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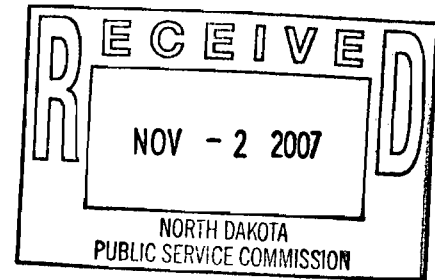
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November 2, 2007

MS ILLONA A JEFFCOAT-SACCO
EXÉCUTIVE SECRETARY
PUBLIC SERVICE COMMISSION
600 EAST BOULEVARD, DEPT 408
BISMARCK ND 58505-0480

Re: TransCanada - Keystone Pipeline Project
Case No: PU-06-421
OAH File No. 20070181
Our File No. 11815



Dear Ms. Jeffcoat-Sacco:

Enclosed for filing is an original and seven copies of a Supplemental Objection to Motion for Intervention to Appear as a Party and Motion to reopen the Hearing Records which is being submitted on behalf of TransCanada Keystone Pipeline, LP.

I am also enclosing an Affidavit of Service which indicates copies are being served on Attorney Delaney and John and Janie Capp. Also enclosed is a Certificate of Service which indicates copies are being served on Attorney Erik Johnson and Ken Royce.

If you have any questions, please feel free to contact me.

Sincerely,



Todd D. Kranda

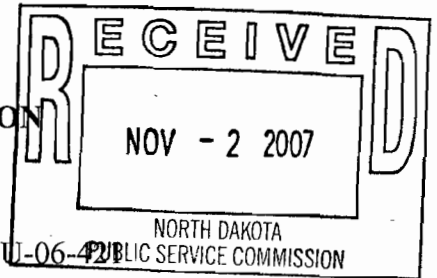
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c: TransCanada Keystone
Attorney Delaney
John and Janie Capp



**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-06-42

PUBLIC CONVENIENCE AND NECESSITY)

CASE NO. PU-07-152

**SUPPLEMENTAL OBJECTION
TO MOTION FOR INTERVENTION TO APPEAR AS A PARTY
AND MOTIONS TO REOPEN THE HEARING RECORDS**

TransCanada Keystone Pipeline, LP (Keystone) hereby files its supplemental objection to the Motion for Intervention to Appear as a Party and Motion to Reopen the Hearing Records, filed herein by the City of Fargo ("Fargo") on October 24, 2007. There are three reasons that the Commission should deny Fargo's untimely motion to reopen the proceeding: (i) all of the issues raised by Fargo have been fully explored by the Commission at the hearing that closed in September; (ii) there is an administrative process already available to the Commission for considering the material filed in Fargo's motion without reopening the proceeding and unduly delaying a decision in this case; and (iii) a decision to reopen the proceeding would result in serious adverse impacts to Keystone and the state. The same reasons apply to deny the North Dakota Water Users Association request to reopen which request raises the same issues as Fargo.

SUMMARY

First, Fargo asserts that it is concerned about the safety of its water supply because of the location and design of Keystone's pipeline in the area of the Sheyenne River and Lake Ashtabula. Notwithstanding Fargo's failure to participate in the hearing, those concerns were raised by members of the public. Acknowledging those concerns, Keystone explicitly addressed these issues at the hearing, through the testimony of several expert witnesses. Those witnesses were made available for

cross examination and were questioned by the Commissioners. The record is replete with information upon which the PSC – and Fargo, if it chose to do so -- can evaluate Fargo's stated concerns.

Second, there is a procedure in place for acceptance of the information and arguments set forth in Fargo's motion to reopen. At the request of the PSC's General Counsel, Presiding ALJ Wahl advised the Commission that it can give notice of its intent to rely on such late-filed information, and permit any party to respond, request an opportunity to cross-examine, or object to the admission of such information. The Commission has indicated its intent to follow that procedure with respect to a significant amount of late-filed information. There is no reason to treat Fargo's late-filed information differently. Use of this procedure for the Fargo submittal would satisfy Fargo's desire to have its late input considered, without the extensive delay that would be inherent in a formal reopening of the proceeding.

Third, Keystone is supplementing its objection in order to ensure that the Commission decides Fargo's motion to reopen without any misconceptions as to the serious adverse impacts that would result from a reopening of this proceeding. The PSC must take a hard look at these adverse impacts of reopening, when it weighs all of the public interest considerations at stake, as it is required to do under the law. To render a decision on Fargo's motion without fully considering all of the resultant adverse impacts would be inconsistent with the Commission's statutory duty.

Numerous adverse impacts would result from reopening this proceeding and the delay in the permitting process that a reopening would create. Delay would make it impossible for Keystone to complete its 2008 construction schedule in the state as currently planned. The inability to complete this construction as currently planned would have very serious costs and schedule impacts to the project. Delay in the permitting process would delay the significant direct economic benefits that the

project will bring to the state, which have recently been revised upward. Granting the motion to reopen in the circumstances here would undermine the reliability and credibility of the Commission's administrative process and call into question the basic fairness of that process. Undermining the administrative process in this way would have a chilling effect on potential future pipeline infrastructure development in the State, which would exacerbate the already large revenue losses being experienced by North Dakota producers and losses to the State's tax revenues, as reported this week by the Office of Management and Budget. Moreover, other potential important energy infrastructure projects would be deterred from coming to North Dakota.

ARGUMENT

After four days of hearings, Keystone has shown through the testimony presented and exhibits filed with the Commission, that Keystone's proposed pipeline is of such length, location and purpose that it will minimize adverse effects upon the environment, and upon the welfare of the citizens of North Dakota, while ensuring continuing system reliability, integrity and efficient use of natural resources. Keystone has also shown that the proposed route is compatible with preservation of the environment and efficient use of resources. It is therefore appropriate for the Commission to proceed in a timely manner to consider the testimony and evidence submitted and issue Keystone a Corridor Certificate and Route Permit without further delay.

For all of the reasons set forth above, and as more fully discussed below, Keystone implores the Commission to fully consider all sides of this issue and to deny Fargo's motion to reopen, as inconsistent with the public interest.

1. Fargo's motion to reopen must be adjudicated in accordance with governing North Dakota law. Applying that law, Keystone's October 26, 2007 objection demonstrated that the PSC should not grant Fargo's motion. As a matter of law, under Section 69-02-06-01, the only

permissible grounds for reopening are a finding that material changes in fact or law have occurred since the close of the hearing, or that the public interest requires reopening. Fargo has not alleged any material changes in fact or law, nor did it bother to cite or address the applicable statutory provision. With respect to the public interest standard, Keystone's objection explained that the citizens of Fargo are not prejudiced in any way by denial of the motion because the PSC can fully consider the concerns raised by Fargo under the process set out in ALJ Wahl's memorandum. The public interest standard requires a fair weighing of the adverse impacts resulting from reopening the proceeding. Keystone's objection further demonstrated that granting Fargo's motion would unfairly impose very substantial adverse impacts on Keystone and would establish bad administrative precedent. Finally, Keystone noted that granting Fargo's motion to reopen in these circumstances contravenes Section 69-02-01-10, which provides that the statute is to be construed to secure the just, speedy, and inexpensive determination of issues presented.

2. Reopening the proceeding would significantly delay issuance of a PSC decision on Keystone's application, beyond the delay that has already occurred. Under the statute, the Commission is required to act on an application for a Corridor Certificate and Route Permit within six months of the date the application is deemed complete, absent good cause. The PSC deemed Keystone's application complete on May 2, 2007. Therefore, the deadline for Commission action was November 2, 2007. The Commission has already extended the expected date for action on Keystone's application by six weeks, until December 12, 2007. If the motion to reopen is granted, Fargo has requested another month to submit additional information, which would suggest an early December filing date. Keystone would presumably be given some period to respond. Even assuming Keystone expedited its response, it would be mid-December before testimony was complete. Whether a formal

hearing on the new evidence could be set and completed before the Holidays is problematic. At best, the hearing might be completed in late December. More likely, the hearing would not be completed until January. Briefing would then be required and the case may not be ready for Commission consideration until late January. Even if the PSC acted expeditiously after the close of the record and briefing, it could be March 2008 before a decision was rendered.

3. Delay of a Commission decision into 2008, as the result of granting Fargo's motion, would severely impact the Keystone project. Construction in North Dakota is scheduled in two spreads, each commencing in May 2008. Two hundred and twenty miles of pipeline are scheduled to be constructed and the entire construction season of May through November is required to complete that work. If Keystone does not have an approved Corridor and Route until 2008, it will not be possible to complete right-of-way acquisition or final routing work in time to meet the construction start date.
4. Further, it is an unfortunate fact that some landowners on the Keystone route have indicated that they will not grant a pipeline easement to Keystone until the PSC has made its decision and in some circumstances a few others have stated at this time they will not grant an easement in any event. They would prefer that the impact of the pipeline be shifted to their neighbors, or that there be no pipeline at all. Accordingly, it will be necessary for Keystone to avail itself of the statutorily prescribed eminent domain process in certain limited instances. Keystone will continue to strive to avoid eminent domain to the greatest extent possible and will use it only as a last resort. If Keystone's Corridor Certificate and Route Permit are delayed until 2008, the project will effectively be denied the ability to use that process in time to acquire all easements for 2008 construction which will inevitably cause a

two year construction period for North Dakota. The eminent domain statute was enacted for just these circumstances, so that the interests of a few not defeat the interests of the common good. Preventing timely access to the eminent domain process through delay would thwart the intent of the legislature in promulgating the eminent domain statute.

5. As discussed above, the delay caused by a reopening of the proceeding would eliminate Keystone's ability to complete construction in the state in 2008. The impact to pipeline construction costs in North Dakota in 2008 is a minimum increase of approximately \$65 million with the potential of costs increasing to \$100 million. The largest impact is associated with the need to move around unacquired tracts of land. These movearounds have compounding impacts including the lost time of the moves themselves, as well as the loss of efficiency of the pipeline construction assembly line which will extend pipeline construction into the winter season. This inefficient construction process also affects landowners who may not have reclamation completed on their property in 2008, thus exposing them to inconvenience for a longer period of time. Additionally, since a large portion of the construction right of way cannot be reclaimed in winter conditions, the risk of damage to the environment during Spring 2009 snow melt and spring rains is significantly increased.

6. Delay in constructing the pipeline in North Dakota delays the substantial benefits that Keystone project will bring to the state. Keystone's application cited the economic benefits brought about by construction activity. Keystone also estimated that pipeline operations would increase tax revenues to the state and counties crossed by the pipeline. Keystone estimated that the project would pay approximately \$5.3 million in property taxes in North Dakota in the first year of operations. This estimate was based on the capital costs of \$2.1 billion projected at that time. Recently, TransCanada issued a statement revising the overall

projected capital costs of the project to \$5.2 billion. The estimated tax revenues to North Dakota counties, based on the revised capital cost estimate, are set forth below:

State/County	Estimated Tax Dollars per state/county (\$US) July 2007
NORTH DAKOTA	\$7,650,000 to \$9,385,000
Pembina	\$800,000 to \$1,000,000
Cavalier	\$200,000 to \$250,000
Walsh	\$900,000 to \$1,100,000
Nelson	\$1,400,000 to \$1,700,000
Steele	\$1,000,000 to \$1,200,000
Barnes	\$1,450,000 to \$1,800,000
Ransom	\$950,000 to \$1,160,000
Sargent	\$950,000 to \$1,175,000

7. A further delay in the permitting process which jeopardizes timely completion of the project creates uncertainty and confusion among the shippers who are relying on Keystone to transport oil to refineries and markets in the U.S. in 2009. This uncertainty also negatively impacts U.S. consumers who need increased supplies of reliable Canadian crude oil at a time when current oil supply circumstances reflect prices above \$95 per barrel. Finally, as more fully discussed below, a delay in the Keystone project, and the negative signal that a delay would send to potential future pipeline projects, would hurt North Dakota oil producers and exacerbate the revenue and tax losses that are being incurred due to the current oil pipeline capacity shortfall in the state.

8. Granting Fargo's motion to reopen would undermine the reliability and certainty of the Commission's administrative process.
 - a. First, it would be fundamentally unfair to reopen this proceeding. Fargo chose not to participate while the public hearings were held, the record was compiled, closed and briefed, and even into the time period reserved for

Commission deliberation. Fargo has not provided any colorable explanation for its failure to participate on a timely basis. All other parties, including Intervenors, complied with the hearing schedule and met the administrative deadlines. Yet, now Fargo wants the Commission to create a special opportunity for it to litigate the proceeding on its own time. In the circumstances where citizens are already protected, an administrative agency should not allow its processes to be abused in this manner and reward the late litigant.

- b. Second, parties to administrative proceedings should have the right to rely on the laws, rules and procedures that govern those proceedings. If the Commission were to grant an unwarranted reopening here, that reliance would be undermined. Such a result would call into question the basic fairness of the process.
- c. Third, the fundamental unfairness that would result from additional, unwarranted delay here is magnified by the magnitude of Keystone's reliance on PSC process. Keystone has contracted or conditionally awarded contracts worth approximately \$3 billion based on the understanding that the PSC review, and the other administrative reviews that it is undergoing, would follow the statutorily prescribed regulatory processes.
- d. Fourth, a decision to reopen the proceeding for Fargo would encourage other entities to seek similar preferential treatment. Once bad precedent is set, the Commission would be hard pressed to deny another city, town, individual, or other body, with some interest in an issue already considered at a hearing, to

come forward and request a further reopening of a proceeding. Once a rule is waived, a slippery slope is created such that anyone else who is denied a similar waiver can argue that their denial represents arbitrary and unduly discriminatory treatment and have grounds to seek review of the entire administrative proceeding. There is a legitimate need for finality in every proceeding and a reopening here would defeat that need.

9. Granting Fargo's motion would have a chilling effect on future pipeline applicants. Pipeline projects are large and complex, and require a very extensive lead-time and planning process. As noted above, they also involve huge financial commitments, such as TransCanada's \$5.2 billion commitment to the Keystone project. In analyzing the risk and return associated with potential projects, the availability of a reliable regulatory process is a critical factor. An unpredictable regulatory process affects the ability of a potential project to maintain schedule and maintaining schedule is critical to both commercial viability and cost certainty. As a result, a state or other jurisdiction that fails to provide a reliable regulatory process is unlikely to attract future pipeline infrastructure investment. A decision to reopen this case and further delay its disposition would send a clear signal to the pipeline industry that the North Dakota PSC's regulatory process is unpredictable.
10. Placing Keystone and potential future pipeline infrastructure at risk would increase the revenue losses currently facing North Dakota crude oil producers and the associated losses in tax revenues. On October 30, 2007, North Dakota's Office of Management and Budget presented a report to the state legislature's Budget Section regarding the impact of price "discounts" imposed on oil production in the state, caused by a shortage of pipeline capacity. The report stated that, as North Dakota's oil production began rising two years ago, a

shortage of pipeline capacity helped to drive down prices. The report indicated that this discounting of oil prices cost North Dakota producers at least \$211.4 million between December 2005 and April 2007. As a result, the state's treasury lost \$16.6 million in tax collections over the same period, according to the OMB report. The Bismarck Tribune reported that the President of the North Dakota Petroleum Council stated these figures are similar to the industry's own estimates of lost revenue. Clearly, more pipeline capacity is required to alleviate this price constraint. Unfortunately, a signal to the industry that the PSC process is unpredictable may impact future additions of such capacity, to the detriment of the state's producers and to the North Dakota economy.

11. North Dakota's Pipeline Authority was established by the Legislature in 2007. The Authority was created for the purpose of diversifying and expanding the North Dakota economy by facilitating development of pipeline facilities to support the production, transportation, and utilization of North Dakota energy-related commodities. N.D.C.C Chapter 54-17.7-03. Acting pursuant to its statutory mandate, the Pipeline Authority testified in support of the Keystone project in PU-07-152. The Pipeline Authority stated that pipeline bottlenecks currently exist in the oil pipeline infrastructure in North Dakota which inhibit area producers from readily accessing markets with their production. This situation has created market conditions that have resulted in depressed prices for western North Dakota crude oil. PU-07-152, Ex T-2. Specifically, the Pipeline Authority Director, testified that capacity bottlenecks have created a situation where North Dakota crude oil has suffered price penalties of \$5 to \$30 per barrel. PU-07-152, VC Tr. 122. The Pipeline Authority stated that the Keystone project could play a role in resolving this problem by providing another transportation route for moving crude oil to the refineries in the United States. The Pipeline Authority also noted that there are additional benefits of future property tax and sales tax revenues as well as

benefits to local communities during the construction process. PU-07-152, Ex T-2. A decision to reopen and delay this proceeding would run counter to the stated legislative purpose behind the creation of the Pipeline Authority and the Pipeline Authority's stated support for the Keystone project.

12. Granting Fargo's motion would have a chilling effect on other potential infrastructure projects. For the same reasons stated with regard to potential pipeline projects, other major energy infrastructure projects are not likely to target development in jurisdictions that lack regulatory certainty. As a prudent state, North Dakota would like to be at the forefront of all types of energy development. No state can grow and prosper without developing the energy infrastructure to support that growth. Among other manifestations of the desire for energy development in North Dakota is the Great Plains Energy Exposition held in Bismarck this week. In connection with the Expo, Senator Dorgan stated that energy is a huge and growing part of the state's economy. A decision to grant reopening here would be watched by the industry and would not enhance the ability of North Dakota to attract such projects.

13. Before closing, Keystone wants to be absolutely clear that it understands the protection of Fargo's water supply is a matter of public interest. It is critical to recognize, however, that this public interest concern, and the interests of Fargo citizens, will not be prejudiced by denial of Fargo's motion:

- a. First, Fargo asserts that its concerns for the safety of its water supply result from the location and design of Keystone's pipeline in the area of the Sheyenne River and Lake Ashtabula. Notwithstanding the failure of Fargo to participate in the hearing, despite the PSC's legally sufficient notice and extensive media coverage, those concerns were raised by members of the

public. Acknowledging those concerns, Keystone explicitly addressed these issues at the hearing, through the testimony of several expert witnesses. That testimony is referenced in Section C of Keystone's October 26, 2007 objection. Those witnesses were made available for cross-examination and were questioned by the Commissioners. Thus, the record is replete with information upon which the PSC can evaluate Fargo's stated concerns.

- b. Of course, Fargo does not know the state of the record, since as late as October 31, 2007, the City was still in the process of requesting a copy of the record from the PSC. Fargo's failure to participate or review the record should not be permitted to undermine the good faith efforts of the Commission, concerned citizens, and other parties who examined these issues.

- c. It is critical to recognize that there is a procedure in place for acceptance of the information and arguments set forth in Fargo's motion to reopen. At the request of the PSC's General Counsel, Presiding ALJ Wahl provided the Commission with a memorandum that analyzes the law governing the Commission's reliance on information submitted after the close of a hearing. Based on that law, Judge Wahl advised the Commission that it can give notice of its intent to rely on such late-filed information, and permit any party to respond, request an opportunity to cross-examine, or object to the admission of such information. In fact, the Commission has indicated its intent to follow that procedure with respect to a significant amount of late-filed information, which confirms that the PSC recognizes the

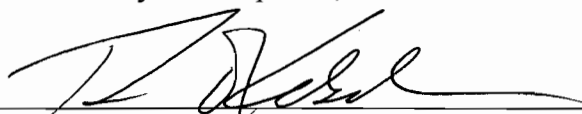
appropriateness and adequacy of that process. There is no reason to treat Fargo's late-filed information differently. Use of this procedure for the materials submitted in Fargo's motion to reopen would satisfy Fargo's desire to have its late input considered, without the extensive delay that would be inherent in a formal reopening of the proceeding and the adverse impacts that would result from that decision.

For all of the foregoing reasons, Keystone objects to the Motion to Intervene and Motion to Reopen the Record by the city of Fargo, and the request to reopen the record by the ND Water Users Association, and requests that the PSC deny the Motions for the reasons as stated herein.

Dated this 2 day of November, 2007.

Respectfully submitted,
TransCanada Keystone Pipeline, LP

By



Thomas D. Kelsch, State Bar ID No. 03918
Todd D. Kranda, State Bar ID No. 04512
KELSCH, KELSCH, RUFF & KRANDA
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103 Collins Avenue, P.O. Box 1266
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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

TRANSCANADA KEYSTONE PIPELINE, LP) CASE NO. PU-06-421
30-INCH CRUDE OIL PIPELINE/CAVALIER TO)
SARGENT COUNTIES SITING APPLICATION)

STATE OF NORTH DAKOTA)
) ss. **AFFIDAVIT OF SERVICE**
COUNTY OF MORTON)

LORI SPENCER, being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of eighteen and not a party to the above-entitled action.

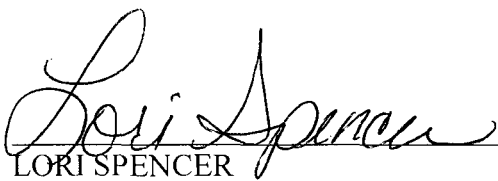
That on the 2 day of November, 2007, this affiant deposited in the United States Post Office at Mandan, North Dakota, a true and correct copy of the following document(s) in the above-captioned action:

Supplemental Objection to Motion for Intervention to Appear as a Party and Motion to reopen the Hearing Records

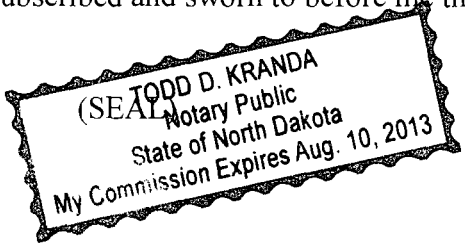
That a copy of the above document(s) was securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

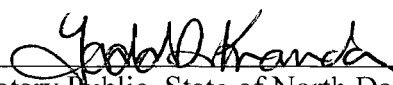
NICHOLAS R DELANEY
ATTORNEY AT LAW
PO BOX 1497
ST CLOUD MN 56302-1497

JOHN & JANIE CAPP
12466 60TH ST NE
LANKIN ND 58250


LORI SPENCER

Subscribed and sworn to before me this 2 day of November, 2007.




Notary Public, State of North Dakota

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

TRANSCANADA KEYSTONE PIPELINE, LP) CASE NO. PU-06-421
30-INCH CRUDE OIL PIPELINE/CAVALIER TO)
SARGENT COUNTIES SITING APPLICATION)

PUBLIC CONVENIENCE AND NECESSITY) CASE NO. PU-07-152

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of November, 2007, the undersigned deposited in the United States Post Office at Mandan, North Dakota, a true and correct copy of the following document(s) in the above-captioned action:

Supplemental Objection to Motion for Intervention to Appear as a Party and Motion to reopen the Hearing Records

That a copy of the above document(s) was securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

ERIK R JOHNSON
ATTORNEY AT LAW
505 BROADWAY ST N - STE 206
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KEN ROYCE
ND WATER USERS ASSOCIATION
PO BOX 2254
BISMARCK ND 58250



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