

R I N K E N O O N A N

A T T O R N E Y S A T L A W

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September 12, 2007

Thomas D. Kelsch
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SENT VIA FAX NO. 701-663-9810 AND U.S. MAIL

William Binek
Public Service Commission
State Capitol
600 East Boulevard, Department 408
Bismarck, ND 58505-0480
SENT VIA FAX 701-328-2410 AND U.S. MAIL

Administrative Law Judge, Al Wahl
Office of Administrative Hearing
1707 North 9th Street
Bismarck, ND 58501
SENT VIA FAX NO 701-328-3254 AND U.S. MAIL

Executive Secretary
Public Service Commission
State Capitol
600 East Boulevard, Department 408
Bismarck, ND 58505-0480
SENT VIA FAX 701-328-2410 AND U.S. MAIL

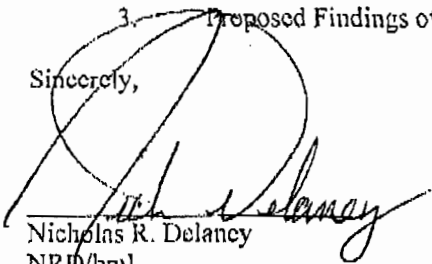
**Re: TransCanada Keystone Pipeline, LP
Case No. PU-06-421 and Case No. PU-07-152
Our File No. 20555.001**

Gentlemen:

Enclosed and served upon you please find the following documents:

1. Post-hearing Brief on the Application For a Certificate of Public Convenience and Necessity;
2. Affidavit of Nicholas R. Delaney; and
3. Proposed Findings of Fact, Conclusions of Law and Order.

Sincerely,



Nicholas R. Delaney
NRD/bml

Enclosures

cc: Lynn Wolff

September 12, 2007 02:07:09 PM
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R I N K E N O O N A N S M O L E Y D E F I E R C O L O M B O W I A N T V O N K U R F I & H O B B S , L T D

D. Michael Noonan
William A. Smaloy²
Kurt A. Dular¹
Burrill L. Colburn³
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Gerald W. Von Kurff
Sharon G. Hobbs
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Roger C. Justin^{5,6}

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Ryan J. Halton⁹

Benjamin D. Dolinsky¹
Tina A. Sims¹
James A. Muggin
Nicholas R. Delaney¹

Chad D. Miller
Adrian A. Hipple
Brooks L. Miller
Ernie E. Fisher

1. Qualified to practice law in Minnesota 2. A Real Property Law Specialist certified by the Minnesota Board for Real Estate 3. Admitted to practice law in Wisconsin 4. Admitted to practice law in North Dakota 5. Admitted to practice law in South Dakota 6. Structural Family Examined of Title 7. Admitted to practice law in Arizona

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

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

Case No. PU-06-421

**POST-HEARING BRIEF ON THE APPLICATION FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY**

September 12, 2007

A hearing in this matter was held before the Public Service Commission ("PSC") on July 23, 2007, and July 24, 2007. TransCanada Keystone Pipeline, LP ("Keystone") seeks a Certificate of Public Convenience and Necessity from the PSC. As such, the sole issue before the PSC is whether or not Keystone's 30-inch pipeline, which will pass through North Dakota, will benefit North Dakota. Intervenor's submit this brief in opposition to the granting of the Certificate of Public Need and Necessity.

BACKGROUND FACTS

The proposed project originates in Hardesty, Alberta and consists of an 1800 mile pipeline which traverses through North Dakota and reaches its ultimate end point in Pakota, Illinois. See Pre-filed Testimony of Dean Cowling at **Exhibit A**. Keystone also plans for an extension that will run through Kansas to Cushing, Oklahoma ("Cushing Extension"). Id. The proposed project will bury approximately 218 miles of 30-inch pipe in North Dakota soil. Id. The project initially plans to provide 435,000 barrels per day ("bpd") through the pipeline, with plans to expand the capacity to 590,000 bpd. Id.

TransCanada claims to have secured 495,000 million barrels per day of firm long-term contracts secured already, with an average duration of 18 years. Transcript, pg. 149, lines 9-24. 340,000 barrels of the product will be shipped to an Illinois consumer, while an additional 155,000 barrels would go to Cushing, Oklahoma through the Cushing Extension. Id. None of the product being transported by way of this proposed project will be delivered to North Dakota. Transcript, pg. 52, lines 8-23 at **Exhibit B**. Moreover, Keystone will not guarantee that it will have the ability to transport any North Dakota crude oil that North Dakota wishes to transport. Transcript, pg. 99, line 23 to pg. 101, line 19 at **Exhibit B**.

ARGUMENT

I. TransCanada has failed to meet its burden of proving the Keystone Pipeline Project will serve a public use or public purpose or otherwise benefit and convenience the State of North Dakota.

The witness presented by the Keystone Pipeline Company that offered any kind of testimony as to the proposed public need of this project was Dean Cowling. Another witness presented was Mike Diller who could only offer testimony regarding financial viability. Transcript, pg. 115, line 16 to pg. 116, line 2 at **Exhibit B**. This Brief is focuses only on the lack public need of the project.

Because Dean Cowling was the only Keystone witness presented on the issue of public need, it is important to explore Mr. Cowling's lack of basis in rendering an opinion as to any purported public benefit to the State of North Dakota or otherwise. Mr. Cowling is not an expert in economics. Transcript, pg. 40, lines 5-7; pg 104, lines 10-12 at **Exhibit B**. Keystone has not supplied the PSC any evidence by way of documentation or testimony that would indicate any benefit to the State of North Dakota as a result of oil transportation to Illinois and/or Cushing Oklahoma. Mr. Cowling acknowledged that the price of oil is set by world market. Transcript, pg. 104, line 13 to pg 105, line

17 at **Exhibit B**. He further acknowledged that the world market price of oil is not going to be impacted by the construction of the Keystone pipeline facilities. Id. In short, there is no evidence or suggestion that North Dakotans will pay less at the pump for their fuel as a result of Keystone's project.

Keystone claims to be a "common carrier" under North Dakota Statute and availed themselves on the record to the obligations of a "common carrier" under N.D.C.C. Chapter 49-19. Transcript, pg 62, line 1 to pg 64, line 25 at **Exhibit B**. Keystone has not done any studies to assess the full potential capacity needed to fulfill any oil transportation needs of the other states along the proposed pipeline route, including North Dakota. Transcript, pg. 103, line 21 to pg. 104, line 2 at **Exhibit B**. Keystone has no agreements or contracts of any kind with North Dakota for interconnection to the pipeline project for the transportation of North Dakota product. Transcript, pg. 49, lines 11-18 at **Exhibit B**. According to N.D.C.C. 49-19-11:

A common pipeline carrier, in the acceptance of the provisions of this chapter, shall agree expressly that it, without discrimination, will accept, carry, or purchase, the oil, coal, gas, or carbon dioxide of the state or of any person not the owner of any pipeline, operating a lease or purchasing oil, coal, gas, or carbon dioxide at prices and under regulations to be prescribed by the commission.

Sec N.D.C.C. § 49-19-11.

Despite the fact Keystone acknowledges it would have an obligation to transport North Dakota oil should North Dakota desire such and that North Dakota has a significant oil resource which is suffering because of a pipeline bottle neck in western North Dakota which inhibits producers from accessing outside markets, Keystone Pipeline Company would not guarantee that they would be able to transport North Dakota oil through their pipeline. Transcript, pg. 86, lines 4-9;

pg. 33, line 14 to pg. 34, line 7; and pg. 99, line 23 to pg. 101, line 19 at **Exhibit B**. This is in direct violation of their obligations under Chapter 49-19 of the North Dakota Century Code.

As it stands, the pipeline is only a pass-through, originating in Alberta, Canada, and ending in Illinois, with the possibility of an extension to Cushing, Oklahoma. Not only is the Keystone project not delivering crude oil to North Dakota, but it is also not transporting any North Dakota oil to any other consumers. In addition, the North Dakota oil producers are located in the western part of the state. In terms of close proximity, the location of the pipeline on the eastern edge of North Dakota is a far cry from providing North Dakota any convenience of future use of the pipeline. Keystone acknowledged that additional engineering an infrastructure would be needed for North Dakota producers to connect without specifying who would incur those costs. Transcript, pgs. 56-58 at **Exhibit B**.

Keystone must obtain their Certificate of Public Convenience and Necessity and agree to be bound by the common carrier obligations under Chapter 49-19 of the North Dakota Century Code in order to exercise the power of Eminent Domain. See N.D.C.C. 49-19-12. Not only is Keystone unable to guarantee the fulfillment of their obligation to transport North Dakota oil should North Dakota desire such, but the Keystone pipeline project does not serve a public use or purpose as defined by the North Dakota Constitution.

Keystone offered pre-filed testimony in support of their application which cited a number of purported public benefits to North Dakota. They included the following:

1. Keystone will acquire pipeline Right-of-Way easements from landowners in predominantly rural areas. Landowners will receive compensation for the easements as well as compensation for crop loss or other damages.
2. Construction will involve two spreads in North Dakota with

- 500-600 workers for each spread.
3. An additional 20 workers will be hired for construction of each pump station.
4. 10-15% of the workforce will be hired locally.
5. There will be a net positive impact on the local economy for the approximately 18 months of construction.
6. Capital construction costs will be in excess of \$300 million dollars.
7. Food and lodging for construction will be approximately \$3.25 million dollars.
8. Construction materials and other supplies will be approximately \$750,000 dollars.
9. Based on 2005 property assessment and tax rate information, Keystone's North Dakota property taxes will be approximately \$5.2 million in the first year after construction, and will be continued to be paid over the lifetime of the pipeline.
10. In addition Keystone will pay ad valorem taxes to the local governments during the years of operation of the pipeline.
11. Direct and contract employees will be hired locally for pipeline operations.
12. Keystone will also pay sales and use taxes.

See Pre-filed testimony of Dean Cowling at **Exhibit A**.

The North Dakota Constitution provides that private property shall not be taken for public use without just compensation. N.D.Const., Art. I, Sec. 16. If the PSC grants this Certificate, Keystone will then have the power to the condemn property through the Eminent Domain process. The Constitution itself provides clarity as to what constitutes a public use or public purpose, such that the power of eminent domain would be appropriate. According to the recently amended North Dakota Constitution, **“a public use or public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health.”** N.D.Const., Art I, Sec. 16 (emphasis added). The purpose of this recent amendment was to make it more difficult for private companies and ventures to take private property, let alone a private foreign company such as Keystone. All of the above-cited benefits

proposed by Keystone do not constitute a public use or purpose under North Dakota's Constitution.

As further comment to some of the specifically cited benefits proffered by Keystone, compensation to landowners for an easement and associated crop damage is not a benefit to North Dakota or the specific individual for that matter, as it is merely compensation for damages and devaluation attributed to the easement itself. It is not a profit to the landowner. Moreover, as indicative at the hearing during public comment, there are a number of landowners opposed to the project all together. It is these persons whose property would be condemned if the PSC granted this certificate. In addition, Keystone also has not yet hired anyone locally for the construction and operation of the pipeline. Transcript, pg. 50, lines 2-5 at **Exhibit B**. In fact, the only local hires Keystone is able to point to at this moment are the local counsel/attorneys, which is hardly a benefit to the State or citizens of North Dakota. Transcript, pg. 50, lines 2-12 at **Exhibit B**. Keystone is not getting any of the pipe used for the project from North Dakota and, instead, the pipe will be outsourced from a number of different countries. Transcript, 48, line 11 to pg. 49, line 6 at **Exhibit B**. Finally, a number of the above-cited benefits are only temporary in nature while the operation of the pipeline itself indefinite and seemingly perpetual.

In summary, any benefits to North Dakota are indirect benefits. Also, the cited benefits do not constitute a public use or purpose under the North Dakota Constitution. Keystone has not provided any studies or reports to substantiate Keystone's claims. Even assuming the above-cited benefits will occur in North Dakota, they do not satisfy the requirements of the North Dakota Constitution. The PSC is expected to rely upon unsubstantiated, blanket statements regarding benefits to North Dakota by a foreign company and a witness who lacks the appropriate economic background.

Keystone has the burden in this matter; The burden to prove to the PSC that the pipeline project serves North Dakota such that they are deserving of a Certificate of Public Necessity and Convenience and the ability to condemn private property under the North Dakota Constitution. Keystone has failed to meet their burden in this matter and the PSC should make a finding that Keystone has failed to offer suitable evidence for the granting of the Certificate.

CONCLUSION

For the aforementioned reasons, Intervenor respectfully request that the Public Service Commission deny Keystone's application for a Certificate of Public Convenience and Necessity.

Dated: 9/12, 2007.

Respectfully Submitted,

RINKE-NOONAN

By 

Gary R. Leistico, #05716
Nicholas R. Delancy, #06198
Attorneys for Intervenor
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1015 West St. Germain St.
P.O. Box 1497
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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

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

Case No. PU-06-421

AFFIDAVIT OF NICHOLAS R. DELANEY

September 12, 2007

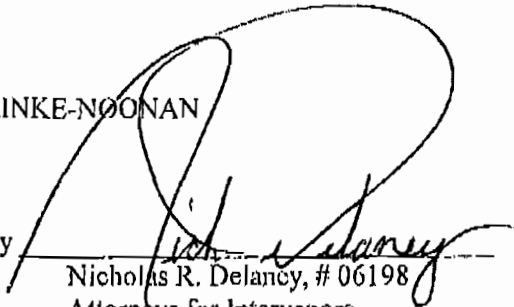
STATE OF MINNESOTA)
)SS
COUNTY OF STEARNS)

Nicholas R. Delaney, being first duly sworn on oath, states and alleges as follows:

1. I am an attorney with the Rinke Noonan law firm in St. Cloud, MN, located at 1015 West St. Germain Street, St. Cloud, MN 56302.
2. Rinke Noonan represents the Dakota Resource Council, Ramona Klein, Merle and Linette Kratochvill, Janic and John Capp, and Mark Novak.
3. Attached hereto as **Exhibit A** is a true and correct copy of Dean Cowling's pre-filed testimony submitted in support of the application for a Certificate of Public Convenience and Necessity.
4. Attached hereto as **Exhibit B** are true and correct copies of the pages of transcript cited in the intervenors' brief.

Dated: 9/12, 2007.

RINKE-NOONAN

By 

Nicholas R. Delaney, # 06198
Attorneys for Intervenors
P.O. Box 1497
St. Cloud, MN 56302-1497
320 251-6700

1

2

STATE OF NORTH DAKOTA

3

PUBLIC SERVICE COMMISSION

4

5 TransCanada Keystone Pipeline, LP

Case No. PU-07-15

6 Keystone Pipeline

7 Public Convenience and Necessity

OAH Case No. 20070258

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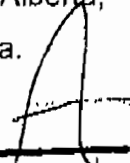
Testimony of Dean Cowling

10 In Support of Application for a Certificate of Public Convenience and
11 Necessity

12 DEAN COWLING, BEING FIRST DULY SWORN, ON OATH, DEPOSES AND STATES AS
13 FOLLOWS:

- 14 • My name is Dean Cowling. I am the Project Director for TransCanada Keystone
15 Pipeline, L.P. (Keystone).
- 16 • I am filing this testimony on behalf of Keystone, in support of its application for a
17 certificate of public convenience and necessity. Keystone's parent company is
18 TransCanada Corporation (TransCanada).
- 19 • I am attaching a copy of my resume and professional qualifications.
- 20 • TransCanada filed an application for a certificate of public convenience and
21 necessity to construct and operate the Keystone Pipeline in the North Dakota
22 Counties of Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and
23 Sargent.
- 24 • The pipeline will cross approximately 218 miles of North Dakota from the
25 Canada border to the South Dakota border.
- 26 • The purpose of the pipeline is to transport crude oil from Hardisty, Alberta,
27 Canada to Patoka, Illinois, with an extension to Cushing, Oklahoma.

28

EXHIBIT

1 **Public Convenience and Necessity will be served by construction and operation**
2 **of the pipeline facilities.**

3 **A. Pipeline serves the National Interest.**

- 4 • As a cross-border crude oil pipeline, Keystone is required to obtain a
5 Presidential Permit from the United States Department of State (DOS),
6 authorizing the construction, operation, and maintenance of its pipeline border
7 crossing. In order to grant a Presidential Permit, the DOS must find that a
8 proposed project will serve the national interest of the United States. In its
9 application for a Presidential Permit, filed with the DOS in April 2006, Keystone
10 explained that construction of the Keystone Pipeline Project, including the
11 proposed border crossing facilities, will serve the national interest of the United
12 States by providing refineries and markets with access to a substantial and
13 reliable incremental supply of Canadian crude oil to meet growing U.S. demand
14 for petroleum products. As summarized in the Environmental Report submitted
15 with Keystone's Presidential Permit application, and attached as an Appendix to
16 Keystone's application to the North Dakota PSC for a Certificate of Corridor
17 Compatibility, the need for the project is dictated by:

- 18 1. Increasing Canadian crude oil supplies combined with insufficient
19 export pipeline capacity.
20 2. Increasing crude oil demand in the U.S., coupled with decreasing
21 domestic supply.
22 3. The opportunity to reduce U.S. dependence on foreign offshore oil
23 through increased access to stable, secure Canadian crude oil
24 supplies.
25 4. Demonstrated shipper interest in the Keystone Pipeline Project.

- 26 • Section 1.2.1 of the Environmental Report discusses crude oil supplies in the
27 Western Canadian Sedimentary Basin (WCSB) and particularly in Canada's vast
28 oil sands reserves located in northern Alberta. The Canadian Association of
29 Petroleum Producers ("CAPP") reports that established crude oil reserves in the

1 WCSB are estimated at 179 billion barrels. Over 97 percent of those reserves are
2 sourced from Canada's oil sands region. The Alberta Energy and Utilities Board
3 ("AEUB") estimates that there are 175 billion barrels of established reserves
4 recoverable from the oil sands. The Oil and Gas Journal has reported that Alberta
5 has the second largest crude oil reserves in the world, second only to Saudi
6 Arabia.

- 7 • Existing crude oil pipeline export capacity out of the WCSB is insufficient to
8 accommodate the forecasted crude oil supply growth. The Keystone Pipeline
9 Project initially will provide 435,000 bpd of incremental export capacity to address
10 this deficiency. Moreover, TransCanada recently announced that it has received
11 adequate shipper commitments to go forward with its plans for a proposed
12 expansion of Keystone's capacity to 590,000 bpd, through the addition of
13 incremental pumping capacity, and an extension of the proposed pipeline to
14 Cushing, Oklahoma.
- 15 • Section 1.2.2 of the Environmental Report notes that, according to the Energy
16 Information Administration ("EIA"), U.S. demand for petroleum products has
17 increased by over 17 percent or three million bpd over the past 10 years and is
18 expected to increase further. The EIA estimates that total U.S. petroleum
19 consumption will increase by approximately 5.3 million bpd over the next 20
20 years, representing average demand growth of approximately 265,000 bpd per
21 year.
- 22 • At the same time, domestic U.S. crude oil production continues to decline.
23 According to CAPP, domestic crude production in the Petroleum Area for Defense
24 District II ("PADD II") is declining at an average rate of about three percent per
25 year. Over the past 20 years, PADD II crude oil production has decreased by
26 over 600,000 bpd or 60 percent.
- 27 • The Keystone Pipeline Project will provide the United States with access to
28 secure and growing Canadian crude oil supplies. Access to incremental
29 Canadian crude supplies will provide the United States with an opportunity to

1 offset declines in domestic crude oil production and to decrease its dependence
2 on offshore foreign crude oil supplies, consistent with national policies.

- 3 • Oil pipelines operating in interstate commerce are subject to regulation by the
4 Federal Energy Regulatory Commission ("FERC") under the Interstate Commerce
5 Act ("ICA"). Under the ICA, oil pipelines are statutory "common carriers."
6 Keystone is willing and able to entertain discussions with North Dakota producers
7 concerning entering into interconnection agreements.

8 **B. Direct and indirect economic benefits for North Dakota are anticipated for**
9 **the proposed facility as follows:**

- 10 1. Keystone will acquire pipeline Right-of-Way easements from landowners in
11 predominately rural areas. Landowners will receive compensation for the
12 easements as well as compensation for crop loss or other damages.
- 13 2. Construction will involve two spreads in North Dakota with 500-600 workers
14 for each spread.
- 15 3. An additional 20 workers will be hired for construction of each pump station.
- 16 4. 10-15% of the workforce will be hired locally.
- 17 5. There will be a net positive impact on the local economy for the approximately
18 18 months of construction.
- 19 6. Capital construction costs will be in excess of \$300 million dollars.
- 20 7. Food and lodging for construction will be approximately \$3.25 million dollars.
- 21 8. Construction materials and other supplies will be approximately \$750,000
22 dollars.
- 23 9. Based on 2005 property assessment and tax rate information, Keystone's
24 North Dakota property taxes will be approximately \$5.2 million in the first year

1 after construction, and will be continued to be paid over the lifetime of the
2 pipeline.

3 10. In addition Keystone will pay ad valorem taxes to the local governments
4 during the years of operation of the pipeline.

5 11. Direct and contract employees will be hired locally for pipeline operations.

6 12. Keystone will also pay sales and use taxes.

7 **C. Keystone Pipeline may ease current bottlenecks in oil pipeline**
8 **infrastructure in North Dakota.**

9 • Pipeline bottlenecks currently exist in North Dakota which inhibits area
10 producers from readily accessing markets with their production.

11 • This has caused depressed prices for western North Dakota crude oil.

12 • The Keystone pipeline could play a role in resolving this problem by providing
13 another transportation route for moving crude oil to refineries in the United
14 States.

15 • The North Dakota Industrial Commission, acting in its capacity as the North
16 Dakota Pipeline Authority, is in support of the TransCanada Keystone pipeline
17 project. A letter stating the North Dakota Industrial Commission's position is
18 attached hereto as Exhibit A.

19

20 **Keystone is fit, willing and able to provide the proposed pipeline service.**

21 **A. TransCanada has the experience and capability to provide the proposed**
22 **pipeline service.**

23 • TransCanada has 36,500 miles of wholly owned pipeline.

- 1 • TransCanada has more than 50 years of pipeline construction and operating
2 experience.
- 3 • TransCanada has developed significant expertise in large-diameter, cold
4 weather pipeline design, construction, operation, and maintenance.
- 5 • TransCanada operates one of the largest, most sophisticated, remote
6 controlled pipeline networks in the world with a solid reputation for safety and
7 reliability.
- 8 • TransCanada has skilled and expert people.
- 9 • TransCanada has relationships with approximately 40,000 landowners.
- 10 • Through its annual Customer Satisfaction Survey, TransCanada received
11 feedback from customers served by its Canadian pipelines. The survey
12 found that TransCanada maintained high levels of overall customer
13 satisfaction.
- 14 • Keystone has a pipeline Management Program that meets or exceeds federal
15 requirements, and includes
- 16 1. In-line inspection,
17 2. Repair criteria, and
18 3. On-going monitoring.
- 19 • Keystone has 24 hour monitoring 365 days a year through the use of a
20 dedicated leak detection system.
- 21 • As required by the United States Department of Transportation, Pipeline
22 Hazardous Materials and Safety Administration (PHMSA), Keystone is
23 developing a detailed Emergency Response Plan (ERP) that includes:
- 24 1. Response equipment pre-positioned at manned locations.

1 2. First responders located along the route able to respond in compliance
2 with 49 CFR Part 194

3 3. Remediation of the area of any spill in coordination with federal and state
4 agencies.

5 • The ERP will be filed with PHMSA prior to Keystone commencing operations.

6 **B. TransCanada has the financial ability to provide the pipeline service.**

7 • TransCanada in its 2006 annual financial report shows the following, in
8 Canadian dollars:

9 1. \$25,909,000,000 in total assets.

10 2. \$7,520,000,000 in gross revenues.

11 3. \$1,079,000,000 in total net income.

12 Dated this 20 day of July, 2007.

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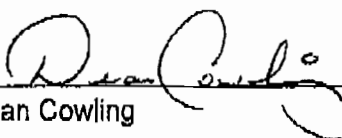
21

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Dean Cowling

COUNTRY OF CANADA)

) ss.

PROVINCE OF Alberta)

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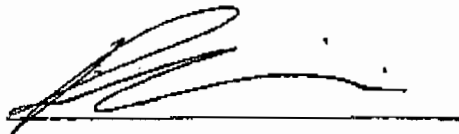
On the 20th day of July, 2007, before me personally appeared Dean Cowling,
known to me to be the same person described in and who executed the within and
foregoing instrument and acknowledged to me that he executed the same.

5

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Notary Public, Province of Alberta

10

11

12

(SEAL) PETER A. PLIOUNIS
BARRISTER AND SOLICITOR

QUALIFICATIONS AND RESUME FOR DEAN COWLINGQUALIFICATIONS

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

EDUCATION SUMMARY

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

CONTINUING EDUCATION

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

CAREER HISTORY**TransCanada Pipelines Ltd**

2006 -- Present Director, Keystone Pipeline Project

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

2005- 2006 Director, Pipeline Projects Implementation

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

2003 -- 2005 Director, Field Operations

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

2000 - 2003 Manager, Eastern Business Development

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

NOVA Gas Transmission Ltd

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

1997 - 1998 Customer Service Representative, Customer Service

1996 - 1997 Program Planner, Operations and Engineering

1994 - 1996 General Rate Application Coordinator, Regulatory Affairs

1992 - 1994 Employee Development Coordinator, Engineering

1990 - 1992 Business Systems Analyst, Information Technology

July 19, 2007

NORMAN E. MARK - COURT REPORTER SERVICE
312 BLACK BUILDING, FARGO, ND 58102 (701) 235-7571

1 heard this morning is in our opinion capacity for
2 pipelines is very tight today, and this -- and this
3 goes hand in hand with that. The conclusion that we
4 came to was Keystone is the only alternative in a
5 position to meet increased demand for crude oil
6 within the time frame required for the contracts
7 that -- that -- that Keystone has, and we'll go into
8 that in a little bit more detail.
9 Keystone has received very strong
10 support from shippers which is demonstrated through
11 the binding contracts that we've been -- that we've
12 attained. TransCanada has now secured a total of
13 495,000 million (sic) barrels of firm long-term
14 contracts with an average duration of 18 years to
15 support the Keystone pipeline project. We did this
16 through two separate open seasons. In late 2005 and
17 early 2006, our first commercial open -- open season,
18 we secured 340,000 barrels of contracts. And just
19 last month we announced that we had secured an
20 additional 155,000 barrels of additional contracts.
21 And I just want to point out, the first -- the
22 340,000 barrels of contracts was to Illinois, and the
23 additional 155,000 barrels of contracts is an
24 expansion into Kansas and Oklahoma.

25 These long-term binding contracts

EXHIBIT B

NORMAN E. MARK - COURT REPORTER SERVICE
312 BLACK BUILDING, FARGO, ND 58102 (701) 235-7571

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

2 you -- what are you basing them on?

3 A. No, the numbers are not

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

5 of pipeline experience and building pipelines and

6 pipeline spreads, this is what we would typically see

7 as it relates to benefit to the local communities.

8 Q. For this project my understanding is

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

10 is that correct?

11 A. The project originates in -- in

12 Hardesty, Alberta, which is southeast of Edmonton,

13 Alberta. The project will deliver crude oil into

14 Illinois at two deliver points as outlined in our

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

16 highlighted in my -- my testimony, we have

17 subsequently went out for an open season and were

18 able to acquire additional contracts to Cushing,

19 Oklahoma. What we filed with the North Dakota Public

20 Service Commission is actually that expanded case.

21 Q. And this will not be delivering any

22 crude oil to anywhere in North Dakota specifically?

23 A. No, not today.

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

25 agreement or contract that would -- at this point

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1 the North Dakota --

2 Q. Okay.

3 A. -- producers to -- to let us understand
4 what business model they might have and what
5 requirements they might have.

6 Q. Now, we've talked a little bit about
7 the North Dakota common carrier statutes. This
8 pipeline is going through a number of states. Are
9 there similar -- you're in charge of permitting and
10 that sort of thing so I guess if you don't -- if you
11 don't know, then you don't know. But are there
12 similar statutes or obligations that you have in
13 other states where you would have to allow them to
14 interconnect with your pipeline?

15 MR. KELSCH: Your Honor, I'm going to
16 object to this question. I think it's certainly
17 beyond the scope of any direct and questions from
18 this commission. It's also probably beyond the scope
19 of this proceedings talking about other states.

20 MR. DELANEY: I guess if I could
21 respond briefly, your Honor.

22 MR. WAHL: Go ahead.

23 MR. DELANEY: My concern is -- is their
24 capacity. And if they have an obligation to North
25 Dakota and they have similar obligations to other

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1 states, I think that would have a direct impact on
2 their ability or lack thereof to allow North Dakota
3 to connect.

4 MR. WAHL: The objection's overruled.
5 You may have to restate the question for the witness.

6 MR. DELANEY: I'll -- I'll try. And
7 it's confusing, I'll try and rephrase.

8 Q. (Mr. Delaney continuing) I'm -- we've
9 talked about the North Dakota common carrier statutes
10 and your obligation as a pipeline company to allow
11 North Dakota to connect if -- if they desire to. Are
12 there similar obligations that you have to suppliers
13 in other states?

14 A. I think --

15 MR. KELSCH: Your Honor, he has
16 testified that he is aware that there's a federal
17 FERC obligation that controls the operation of the
18 pipeline, but to expect this witness to -- to know
19 the state-by-state regulations....

20 MR. WAHL: Well, but then, Mr. Kelsch,
21 his answer is he doesn't know. You should try to
22 answer the question as best you can, Mr. Cowling. If
23 you don't know, you don't know.

24 A. Actually subject to check, the way that
25 I would answer that question is actually each state

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1 has different state regulatory requirements, and
2 we're currently working our way through those
3 regulatory requirements, including North Dakota.

4 Q. (Mr. Delaney continuing) Have you
5 looked at or studied the quantity of supply in the
6 other states that the pipeline is passing through?

7 A. The company -- I would suggest to you
8 that we've done preliminary review. I would suggest
9 to you that today as it relates to supply, North
10 Dakota is -- is -- has probably the biggest supply
11 out of -- out of the states that we go through.

12 Q. So are you representing to this
13 commission that regardless of what regulations govern
14 any other states and regardless of what quantities of
15 oil they may wish to have you transport, you are
16 guaranteeing that any oil North Dakota wishes to
17 transport they will be able to do so through your
18 pipeline?

19 A. No, I'm not. I'm suggesting to you
20 that -- or is that we will have discussions with the
21 North Dakota producers and that we would -- that we
22 would need to sit down and work through their
23 requirements, what the -- what the pipeline
24 requirements are as it relates to pricing and -- and
25 spec, et cetera. What I said in my testimony is

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1 ability of TransCanada Keystone, do you see any
2 reason for that to recommend -- to deny the -- the
3 public --

4 A. The reason I asked for a restatement, I
5 just wanted to make sure you understand I'm just here
6 as a witness as far as financial viability, and
7 that's -- I think I concluded in my memo that there's
8 no reason to deny TransCanada a PC & N as far as
9 financial viability is concerned.

10 MR. KELSCII: Okay. Thank you. No
11 further questions.

12 MR. WAHL: Mr. Delaney.

13 MR. DELANEY: Very briefly, your Honor.

14 EXAMINATION

15 BY MR. DELANEY:

16 Q. So you just did an assessment on
17 financial viability; is that correct?

18 A. That's correct.

19 Q. So in that memorandum where you're
20 stating you see no reason why their application
21 should be denied, you're basing that only upon your
22 review of their financial viability; correct?

23 A. That's correct.

24 Q. You're not touching at all on the issue
25 of public necessity or economic benefit to North

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1 Dakota?

2 A. No.

3 MR. DELANEY: Okay. That's all I have.

4 MR. WAHL: Mr. Binck.

5 MR. BINEK: No questions.

6 MR. WAHL: Does any commissioner have
7 any question of the witness? Commissioner Cramer?

8 MR. CRAMER: I don't because I think we
9 have a late-filed exhibit that's going to address it
10 so I don't have any.

11 MR. WAHL: Anything further --

12 MS. WEFALD: No.

13 MR. WAHL: -- from the commission?

14 All right. Thank you very much,

15 Mr. Diller.

16 MR. DILLER: Thank you.

17 MR. WAHL: Mr. Kelsch.

18 MR. KELSCH: I would call Mark Makelky
19 to the stand.

20 MR. WAHL: Mr. Makelky, as you have
21 heard me advise previous witnesses, your testimony is
22 required to be under oath, and I am required by law
23 to advise you regarding perjury before administering
24 the oath. Perjury is a false statement of material
25 fact which you do not believe to be true; in other

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1 has --

2 You know, certainly if we are going to
3 accept the benefits of 49-19, we have to accept all
4 the -- the regulations concerned in 49-19. You can't
5 have the benefits without whatever burden is there,
6 and -- and certainly we would accept -- accept that.
7 But as I read that, it's a -- it's a -- if you choose
8 to do this, you have to do -- if you choose these
9 rights, you have these obligations as well, and
10 certainly that would be the case.

11 MR. BINEK: Your Honor, I believe that
12 Mr. Cowling previously testified that this -- that
13 TransCanada is a common pipeline carrier in North
14 Dakota, and all I'm asking is whether they agree
15 to -- to comply with the provisions of the pipeline
16 common carrier chapter and -- which is chapter 49-19
17 of the North Dakota Century Code. It's pretty
18 simple.

19 MR. WAHL: I agree, Mr. Kelsch. If --
20 if it that was an objection, it's overruled. The
21 witness may answer the question.

22 A. I haven't reviewed this in over 24
23 hours, but I would -- I would suggest to you, yes.

24 MR. BINEK: Thank you. I have no
25 further questions.

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1 auxiliary equipment, and you would provide the
2 service. As -- as we move forward -- and that's --
3 you know, based on where we're at today, at least my
4 understanding of the -- of the business here in North
5 Dakota, that's -- that's the way that that -- that
6 process would work.

7 Q. Okay. You mentioned it's a
8 negotiation. But my understanding is Keystone would
9 have an obligation if indeed there is a supplier in
10 North Dakota that wishes to use the pipeline; am I
11 right?

12 A. Yeah, there's two issues. We -- we
13 have a contract, and we have a tariff so we will
14 utilize that as part of our discussion. Now, when I
15 talk about negotiation, there will be other
16 facilities that would -- that potentially would be
17 required to get the product from to Keystone. So the
18 answer is we've got a -- we've got a contract, we've
19 got a tariff so those would be utilized in those
20 discussions.

21 Q. So am I correct in saying that
22 TransCanada Keystone Pipeline, LP, hasn't not done
23 any studies to assess the full potential capacity
24 needed to fulfill obligations to all of the states
25 along the line to allow them to transport oil?

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1 A. The answer to that I believe is you're

2 correct.

3 Q. Okay.

4 A. And, you know, I'd just maybe close off

5 by saying the oil -- and again I believe North Dakota

6 is in actually a very -- very nice position here

7 where North Dakota actually has what I would call a

8 significant amount of oil resource compared to some

9 of your other state companions.

10 Q. Would you consider yourself an expert

11 in economics?

12 A. Absolutely not.

13 Q. Okay. You spoke -- you spoke of the

14 world market and that oil prices are dictated by a

15 world market; is that correct?

16 A. Yes. Well, if you take a look at

17 pricing, there's -- there's pricing out of OPEC,

18 there's pricing out of New York City and a bunch of

19 other different exchanges. It -- the pricing

20 typically does not get down into -- at -- from an oil

21 perspective down into the -- the regional and driven

22 by more global indicators.

23 Q. Okay. So am I correct in saying that

24 this pipeline project will not in any way affect the

25 world market price of oil?

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1 A. This pipeline project will -- as per my
2 testimony, with the declining production in -- in the
3 U.S. and the increasing production in Canada, will
4 alleviate a portion of that -- of that production
5 shortfall in the U.S. And just give me one second
6 here, and I'll -- I'll pull this out.

7 Q. Well, I guess that doesn't really
8 answer my question. My question is, will the
9 pipeline project and its delivery of oil to Canada --
10 from Canada to the U.S. in any way change the price
11 of oil that's been set by the world market? And I'm
12 just talking change the price, not alleviate need or,
13 you know, supply and demand but the price.

14 A. I think at the world level, no. I
15 think at the regional level with regards to PADD II
16 there will be -- at least in my opinion there will be
17 benefits.

18 Q. Is there a difference in refining costs
19 with respect to the crude oil coming from Canada
20 versus the oil that would come from offshore sources?

21 A. I think I've already answered that
22 question earlier where at least I'm -- I believe that
23 our delivery points would need to invest in -- or in
24 the delivery points that we'd be delivering to to
25 take our crude.

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1 Q. (Mr. Binek continuing) Under chapter
2 49-19 of the North Dakota Century Code there -- there
3 are different provisions that relate to -- to the
4 carrier's acceptance of the provisions of this
5 chapter. For instance, 49-19-12 deals with eminent
6 domain, and it says, "Every common pipeline carrier
7 which shall have filed with the commission its
8 acceptance of the provisions ... has, subject to
9 chapter 32-15, the right and power of eminent
10 domain." And 49-19-11 states that "a common pipeline
11 carrier, in the acceptance of the provisions ...
12 shall agree expressly that it, without
13 discrimination, will ... carry or purchase the oil,
14 coal, gas," et cetera.

15 Does TransCanada accept the provisions
16 of chapter 49-19?

17 A. And are we talking -- so specifically
18 49-19-10?

19 MR. KELSCH: Your Honor --

20 Q. (Mr. Binek continuing) I'm referring
21 to chapter -- the statute -- and we -- I can
22 reference specifically Section 49-19-12 which is the
23 one that deals with eminent domain. It specifically
24 says that "a common pipeline carrier which shall have
25 filed with the commission its acceptance with the

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1 provisions of this chapter," et cetera.

2 And my question to you is, does

3 TransCanada accept -- accept the provisions of

4 chapter 49-19 of the North Dakota Century Code?

5 And -- and that would be all provisions of that

6 chapter.

7 MR. KELSCH: Your Honor, I guess this

8 is really a legal conclusion. We certainly will

9 comply with North Dakota law if this pipeline is

10 approved.

11 MR. BINEK: The law talks about

12 acceptance of the provisions. My --

13 MR. WAHL: Yeah.

14 MR. BINEK: My question simply is

15 whether TransCanada will agree to accept the

16 provisions of chapter 49-19.

17 MR. WAHL: Right. That's the question,

18 Mr. Kelsch. And Mr. Cowling is asked to answer on

19 behalf of the corporation.

20 MR. KELSCH: As I understand, that

21 if -- if we accept the provisions of this chapters,

22 then we do the right of eminent domain. If we don't

23 need eminent domain, whether we would be doing that

24 or not, I'm not sure. So there are -- is some legal

25 questions there that I'm not sure that this witness

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1 A. The answer to that I believe is you're

2 correct.

3 Q. Okay.

4 A. And, you know, I'd just maybe close off

5 by saying the oil -- and again I believe North Dakota

6 is in actually a very -- very nice position here

7 where North Dakota actually has what I would call a

8 significant amount of oil resource compared to some

9 of your other state companions.

10 Q. Would you consider yourself an expert

11 in economics?

12 A. Absolutely not.

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14 world market and that oil prices are dictated by a

15 world market; is that correct?

16 A. Yes. Well, if you take a look at

17 pricing, there's -- there's pricing out of OPEC,

18 there's pricing out of New York City and a bunch of

19 other different exchanges. It -- the pricing

20 typically does not get down into -- at -- from an oil

21 perspective down into the -- the regional and driven

22 by more global indicators.

23 Q. Okay. So am I correct in saying that

24 this pipeline project will not in any way affect the

25 world market price of oil?

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1 any pipe from anywhere in North Dakota?

2 A. No, we are not.

3 Q. Okay.

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

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

6 that we're building.

7 Q. Okay. When do you anticipate your

8 emergency response plan will be completed?

9 A. Our emergency response plan will be

10 completed in the first quarter of 2009.

11 Q. You testified that Keystone is willing

12 and able to entertain discussions with North Dakota

13 producers concerning entering into interconnection

14 agreements. Have there been any agreements or

15 contracts for such interconnections?

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

17 agreements or contracts for such interconnection

18 agreements.

19 Q. You also testified that 10 to

20 15 percent of the workforce will be hired locally.

21 Who is going to be hired locally?

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

23 will supplement our workforce with labor. If you

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

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

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1 on that issue and have also had the opportunity to
2 review presentations from folks around North Dakota
3 and -- and some of the folks out -- out west.

4 Q. Okay. Just to clarify, the -- the
5 decreased price that western North Dakota oil
6 producers receive does not reflect a decreased price
7 at the pump for North Dakota consumers; does it?

8 A. That -- that is correct.

9 Q. So somewhere it's being captured in the
10 middle, but it's not -- well, I guess what I'm -- the
11 point I'm making is is folks shouldn't be worried
12 here that an increased price that North Dakotans
13 receive for their production doesn't equate to an
14 increased price at the retail pumps?

15 A. That is correct. When you take a look
16 at the -- this is really a world market. And -- and
17 pricing is driven by -- as in my testimony, when you
18 take a look at the big oil -- oil producers, it's
19 really a macroeconomics discussion.

20 Q. And just two final questions.
21 TransCanada you mentioned is a public company. It's
22 traded on which exchange?

23 A. TransCanada is traded on -- on both the
24 Toronto Stock Exchange and the New York Stock
25 Exchange.

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1 Q. Once the pipeline is -- is constructed
2 and in operation, will there be -- Keystone continue
3 to have employees in the state and -- and hire
4 services from people in the state?

5 A. Yes. We would expect to have both
6 direct and contract employees which will be hired
7 locally for pipeline operations.

8 Q. Now, you -- you just previously
9 testified about purchasing materials and construction
10 costs in the state. Will Keystone pay taxes on those
11 items purchased?

12 A. Keystone will pay sales and use taxes
13 as well.

14 Q. Are you familiar with the current North
15 Dakota crude oil pipelines that are in existence
16 today?

17 A. I am familiar.

18 Q. Is there a pipeline bottleneck in the
19 state of North Dakota?

20 A. Pipeline bottlenecks currently exist in
21 North Dakota which inhibits area producers from
22 readily accessing markets with their production.

23 Q. Does that bottleneck have an effect on
24 the price of -- that the producers receive?

25 A. This has caused depressed prices for

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1 western North Dakota crude oil.

2 Q. Will the Keystone pipeline have any
3 impact on this bottleneck?

4 A. The Keystone pipeline could play a role
5 in resolving this problem by providing another
6 transportation route for moving crude oil to
7 refineries in the United States.

8 Q. Do you know whether the North Dakota
9 Industrial Commission has taken any position on the
10 Keystone pipeline?

11 (Whereupon, Exhibit No. T2
12 was marked for identification by
the court reporter.)

13 A. Yes. The North Dakota Industrial
14 Commission, acting in its capacity as the North
15 Dakota Pipeline Authority, is in support of the
16 TransCanada Keystone Pipeline project. A letter
17 stating the North Dakota Industrial Commission's
18 position has also been provided and attached.

19 Q. (Mr. Kelsch continuing) Mr. Cowling,
20 in -- in front of you is Exhibit T2. Is that the
21 letter that was submitted by the North Dakota
22 Industrial Commission?

23 A. Yes, it is.

24 MR. KELSCH: I would move to admit
25 Exhibit T2.

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1 the North Dakota --

2 Q. Okay.

3 A. -- producers to -- to let us understand

4 what business model they might have and what

5 requirements they might have.

6 Q. Now, we've talked a little bit about

7 the North Dakota common carrier statutes. This

8 pipeline is going through a number of states. Are

9 there similar -- you're in charge of permitting and

10 that sort of thing so I guess if you don't -- if you

11 don't know, then you don't know. But are there

12 similar statutes or obligations that you have in

13 other states where you would have to allow them to

14 interconnect with your pipeline?

15 MR. KEISCH: Your Honor, I'm going to

16 object to this question. I think it's certainly

17 beyond the scope of any direct and questions from

18 this commission. It's also probably beyond the scope

19 of this proceedings talking about other states.

20 MR. DELANEY: I guess if I could

21 respond briefly, your Honor.

22 MR. WAHL: Go ahead.

23 MR. DELANEY: My concern is -- is their

24 capacity. And if they have an obligation to North

25 Dakota and they have similar obligations to other

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1 states, I think that would have a direct impact on
2 their ability or lack thereof to allow North Dakota
3 to connect.

4 MR. WAHL: The objection's overruled.
5 You may have to restate the question for the witness.

6 MR. DELANEY: I'll -- I'll try. And
7 it's confusing, I'll try and rephrase.

8 Q. (Mr. Delaney continuing) I'm -- we've
9 talked about the North Dakota common carrier statutes
10 and your obligation as a pipeline company to allow
11 North Dakota to connect if -- if they desire to. Are
12 there similar obligations that you have to suppliers
13 in other states?

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15 MR. KELSCH: Your Honor, he has
16 testified that he is aware that there's a federal
17 FERC obligation that controls the operation of the
18 pipeline, but to expect this witness to -- to know
19 the state-by-state regulations....

20 MR. WAHL: Well, but then, Mr. Kelsch,
21 his answer is he doesn't know. You should try to
22 answer the question as best you can, Mr. Cowling. If
23 you don't know, you don't know.

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25 I would answer that question is actually each state

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1 has different state regulatory requirements, and
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5 looked at or studied the quantity of supply in the
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8 that we've done preliminary review. I would suggest
9 to you that today as it relates to supply, North
10 Dakota is -- is -- has probably the biggest supply
11 out of -- out of the states that we go through.

12 Q. So are you representing to this
13 commission that regardless of what regulations govern
14 any other states and regardless of what quantities of
15 oil they may wish to have you transport, you are
16 guaranteeing that any oil North Dakota wishes to
17 transport they will be able to do so through your
18 pipeline?

19 A. No, I'm not. I'm suggesting to you
20 that -- or is that we will have discussions with the
21 North Dakota producers and that we would -- that we
22 would need to sit down and work through their
23 requirements, what the -- what the pipeline
24 requirements are as it relates to pricing and -- and
25 spec, et cetera. What I said in my testimony is

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1 A. That is correct. There --

2 Q. Have you --

3 A. There have not been any agreements
4 entered into.

5 Q. Have there been any discussions with
6 any producers?

7 A. I can say that there has been
8 discussions.

9 Q. Will there be taps or points along the
10 pipeline where North Dakota-produced crude oil can be
11 put into the pipeline?

12 A. The way that the system is designed, we
13 are not prebuilding taps or interconnections per say.
14 Through discussions those types of details would be
15 part of any discussions with any business or person
16 wanting to discuss with us connection to Keystone.

17 Q. Would it -- how difficult is it to put
18 in those connections or taps, whatever you want to
19 call it, after the pipeline has been built?

20 A. I -- to -- to simply put a tap in --
21 and again maybe I'll go back a little bit more. As
22 it relates to our pipeline, there are certain
23 requirements that we have as it relates to our
24 tariff, et cetera, so we'd have to chat about or
25 discuss our tariff.

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

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

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

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

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

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

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

2 correct?

3 A. That's what I understand.

4 Q. You said that TransCanada has done

5 studies regarding the need for the pipeline. Are

6 those studies available?

7 A. Typically those studies are -- internal

8 to TransCanada are confidential as we make these

9 investment decisions. There are a number -- and

10 we've tried to provide you with a number of other

11 sources that actually fall in line with -- with

12 TransCanada's understanding.

13 Q. Well, do you have any reports or -- or

14 forecasts, that sort of thing, that -- that were

15 talked about here that are not confidential

16 information that you could provide copies of? You --

17 you made statements about the need for -- for

18 pipeline capacity and it's based on -- on the

19 information that -- that you cited. Are -- are those

20 reports a part of your testimony or are they evidence

21 that -- that is being presented in this case?

22 MR. KELSCH: Your Honor, I -- we would

23 be willing to submit the EIA annual energy outlook

24 report that was cited in Mr. Cowling's testimony as

25 well. That shows EIA's, Energy Information

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1 bc hired locally.

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

4 A. For operations -- construction and
5 operations, no.

6 Q. Okay. Well, for any reason for that
7 matter. Have you hired anyone locally for any reason
8 whatsoever?

9 A. There's a couple sitting at the table
10 beside you.

11 Q. Are you speaking of your attorneys?

12 A. Yes.

13 Q. Oh, okay. The -- you testified that
14 there will be a net positive impact on the local
15 economy for the approximately 18 months of
16 construction. What do you base that upon?

17 A. That is based on experience, and that's
18 also based on some work that we undertook along with
19 our engineering contractors to put that information
20 together.

21 Q. Have you done any studies to indicate
22 this net positive impact that will occur?

23 A. It's tough to find study. We've
24 estimated that these benefits will be realized in
25 North Dakota.

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1 reserves in Canada?

2 A. I'm familiar with the reserves in
3 Canada as it relates through information --
4 information that's shared to me through TransCanada.

5 Q. Have you visited the reserves in
6 Canada?

7 A. When I operated -- when I was part of
8 the operating group in northern Alberta, I actually
9 had an asset that was -- that was a host site to one
10 of these plants.

11 Q. The actual pipe that is anticipated to
12 be used for the project, where is that coming from?

13 A. The pipe will be sourced from a number
14 of different actually countries. Today we're
15 finalizing our -- our -- our pipe commitments and our
16 pipe order. I would anticipate that pipe will be
17 coming from the domestic North American market. I
18 also anticipate that pipe will be coming from
19 overseas markets.

20 Q. Do you know this for a fact or -- where
21 the pipe's coming from at this point or do you not?

22 A. I have a very good idea that it's --
23 that it's coming from the North American domestic
24 market and overseas market.

25 Q. Okay. Are there any -- are you getting

NORMAN E. MARK - COURT REPORTER SERVICE
312 BLACK BUILDING, FARGO, ND 58102 (701) 235-7571

1 any pipe from anywhere in North Dakota?

2 A. No, we are not.

3 Q. Okay.

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

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

6 that we're building.

7 Q. Okay. When do you anticipate your

8 emergency response plan will be completed?

9 A. Our emergency response plan will be

10 completed in the first quarter of 2009.

11 Q. You testified that Keystone is willing

12 and able to entertain discussions with North Dakota

13 producers concerning entering into interconnection

14 agreements. Have there been any agreements or

15 contracts for such interconnections?

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

17 agreements or contracts for such interconnection

18 agreements.

19 Q. You also testified that 10 to

20 15 percent of the workforce will be hired locally.

21 Who is going to be hired locally?

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

23 will supplement our workforce with labor. If you

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

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

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

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

Case No. PU-06-421

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

September 12, 2007

INTRODUCTION

A hearing was held in this matter before the Public Service Commission ("PSC") on July 23, 2007, and July 24, 2007. TransCanada Keystone Pipeline, LP ("Keystone") seeks a Certificate of Public Convenience and Necessity from the PSC and submitted an application for the same. Tom Kelsch appeared on behalf of Keystone and Nicholas Delaney with the Rinke Noonan law firm appeared on behalf of the Intervenors of record.

FINDINGS OF FACT

1. The proposed project is a pipeline originating in Hardisty, Alberta and consisting of 1800 miles of pipeline which traverses through North Dakota and reached its ultimate end point in Pakota, Illinois.
2. Keystone also plans for an extension of the pipeline which will run through Kansas to Cushing, Oklahoma. This extension will not add any additional pipeline in North Dakota.
3. Approximately 218 miles of 30-inch diameter pipe would be installed in North Dakota Soil as a result of the project.
4. The project initially plans to provide 435,000 barrels per day through the pipeline,

with recent plans to expand the capacity to 590,000 per day.

5. TransCanada already has 495 million barrels per day of firm, long-term contracts secured with an average duration of 18 years. 340,000 barrels of the product will be shipped to an Illinois consumer, while an additional 155,000 barrels go to Cushing, Oklahoma through the Cushing extension.

6. As of now, none of the product being transported by way of this proposed project will be delivered to any location in North Dakota.

7. Keystone would not guarantee that it would have the ability to transport any North Dakota crude oil that North Dakota may wish to transport in the future.

8. The only witness from the Keystone pipeline company that offered any testimony as to the proposed public need of the project was Dean Cowling. Mr. Cowling admittedly is not an expert in economics and has no educational background in economics.

9. The price of oil is set by a world market and the Keystone Pipeline Project will not impact the world market price of oil.

10. There is no evidence nor any suggestion that North Dakotans will pay less at the pump for their fuel as a result of this project.

11. Keystone claims to be a "common carrier" under the North Dakota Statute and the North Dakota Century Code Chapter 49-19.

12. Keystone has not done any studies to assess the full potential capacity needed to fulfill any oil transportation needs of other states along the proposed route including North Dakota.

13. Keystone has no agreements or contracts of any kind with North Dakota for interconnection to the pipeline project for transportation of North Dakota product.

14. Keystone acknowledged on the record that it has an obligation to transport North Dakota oil should North Dakota desire such and that North Dakota has a significant oil resource.

15. North Dakota is currently suffering from a pipeline bottleneck in the western portion of the state, which inhibits producers from accessing outside markets.

16. Keystone would not guarantee that they would be able to transport North Dakota oil through their pipeline so as to alleviate the strain being suffered by the current pipeline bottleneck.

17. North Dakota oil producers are located predominantly in the western part of the state, while the location of the proposed Keystone pipeline project runs along the eastern edge of North Dakota.

18. Additional engineering and infrastructure would be needed for North Dakota producers to connect to the Keystone pipeline project, if and when ever allowed to do so. Keystone offered pre-filed testimony in support of their application which cited the following purported benefits to North Dakota:

1. Keystone will acquire pipeline Right-of-Way easements from landowners in predominantly rural areas. Landowners will receive compensation for the easements as well as compensation for crop loss or other damages.
2. Construction will involve two spreads in North Dakota with 500-600 workers for each spread.
3. An additional 20 workers will be hired for construction of each pump station.
4. 10-15% of the workforce will be hired locally.
5. There will be a net positive impact on the local economy for the approximately 18 months of construction.
6. Capital construction costs will be in excess of \$300 million dollars.
7. Food and lodging for construction will be approximately \$3.25 million dollars.
8. Construction materials and other supplies will be approximately \$750,000 dollars.

9. Based on 2005 property assessment and tax rate information, Keystone's North Dakota property taxes will be approximately \$5.2 million in the first year after construction, and will be continued to be paid over the lifetime of the pipeline.
10. In addition, Keystone will pay ad valorem taxes to the local governments during the years of operation of the pipeline.
11. Direct and contract employees will be hired locally for pipeline operations.
12. Keystone will also pay sales and use taxes.

19. Keystone has not yet hired anyone locally for the construction and operation of their pipeline project.

20. Keystone is not getting any of the pipe used for the project from North Dakota and instead, the pipe will be outsourced from a number of different countries.

CONCLUSIONS OF LAW

1. In order to exercise the power of eminent domain, Keystone must obtain its Certificate of Public Convenience and Necessity from the PSC and also agree to be bound by the common carrier obligations outlined in Chapter 49-19 of the North Dakota Century Code. The North Dakota Constitution states that "a public use or public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health". North Dakota Constitution, Article 1, Section 16.

2. The purpose of the North Dakota Constitutional provision defining public use and public purpose is to make it more difficult for private companies and ventures to take private property through the condemnation process.

3. None of the purported benefits cited by Keystone constitute a public use or public purpose under North Dakota's Constitution.

4. The applicant, Keystone, has the burden to prove to the Commission that its project

serves a public use or public purpose to the state of North Dakota. Additionally, the project must be necessary and convenient to the state of North Dakota and its citizens.

5. Keystone has not proffered any expert testimony that this project will serve as an economic benefit to North Dakota. Regardless, economic benefits do not satisfy the North Dakota Constitutional requirements for public use and public purpose. Keystone, by its inability to guarantee the transportation of North Dakota oil should North Dakota desire to transport oil through its project, has failed to fulfill its obligations under Chapter 49-19 of the North Dakota Century Code. Therefore, Keystone cannot be considered a common carrier.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the PSC denies Keystone's application for a Certificate of Public Convenience and Necessity.

Dated: _____, 2007.

STATE OF NORTH DAKOTA PUBLIC
SERVICE COMMISSION

Al Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, ND 58501
701-328-3260, awahl@nd.gov

STATE OF MINNESOTA)
)
COUNTY OF STEARNS)

**AFFIDAVIT OF SERVICE BY FACSIMILE
AND U.S. MAIL**

The below signed, being duly sworn, states that on the 12th day of September, 2007, I served the following:

1. Post-Hearing Brief on the Application For a Certificate of Public Convenience and Necessity;
2. Affidavit of Nicholas R. Delaney; and
3. Proposed Findings of Fact, Conclusions of Law and Order.

on the following individuals:

Thomas D. Kelsch
 Todd Kranda
 Kelsch, Kelsch, Ruff & Kranda
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Executive Secretary
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 MAIL

by mailing to them copies thereof, enclosed in an envelope, postage prepaid, and by depositing same in the post office at St. Cloud, Minnesota, directed to said attorneys at the addresses above, and by faxing to the facsimile numbers listed above, the last known facsimile numbers and addresses of said attorneys.

Brandi Lowe

Subscribed and sworn to before me
this 12th day of September, 2007.

Angie M. Bengtson

 Notary Public



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Date: September 12, 2007

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TRANSMITTED TO: Thomas Kranda, William Binek, Al Wahl, Executive Secretary

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