
16 day has grown short. And like I say I'll  
17 present that other deal as evidence so, what  
18 you call it this one sheet I read.

19 And thank yous all for your time.

20 MR. WAHL: Mr. Kratochvil, where did  
21 this, this is page 22 of a document. Where  
22 did this come from?

23 MR. KRATOCHVIL: It come off the  
24 Internet. Right here it shows where the  
25 information came from.

1 MR. WAHL: I understand that. So  
2 you got this from an Internet website.

3 MR. KRATOCHVIL: Yep.

4 MR. WAHL: Would you know which  
5 website it was?

6 MR. KRATOCHVIL: No, I don't,  
7 because my wife happened to get it. But I can

8 --

9 MR. WAHL: Is your wife going to  
10 testify?

11 MR. KRATOCHVIL: Yes, she is.

12 MR. WAHL: Maybe we could have her  
13 identify this and offer it with --

14 MR. KRATOCHVIL: Here, there's the  
15 references where it came from, also.

16 MR. WAHL: This --

17 MR. KRATOCHVIL: But I'm not  
18 entering this piece, you know.

19 MR. WAHL: I, I understand that.  
20 That's really not what I'm looking for. This,  
21 I'm looking for what website it came from.

22 MR. KRATOCHVIL: Well, see the  
23 website I explained to you, it's from  
24 TransCanada.

25 MR. WAHL: I see that citation.

1 Well, just a minute, please.

2 MR. KELSCH: Your Honor, your Honor,  
3 if I may assist you. This is page 22 of MN3  
4 which has already been admitted.

5 MR. KRATOCHVIL: Okay. If it is,  
6 that's fine.

7 MR. KELSCH: Over my objection.

8 MR. WAHL: Okay. Let me make a  
9 record, please.

10 MR. KRATOCHVIL: Okay.

11 (Whereupon, Exhibit MK1 was marked  
12 for identification.)

13 MR. WAHL: I have marked for  
14 identification as Exhibit MK1 a portion of  
15 what turns out to be a, a brochure or a  
16 newsletter of some sort. And Mr. Kratochvil  
17 that has already been marked in evidence and  
18 received yesterday as Exhibit MN3, so --

19 MR. KRATOCHVIL: Okay. That's fine.

20 MR. WAHL: -- the Commission already  
21 has this.

22 MR. KRATOCHVIL: That's fine.

23 MR. WAHL: Is there anything else  
24 you wish to say at this time?

25 Mr. Kelsch, any questions of Mr.

1 Kratochvil.

2 MR. KELSCH: No, No questions, your  
3 Honor. Was MK1 --

4 MR. WAHL: Not received.

5 MR. KELSCH: Okay, thank you.

6 MR. DELANEY: I have no questions.

7 MR. WAHL: Mr. Binek?

8 MR. BINEK: No questions.

9 MR. WAHL: Questions from the  
10 Commission? Commissioner Cramer?

11 MR. CRAMER: One short statement and  
12 a question.

13 First of all I agree that economic  
14 activity is certainly more valuable when it's  
15 to people and landowners and goes to business  
16 as opposed to directly to the government for  
17 revenue, but you're not saying that you're  
18 opposed to county parks and roads and things,  
19 though, are you?

20 MR. KRATOCHVIL: No, I'm not.

21 MR. CRAMER: Okay, thank you. I  
22 just wanted to clear that up for the county  
23 commissioners in the room.

24 MR. KRATOCHVIL: Yeah.

25 MR. WAHL: Any other questions from

1                   MR. WAHL: You may proceed with your  
2 testimony.

3                   MS. KRATOCHVIL: Thank you.

4                   Where to start. What a mess. I  
5 will start with the first phone conversation  
6 that I had with a Keystone representative.  
7 And I don't remember the exact date, but it  
8 was before the Michigan scoping meeting.

9                   A very rude, obnoxious person, male,  
10 called and wanted to know if we'd give him  
11 permission to survey across our land. I said  
12 absolutely not. Stay in Canada.

13                   And he started talking and saying  
14 what a great deal it was. And I says okay,  
15 one question, I've only got one question, what  
16 happens with our high water table, our shallow  
17 wells, and an oil spill.

18                   And this smart aleck that he was,  
19 and I will use those terms because that's  
20 exactly what he was, said well, I guess you'll  
21 just have to learn to like drinking oil, and  
22 your livestock, too.

23                   At that point my blood pressure  
24 probably was off the charts and then some.  
25 Thank God my doctor wasn't handy. He would

1 have had me tranquilized and on blood pressure  
2 pills for the rest of my life.

3 But that is the kind of response we  
4 have had basically from Keystone from day  
5 one.

6 When I went to the scoping meeting  
7 and Elizabeth Orlando from the United States  
8 State Department was there, we listened to all  
9 of the propaganda. And that's what it was. I  
10 mean there was nothing definitive. No  
11 questions were answered. Nothing but, well,  
12 like I told her afterwards as far as I was  
13 concerned it was just a bunch of bull and a  
14 waste of my time.

15 And I asked her point blank why this  
16 pipeline had to come through, and why there,  
17 and why they didn't care about this country,  
18 and why it couldn't be moved. And she goes,  
19 well, they've invested so much time and money  
20 already into this proposed pipeline that we  
21 cannot, meaning the United States government,  
22 could not ask them to deviate from their  
23 proposed route.

24 And I said excuse me, this foreign  
25 company has more rights than the US citizens?

1 Their greed for money comes over life, health,  
2 welfare, production, water? Not necessarily  
3 in those orders.

4 And she goes, well, I guess. And  
5 just kind of blew me off, like who are you.

6 Really ticked me off. I'm going  
7 this is from state, US federal officials. I'm  
8 going, you know, okay, they went straight to  
9 the top, which maybe is protocol I don't  
10 know.

11 But to me those federal officials,  
12 state, county, federal, you go up the ladder,  
13 it should have started at the citizen level.  
14 Do we want this? Does the Canadian people  
15 want this pipeline? No, they do not want this  
16 pipeline in this country.

17 Does Keystone care? No, because  
18 that's where they're making all their money,  
19 putting this pipeline in. Conoco has half  
20 interest in them already, whether they want to  
21 admit it or not.

22 As far as I'm concerned they  
23 perjured themselves saying they don't. It's  
24 in their documents saying they do. So why  
25 aren't they telling us.

1           I mean their country needs oil just  
2 as much as ours does. They're importing for  
3 part of their country. Why can't they use  
4 their own. Why does our country have to run  
5 the risks of their contamination, and our  
6 people's lives, our water, our land.

7           If they need the oil, too, process  
8 it in their own country. The people are  
9 complaining because it's getting shipped down  
10 here, processed, and then they're going to  
11 have to buy it back. Doesn't make any sense  
12 to me. Why is our country doing this?

13           Part of the reason is, according to  
14 the NAFTA agreement, proportional sharing  
15 clause, Article 60-5 of NAFTA, it restricts  
16 the Canadian's ability to cut back on future  
17 oil exports. In other words the more oil we  
18 ship to the United States the more oil we must  
19 ship. Article 60-5 of NAFTA obliges Canada to  
20 continue exporting nonrenewable hydrocarbons  
21 to the US in the same proportion of total  
22 supply as was sold to the US over the three  
23 previous years.

24           Okay. It's great for Canada. What  
25 about our country. What about our oil

1 supplies, and it's much better quality, less  
2 contaminates, less pollution, and our people.

3           Who wrote up this crazy agreement?  
4 Whoever it was doesn't need to be in office.  
5 To me it was a terroristic tactic, because  
6 that's what it's doing to this country.

7           It's not helping Canada, either.  
8 They're losing many, many jobs.

9           People have died already from these  
10 chemicals that this oil produces. Why do we  
11 need it here?

12           In fact when South Dakota tried  
13 getting TransCanada to, to tell them the exact  
14 composition of their crude oil they refused to  
15 release the exact combination or exact  
16 composition of their crude oil claiming it was  
17 proprietary information. Well, the Canadian  
18 industry also, they have a website, and  
19 according to their information this oil  
20 contains not only the carbon, the hydrogen,  
21 sulfur, oxygen, and nitrogen like most of them  
22 do, it also contains nickel, vanadium, lead,  
23 chromium, mercury, arsonic, selenium, plus  
24 many other toxic elements.

25           Some of these like the hydrogen

1 sulfide that they need to add to it to make  
2 this oil even move is extremely dangerous.  
3 It's the same thing as sewer gas that kills  
4 thousands of people a year. It takes very  
5 little of it to permanently brain damage  
6 people and they can't even smell it half the  
7 time before it's harmed them. Is this what we  
8 really want leaking into our water supplies?  
9 That's just one of the things.

10           The benzene, they have all of these  
11 other things that are leaking in there that,  
12 like benzene. It's flammable. Our local fire  
13 departments don't have the protective gear to  
14 prevent anything from happening to them while  
15 they're trying to fight a fire. They're just  
16 another casualty of greed.

17           And that's all this boils down to.  
18 Greed. Money. Life, property, water, makes  
19 no difference. If the big shot companies  
20 which are also in a lot of articles are  
21 purported to supply money to Sudam Hussien,  
22 and I'm sorry but he's already been declared a  
23 terrorist, so guess what, who gave him the  
24 money.

25           We don't need this in our country.

1 We don't need it in our world. And I'll be  
2 really disappointed with this country if this  
3 is allowed to come in.

4 Because there is not going to be, if  
5 one of these things leaks, and it's going to,  
6 all their literature suggests it. They've  
7 said they can't detect a 3 percent leak or 2  
8 percent leak or whatever for over 90 days.  
9 That's millions of gallons.

10 And these toxic elements get in the  
11 air, and some of them are less than 500 feet  
12 from residences and schools, and you drive by  
13 them, if you have your windows open or even  
14 the air conditioner running you're going to  
15 breath it in. You could be dead two days  
16 later and not know why you died. And no one  
17 else might either.

18 Scares the hell out of me. I don't  
19 know about you. I don't know how many more  
20 private islands there are someplace away from  
21 these companies, but boy I'm going to do some  
22 Internet search because it might be the only  
23 place left that's safe.

24 But it's up to you guys. And I  
25 don't know who else you can put pressure on,

1 but I sure hope somebody does, because I don't  
2 want them in this country.

3 I don't want to watch my kid die.  
4 And some of these chemicals get in the water  
5 and she could be dead in two days. And no  
6 symptoms besides a headache. It's crazy.  
7 Plain downright crazy.

8 And as far as I'm concerned the  
9 bigwigs that are perpetuating this are nothing  
10 short of terrorists, criminals, and  
11 unconscionable fools to even practice this or  
12 preach it, and tell us, oh, this is so safe  
13 and we need it so much. Our government alone  
14 is sitting on the world's biggest oil reserve  
15 anywhere. Over a trillion barrels. It's been  
16 known since 2005.

17 Bush has already signed declarations  
18 to start drilling on it. And it's good oil.  
19 Why do we need this stuff? It should have  
20 stayed underground with the forest growing  
21 over it, protecting the world, where God  
22 intended it to stay. But we don't need it  
23 here.

24 MR. WAHL: The Commission certainly  
25 appreciates your testimony, Ms. Kratochvil.

1 Would you take any questions?

2 MS. KRATOCHVIL: I'll take any  
3 questions --

4 MR. WAHL: Sure.

5 MS. KRATOCHVIL: -- they want to  
6 throw at me.

7 MR. WAHL: Well, I'm, I'm not sure  
8 that there are any questions, but let me ask.

9 Mr. Kelsch?

10 MR. KELSCH: Your Honor, I just have  
11 one, if I may.

12 MR. WAHL: All right.

13 MR. KELSCH: Mrs. Kratochvil, you  
14 made a statement about, I don't know if it was  
15 TransCanada or Keystone, something about  
16 perjury. I just would like you to expound a  
17 little bit more on that. Who said that, and  
18 when, and what was said.

19 MS. KRATOCHVIL: Almost every one of  
20 your people that have given their testimony  
21 today that claimed they were under oath and  
22 everything else, that have said that they have  
23 no affiliation with Conoco, that there's  
24 nothing wrong with this pipeline, they have  
25 such a great safety record, it's been proven

1 they don't, when they refuse to give out all  
2 the chemical composition of this oil, and how  
3 toxic it really is, when they have their own  
4 figures, they have their chemical analysis but  
5 refuse to share it with the different branches  
6 that have asked for it across this country, to  
7 me that is willfully hiding the truth. In  
8 other words lying.

9 If I did it, you'd call me on it.

10 MR. KELSCH: Thank you. No further  
11 questions.

12 MR. WAHL: Mr. Delaney?

13 MR. DELANEY: I have no questions.

14 MR. WAHL: Mr. Binek?

15 MR. BINEK: No questions.

16 MR. WAHL: Any questions from the  
17 Commission?

18 MR. CRAMER: I have none.

19 MS. WEFALD: None. Thank you.

20 MR. WAHL: Thank you very much, Ms.  
21 Kratochvil.

22 MS. KRATOCHVIL: Thank you.

23 MR. WAHL: It's been a long  
24 afternoon and I certainly am sure I speak on  
25 behalf of the Commission to say we appreciate

1 your attendance. I do want to say that it's  
2 obvious to me that we're not going to be  
3 anywheres near finishing this hearing today.

4 I want to be sure, and I know the  
5 Commission wants to hear all of the public  
6 testimony, so that we get that in. But we are  
7 going to have to continue both of these  
8 hearings.

9 And I say both, for those of you  
10 were at Valley City yesterday, we did not  
11 finish the hearing for the certificate of  
12 public convenience and necessity yesterday  
13 morning. There's not very much left. In  
14 fact, it may be only a matter of, oh, less  
15 than an hour, if, if that much. But clearly  
16 we're not going to get that done today.

17 We are certainly not going to  
18 complete today the testimony of the other  
19 witnesses for TransCanada Keystone, let alone  
20 the testimony that the intervenors have, and  
21 the many questions that I know that Commission  
22 counsel, and the Commissioners have. So what  
23 I will do is what's called continue those  
24 hearings. Both of those hearings.

25 And unfortunately I, I don't have a

1 date and time to tell you. I'm going to  
2 continue them, what lawyers call sine die.  
3 That is indefinitely.

4 So we'll continue those hearings and  
5 then the Commission will publish notice of the  
6 hearings again, but they'll be continued in  
7 Bismarck. And I'm not suggesting that any of  
8 you need to drive to Bismarck, but you're  
9 certainly welcome to attend the hearing.  
10 It'll be in the capitol in the Commission's  
11 hearing room, or well, depending.

12 But anyway wherever it will be in  
13 Bismarck at the capitol, the notice will be  
14 published the same as the notice was before.  
15 And of course, you're certainly welcome to  
16 attend those continued hearings. And after  
17 you've heard the additional testimony, if you  
18 wish to make additional comments I will also  
19 offer, allow you to make additional comments  
20 as public testimony regarding any further  
21 testimony that you might want to comment on.

22 So I'm, I'm sorry, I, I regret very  
23 much that we aren't able to finish this  
24 today. The important thing is that we're here  
25 to hear your public testimony. We'll continue

1 these hearings, and the real problem is I  
2 regret to say there's only 24 hours in the  
3 day. But you will get notice of those  
4 hearings, and you're, you're certainly welcome  
5 to attend those further hearings.

6 And we'll continue with -- how,  
7 how's the court reporter doing? Good for  
8 another 45 minutes? We'll continue with, and  
9 as long as necessary, to hear the further  
10 public testimony.

11 Is there any further public  
12 testimony?

13 MR. BERGSRUD: Am I allowed to, I  
14 just have a few things that I left out I would  
15 like to add. It's not very long at all. Is  
16 that okay that I approach the stand.

17 MR. WAHL: Yes, but I'd ask you --  
18 is there anybody else who, is there anybody  
19 else who's here to testify?

20 Can I ask you to wait until we  
21 finish with the other people who are here to  
22 testify? Let's do that.

23 What is your name?

24 MR. OTTO: My name is Duane Otto.

25 MR. WAHL: Mr. Otto, you heard my

1 advice regarding perjury, of course?

2 MR. OTTO: Yes.

3 MR. WAHL: Will you raise your right  
4 hand, please.

5

6 D U A N E O T T O,  
7 of Langdon, North Dakota, being first duly  
8 sworn, was examined and testified on his oath  
9 as follows:

10

11 MR. WAHL: Please state your name  
12 and address for the record.

13 MR. OTTO: My name is Duane Otto. I  
14 live at Langdon, North Dakota. 1114 5th  
15 Street. I'm manager of Cavalier Rural  
16 Electric Cooperative of Langdon.

17 MR. WAHL: You may proceed with your  
18 testimony, Mr. Otto.

19 MR. OTTO: I'll try and make it as  
20 brief as possible, but it's to the  
21 Commission.

22 Cavalier Rural Electric Cooperative  
23 supports the Keystone project for these  
24 reasons:

25 The Fargo Forum newspaper, dated

1 Saturday July 21st, 2007 states some  
2 landowners, the Dakota Resource Council, and  
3 others who fear the line could leak or who  
4 believe construction and maintenance will  
5 disrupt wildlife, aquifers and two of the  
6 state's most scenic wooded area, the Pembina  
7 Gorge and the Sheyenne River Valley near Fort  
8 Ransom State Park. End of statement.

9 Actually the pipeline will be located east of  
10 the Pembina Gorge, so it will not affect  
11 that.

12 This pipeline delivering Canadian  
13 crude oil will reduce our dependence upon  
14 Mideast and South American oil.

15 It is our understanding that  
16 aircraft will fly the route of the pipeline  
17 every two weeks to observe any leaks, digging  
18 activities by others near the pipeline, and  
19 any condition that may be detrimental to the  
20 pipeline.

21 The Keystone Pipeline will provide  
22 tax revenue to the state of North Dakota,  
23 counties and townships in the route of the  
24 pipeline. Estimated to be about 5.4 million  
25 annually, plus more in the counties where it

1 will have five pumping stations.

2 Cavalier would like to provide  
3 electric service to pumping station number 15  
4 located less than one mile from Cavalier  
5 County, with transmission services provided by  
6 Minnkota Power Cooperative of Grand Forks.

7 Cavalier urges construction of the  
8 Keystone pipeline project.

9 Sincerely yours, Duane Otto.

10 And I'd like to enter into, as an  
11 exhibit this statement and a copy of the news  
12 article.

13 MR. WAHL: Do you care which order  
14 they're in?

15 MR. OTTO: No.

16 MR. WAHL: Let's mark this as one  
17 exhibit.

18 MR. OTTO: That's fine.

19 (Whereupon, Exhibit D01 was marked  
20 for identification.)

21 MR. WAHL: For the record I have  
22 marked for identification Exhibit D01, which  
23 is Mr. Otto's statement, together with a  
24 clipping from the Fargo Forum, Saturday July  
25 21, 2007, page A14.

1 Mr. Kelsch?  
2 MR. KELSCH: 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 D01 is received.  
8 Mr. Kelsch, any questions for Mr.  
9 Otto?  
10 MR. KELSCH: No questions.  
11 MR. WAHL: Mr. Delaney?  
12 MR. DELANEY: No questions.  
13 MR. WAHL: Mr. Binek?  
14 MR. BINEK: No.  
15 MR. WAHL: Questions from the  
16 Commission?  
17 MR. CRAMER: No, just want to  
18 express my appreciation for your testimony, as  
19 well as for pointing, correcting the Fargo  
20 Forum. We need more of you.  
21 MR. OTTO: Good. Thank you.  
22 MR. CLARK: I just want to thank,  
23 thank you, Mr. Otto, for coming down.  
24 MR. OTTO: Thank you.  
25 MR. CLARK: We've heard previously

1 from, from your cooperative on the issue of  
2 the pumping station.

3 MR. OTTO: Yes.

4 MR. CLARK: We're certainly aware of  
5 it. So appreciate you coming down today as  
6 well. Thanks.

7 MR. OTTO: Very good, thank you.

8 MR. WAHL: Thank you very much, Mr.  
9 Otto.

10 Is there anyone who wishes to  
11 testify? Any, any, anybody else who wishes to  
12 testify regarding the application?

13 Cory?

14

15 C O R Y B E R G S R U D E,  
16 of Devils Lake, having been previously sworn,  
17 was examined and testified on his oath as  
18 follows:

19

20 MR. WAHL: You understand, of  
21 course, Cory, that your testimony continues  
22 under oath and subject to penalties of  
23 perjury.

24 MR. BERGSRUD: Yes, I do.

25 MR. WAHL: You may proceed.

1 MR. BERGSRUD: Okay.

2 First of all I'd like to greatly  
3 appreciate Keystone and their scientific  
4 advancement to lessen the impact on the  
5 environment. And I forgot to mention a couple  
6 of concerns.

7 They are really questions, but I  
8 found out you can't get, you can ask questions  
9 but they can't answer you. So --

10 MR. WAHL: Well, can ask a  
11 rhetorical question, yes, Cory, you may do  
12 that.

13 MR. BERGSRUD: Okay. They mentioned  
14 something about this horizontal drilling,  
15 horizontal vertical drilling and underneath a  
16 forested area, well, and also underneath river  
17 areas. Well, I believe that would be pretty  
18 tough if there was some sort of damage  
19 underneath of these critical areas to get to.  
20 It would be really tough to get to.

21 And another concern is what replaces  
22 the resource after it's welled from the  
23 earth.

24 And also about these computerized  
25 systems that keep track of if there's a

1 weakness in the pipe or whatnot. I'm just  
2 curious if they have like a backup power  
3 supply or something like an electrical surge  
4 has an effect on the computerized system that  
5 are the monitoring the pipelines.

6 And that's all I had to add.

7 MR. WAHL: Mr. Kelsch?

8 MR. KELSCH: No questions.

9 MR. WAHL: Mr. Delaney?

10 MR. DELANEY: No questions.

11 MR. WAHL: Mr. Binek?

12 MR. BINEK: No questions.

13 MR. WAHL: Any questions from the  
14 Commission.

15 MR. CRAMER: None. But your  
16 concerns will be raised.

17 MR. BERGSRUD: Okay. You Honor, do  
18 you mind if I give this to them? This --

19 MR. WAHL: Yes, I do.

20 MR. BERGSRUD: Okay.

21 MR. WAHL: You, you, you've  
22 testified. That's your record. And it is  
23 being recorded by the court reporter, it's  
24 also being recorded audiobly, so it will, it  
25 will be there.

1 MR. BERGSRUD: Okay, thank you.

2 MR. WAHL: You're welcome.

3 Is there anybody, is there anybody  
4 else who wishes to testify? Anybody who's  
5 holding back? This is your last opportunity.

6 Going once, going twice. If you  
7 have anything to say, please don't hesitate to  
8 do so.

9 All right.

10 MS. WEFALD: I have a question. Can  
11 we proceed with the PC&N and finish that up  
12 this evening?

13 MR. WAHL: That's my thought,  
14 Commissioner.

15 Let's take a brief recess. I'd like  
16 to talk to counsel, please.

17 (Whereupon, a brief recess was  
18 taken.)

19 MR. WAHL: All right. We're back on  
20 the record.

21 We have completed the public  
22 testimony for the hearing for the siting  
23 application. We are going to continue the  
24 hearing for the siting application  
25 indefinitely to be rescheduled upon the order

1 of the Commission for a date and time as soon  
2 as counsel and, well, as soon as the parties  
3 and the public can be heard.

4 As I advised you the Commission will  
5 publish notice of that continued hearing which  
6 will be held in Bismarck. And incidentally, I  
7 would tell you that if you do not wish or are  
8 not able to attend the continued hearing in  
9 Bismarck and wish to hear that hearing, that  
10 hearing will be broadcast, that's not the  
11 correct word and I, my, my technology escapes  
12 me now, but at any rate you will be able to  
13 hear that continued hearing on your computer  
14 by accessing the Public Service Commission's  
15 website. And I'm sure there are instructions  
16 on the website for you to click on the  
17 appropriate links and you'll be able to listen  
18 to the hearing as it's conducted in Bismarck.  
19 The continued hearing.

20 Now unfortunately it's not  
21 interactive. You'll only be able to listen in  
22 the nature of a radio broadcast.

23 Now we have some time left today.  
24 I've talked with counsel. It appears that we  
25 can complete the hearing for the certificate

1 of public convenience and necessity which was  
2 continued from yesterday morning.

3 And in fact it appears that we can  
4 complete that in under five minutes, which  
5 would be something of a record. We'll see how  
6 Mr. Kelsch's estimates are and what Mr.  
7 Delaney may have to say further, as well as  
8 Mr. Binek.

9 That leaves us, that will, that will  
10 leave us very close to 5:00 o'clock.

11 Mr. Kelsch also tells me that it's  
12 unlikely that we would be able to complete any  
13 further testimony for the siting application  
14 hearing, which is why I have continued that.  
15 So we will go back on the record, open the  
16 continued hearing for the certificate of  
17 public convenience and necessity. We'll make  
18 the rounds formally on that to complete that  
19 hearing. We will then, having completed that  
20 hearing we will then adjourn until the  
21 continued hearing of the siting application.

22 So proceeding, then, with the  
23 continued hearing for the certificate of  
24 public convenience and necessity, North Dakota  
25 Public Service Commission Case No. PU-07-152.

1                   Mr. Kelsch, I understand that  
2 TransCanada Keystone has rested.

3                   MR. KELSCH: Yes, your Honor.

4                   MR. WAHL: Mr. Delaney, does, or do  
5 the intervenors have any witness or other  
6 evidence to present for the hearing of the  
7 certificate of public convenience and  
8 necessity?

9                   MR. DELANEY: The intervenors have  
10 nothing further with respect to the  
11 certificate of public need and convenience.

12                   MR. WAHL: Mr. Binek, does the  
13 Commission have anything to present?

14                   MR. BINEK: No.

15                   MR. WAHL: Rebuttal, Mr. Kelsch?

16                   MR. KELSCH: No, your Honor.

17                   MR. WAHL: That's the answer.

18                   That completes the, that completes  
19 the certificate of public convenience and  
20 necessity.

21                   MS. WEFALD: Hearing.

22                   MR. WAHL: And do, does the  
23 Commission have anything further at this  
24 time?

25                   MS. WEFALD: No.

1 MR. WAHL: Commissioners?

2 MR. CRAMER: Nothing other than to  
3 get a schedule, of course, going forward.

4 MS. WEFALD: No. I would just like  
5 to thank everyone who came today. And I would  
6 like to thank everyone for their interest and  
7 participation.

8 It's nice to finish the official  
9 hearing for the PC&N. And the Commission has,  
10 will be, the next step is for the Commission  
11 to hold a work session on the information that  
12 it receives, has received on the PC&N.

13 And generally there were some late  
14 filed exhibits that have been asked from the  
15 Commission from the parties. Those will need  
16 to come in. And then the Commission will  
17 schedule the work session.

18 So don't expect a decision on this,  
19 on the PC&N part of this in the near, in the  
20 very near future, because we need time once we  
21 receive those late filed exhibits to look them  
22 over very carefully. The work session allows  
23 the Commission, then, a chance to discuss this  
24 among ourselves.

25 You may not be aware but because the

1 Commission is a three member body we can only  
2 do our discussions about these cases in  
3 public. And that's the only time that we can  
4 talk to each other about them, when a public  
5 meeting has been declared.

6 So if you're interested in the case  
7 you can ask to have notice of that public  
8 meeting or you can call the Commission and say  
9 when is the Commission's work meeting, work  
10 session going be to held on that PC&N part of  
11 this case to find out when we're going to  
12 proceed to talk about it. And usually at that  
13 point then we give information to our staff  
14 how we would like an order drawn up if we're  
15 ready at that time to do that.

16 MR. CRAMER: And that will be  
17 streamed on the Internet, as well.

18 MS. WEFALD: Yes.

19 MR. CRAMER: That work session.

20 MS. WEFALD: All those meetings are  
21 on the Internet.

22 So that's the process that we're  
23 going to be using to handle that particular  
24 case. And as you're aware of the Commission  
25 still has further information to gather on the

1 record for the siting of the pipeline.

2 And it's very, we consider that a  
3 very important case. And we're going to be  
4 taking a lot of thorough deliberation as we  
5 make those determinations.

6 MR. CLARK: And I just want to thank  
7 everyone for showing up. I know that these,  
8 it can be nerve-wracking.

9 I mean I know a lot of folks have  
10 left the room right now, but I mean it can be  
11 nerve-wracking getting up and having to  
12 testify. It can be nerve-wracking for state  
13 officials who have to go before legislative  
14 committees let alone in a more cumbersome  
15 process like this where you have to be sworn  
16 under oath, and it's, it's more formal than a  
17 lot of other places.

18 But hopefully, although it is, as I  
19 said, a bit cumbersome it will give North  
20 Dakotans a sense of, of professionalism and  
21 thoroughness in how we go about our job. So I  
22 thank you in helping us to accomplish that.

23 MR. CRAMER: Are we going to discuss  
24 the schedule moving forward with regard to the  
25 PC&N? I guess that's what I was getting at

1 when you asked for questions regarding the  
2 late filed exhibits and the --

3 MS. WEFALD: Well, that has to be  
4 determined --

5 MR. WAHL: I was, actually I was  
6 going to follow-up on that.

7 MR. CRAMER: Okay.

8 MS. WEFALD: All right. Go ahead.

9 MR. CRAMER: Thank you.

10 MR. WAHL: But I was just going to  
11 consult --

12 MR. CRAMER: Okay. All right.

13 MR. WAHL: -- with counsel.

14 MR. CRAMER: That's fine.

15 MR. WAHL: Yeah.

16 MR. CRAMER: Thank you everyone.

17 MR. WAHL: All right the, the  
18 hearing for the certificate of public  
19 convenience and necessity, Public Service  
20 Commission Case No. PU-07-152 is closed.

21 MS. WEFALD: Now we're done for the  
22 day.

23 MR. WAHL: We're done for the day.

24 MS. WEFALD: We're adjourned.

25 Adjourned for the day.

1                   (Whereupon, the hearing was  
2 adjourned at 4:40 o'clock p.m.)  
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## 1 REPORTER'S CERTIFICATE

2

3 I, Julie K. Kohler, a general shorthand  
4 (Stenograph) reporter, 600 DeMers Avenue,  
5 Suite 300, Grand Forks, North Dakota, do  
6 hereby certify that the foregoing 175 pages of  
7 typewritten material constitutes a full, true  
8 and correct transcript of my original  
9 stenograph notes, as they purport to contain,  
10 of the transcript of the proceedings reported  
11 by me at the time and place hereinbefore  
12 mentioned.

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Julie K. Kohler

Dated this 9<sup>th</sup> day of August, 2007.