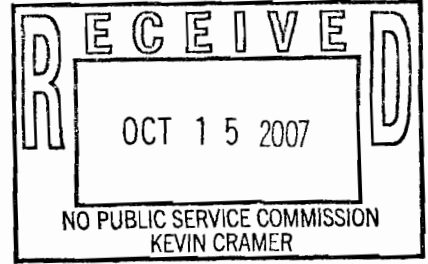


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October 15, 2007

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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 Intervencors' Post Hearing Brief.

Sincerely,

Nicholas R. Delaney
NRD/bml

Enclosure

cc: Lynn Wolff

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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

POST HEARING BRIEF

October 15, 2007

I. INTRODUCTION

A hearing was held at the Public Service Commission Office in Bismarck, ND on September 5 and 6, 2007, with respect to the application for a Route Permit and Corridor Certificate by TransCanada Keystone Pipeline, LP ("Keystone"). Attorneys Nicholas R. Delaney and Gary R. Leistico from the Rinke Noonan law firm appeared on behalf of the Dakota Resource Council, Ramona Klein, Merle and Linette Kratochvill, Janie and John Capp, and Mark Novak ("Intervenor"). Other appearances were noted on the record. Intervenor submit this Post-Hearing Brief with respect to Keystone's aforementioned applications and seeks the PSC's denial of the same.

II. LAW AND ARGUMENT

The proposed Keystone Project presents significant environmental risks. Keystone hired DNV Consulting of Houston, TX to perform and prepare a Frequency-Volume Study ("Study") of the Keystone pipeline. See Exhibit I-1. The Study examined the risk of a pipeline leak and the related volume of oil that may be released as a result. Id. According to the Study, a significant leak in the pipeline will occur every seven years. Id. at Executive Summary. Approximately 53.5% of spills that occur in pipelines are the result of small holes (pin holes).

Id. at Executive Summary. One of the most common causes for leaks is corrosion. Id. at 24.

87% of the leaks caused by corrosion will be small (pin hole) leaks. Id. at 10.

Just because a leak is referred to as a small (pinhole) leak, does not mean that an insignificant amount of oil would be released. The amount of oil that would spill out of a small (pinhole) hole is relative to the amount of product passing through the pipeline. Also, the amount of time that would pass prior to shutting down the necessary valves to isolate a leak depends on the time it takes to detect the leak. Id. Non-reported causes are those which occur without any person present to witness and/or report the event. Id. at 19. For example, a corrosion leak is not normally related to the presence of people who might observe it. Thus, the leak detection system and other surveillance is the only means of leak detection for these non-reported causes. Id. DNV's Study contains a table which outlines the amount of time necessary to detect and verify leaks from non-reported causes using their leak detection system and surveillance. Below is a duplication of Table 5.2 from the DNV Consulting Study:

Leak Rate	Detection and Verification		Isolation
	Below Ground Pipe	Above Ground Pipe	Time for RGV to Close
Less than 1/5%	90 days	14 days	2.5 min
1.5%	138 min	138 min	2.5 min
15%	18 min	18 min	2.5 min
50%	9 min	9 min	2.5 min

See Exhibit I-1, at 19. (Emphasis added).

Because the Keystone pipeline is a below ground pipe, with the exception of a few areas near and/or around pump stations, leaks that are less than 1.5% of the total volume, will take up to 90 days to detect. Id. at 19. The Keystone Project will be transporting 435,000 barrels per day (“bpd”) through the pipeline, with plans to expand the project to 591,000 bpd. Id. at Executive Summary. As such, a 1% leak, which would take up to 90 days to detect, would result in 4,350 to 5,910 barrels per day leaking out of the pipeline. See Exhibit I-1 & Transcript, pg. 467. The problem this presents is the fact that the pipeline is in close proximity to many North Dakota natural resources, including but not limited to multiple streams, rivers, and underground aquifers.

Since a 1% leak will take 90 days to detect, that means the pipeline, prior to discovery, could leak up to a total of 391,500 barrels of crude oil when transporting 435,000 bpd and up to 531,900 total barrels when the pipeline is transporting 591,000 bpd. There are 42 gallons in a barrel of crude oil, which puts into harsh perspective the amount of oil that could contaminate North Dakota land, water and other natural resources. As noted in the DNV Study, there is a likelihood of a leak greater than 50 barrels once every seven years. See Exhibit I-1 at Executive Summary & pg. 23.

The crude oil poses a significant risk to the environment and private/public water supplies. According to Heidi Tilquist’s testimony, the crude oil consists of a multitude of various pollutants, including various hydrocarbons, aromatic hydrocarbons, the compounds found in the BTEX (benzene, toluene, ethyl benzene, xylene), PAH’s, poly aromatic hydrocarbons, and other trace elements. See Transcript, pgs. 323-24. The crude oil also contains nickel, vanadium, and benzene. Id. Water becomes toxic with the existence of these pollutants and trace elements in the parts per billion range. For example, benzene is toxic at a

level at .005 parts per billion. Id. at 323-325. Ms. Tilquist did not take into account the fact that private wells exist in close proximity to the pipeline and have a risk of contamination from a leak. Id. at 342, 372. In fact, there was no analysis of the location of private wells and the relative risk of contamination. Furthermore, the only detailed risk assessment that was completed was on sections of the pipeline totaling 8.1 miles, despite the fact that the pipeline will cover 218 miles in North Dakota. Id. at 371-2. This risk assessment is clearly lacking and simply disregards a number of North Dakota citizens and their private drinking water supplies near Keystone's Project.

Detection is a problem and the DNV Study makes that clear. DNV was specifically hired to do an analysis of the frequency of leaks and the volume of crude oil that may be released during those leaks. DNV is an independent third-party and their report should be considered credible and reliable. Id. at 470. Heidi Tilquist acknowledged that DNV Consulting is the expert when it comes to leak detection capabilities and the frequency and volume of spills. Id. at 331-3. Despite the fact Keystone "believes" it will be able to detect the small leaks visually, this pipeline is located in rural North Dakota where there is not an abundance of people present to notice or identify pipeline failures. Moreover, while Keystone plans to do patrols for the visual inspection of the pipeline route, these patrols are limited, as will be discussed further below.

Since the smaller leaks and most common leaks cannot be detected by the computer system in a timely manner, Keystone must rely on other means which are insufficient at best. Ms. Kothari, who testified on behalf of Keystone, claimed that corrosive type leaks could be detected from internal inspection of the pipeline. See Transcript at pg. 418. However, Ms. Kothari indicated that internal inspections would be done per DOT regulation. Id. at 419-20.

Internal inspection of the pipeline per DOT regulations require internal inspections only **once every five years**. *Id.* at 419. This is clearly not often enough when considering the magnitude of oil that would leak from even a 1% leak on a daily basis. When Ms. Kothari was asked how Keystone would detect a small (pinhole) leak in the pipeline, she deferred any and all leak detection questions to Brian Thomas, despite her previous testimony that a leak would be detected early on. *Id.* at 420.

Pipeline safety regulations require that patrols be done only 26 times a year (averaging at two week intervals), but not exceeding intervals of three weeks. *Id.* at pg. 14 *citing* 49 C.F.R. § 195.412. Keystone anticipates that it will conduct patrols every two weeks, which leaves as many as 14 days for a small pipeline failure to go undetected and leak significant amounts of oil everyday. That assumes that the patrol would actually detect the leak. There is no evidence that a small leak, no matter how long it has been in existence, will be detected by a patrol.

Brian Thomas, who testified on behalf of Keystone, indicated that when dealing with leaks below the 1.5% threshold, the detection of the leak is dependent upon site specific circumstances. *See* Transcript, pg. 440. Those leaks will not generate automatic alarms to the control center operator and the computer system may not detect a leak as small as 1%. *Id.* at 440, 461. Mr. Thomas also indicated that Keystone has not prepared an emergency response plan for its pipeline system. *Id.* at 442. All questions regarding leak detection, frequency and volume of leaks were deferred to Brian Thomas. However, Mr. Thomas indicated he is only “**somewhat familiar**” with the DNV Study. *Id.* at 459.

When it comes to small (pinhole) leaks, Keystone would be relying more upon direct observation methods such as ground patrols and aerial flights, which are periodic at best. Mr.

Thomas indicated that he has no personal experience with being physically on site in an area where there was a small leak and/or the actual visual detection of that small leak. Id. at 464. While Mr. Thomas contends that a small leak would eventually rise to the surface for purposes of visual detection, he does not have an opinion nor has he done any analysis as to how much oil would need to leak before a leak could be detected visually at the surface. Id. at 464-465. There also will be no ground crews walking the right-of-way to look for leaks, except in “sensitive areas”, which would be limited to more populated areas. Id. at 471. Of course, Mr. Thomas was unable to identify on the record the specific location of these sensitive areas and/or what portion of the 218-mile pipeline would be considered a sensitive area for purposes of on the ground inspections. Id.

This pipeline is buried more than four feet underground and there is no credible evidence that the oil would rise to the surface so as to be visually detected. In fact, the only written report which identifies the time necessary to detect a small leak (the most common type of leak under 1.5%) in the pipeline is the DNV Study. The Study identifies 90 days as the time required to identify such, without any qualifications, conditions or exceptions.

It is important to reiterate that when a leak is referred to as “small” that is in no way indicative of the amount of oil that would spill. The volume of a spill is tied to detection and the time necessary to shut down the pipeline after detection and verification of a leak. There are extreme volumes of oil being transported through this pipe, so even a very small percentage leak results in extreme daily discharges into the environment. Keystone does not have the proper safeguards in place and has not done a complete analysis of the risks to the North Dakota citizens and the environment.

For the aforementioned reasons, Keystone's applications should be denied. Alternatively, if the PSC endorses Keystone's Project, it should place a number of conditions on the Project; conditions and/or promises that were made on the record in support of Keystone's applications. Mr. Gray testified that Keystone would commit to compensating the landowners for any damages related to the mixing of topsoil. Id. at 265-266. According to Ms. Kothari, if oil were to leak from the pipeline because of farm equipment or other equipment contact with it, Keystone would be take responsibility for the damage. Id. at 423. Ms. Kothari indicated that normal farming practices would not impact the pipeline and that the pipeline is designed inherently to manage any sort of stresses with equipment crossing over the pipeline. Id. at 422.

Mr. Thomas represented to the PSC that in the event that a leak were to affect a private individual's well, that Keystone would find an alternate source of water for that individual and also develop a mitigation plan to mitigate the well contamination while maintaining an alternate supply of water for the landowner. Id. at 456-457, 473.

III. CONCLUSION

For the foregoing reasons, Keystone's Applications for a Route Permit and a Corridor Certificate should be denied.

Alternatively, if the PSC grants the Applications, the following conditions should be attached to the Permit and Corridor Certificate:

- (1) That any damage that occurs as a result of soil disturbance on a persons property is paid for by Keystone and any necessary attorney fees necessary for a landowner to recover its damages related to Keystone's soil disturbance shall be paid by Keystone;
- (2) That no person should be held responsible for leaks to a pipeline that occur as a

STATE OF MINNESOTA)
)
COUNTY OF STEARNS)

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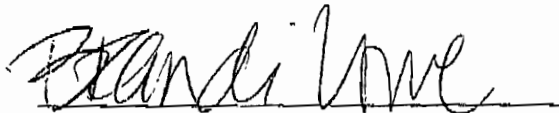
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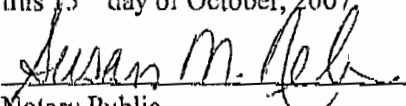
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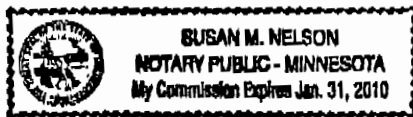
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Subscribed and sworn to before me
this 15th day of October, 2007


Notary Public



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