UNITED STEELWORKERS
USW
UNITY AND STRENGTH FOR WORKERS

Thomas M. Conway
Vice President (Administration)

April 6, 2009

Dockets Operations
U.S. Department of Transportation
M-30 West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

VIA online and FAX

Docket Number: PHMSA – 2008-0285

Dear Sir or Madam:

I file public comment in the above-referenced matter[1] to express opposition on behalf of the United Steelworkers ("USW")[2] to the special permit requested by TransCanada Keystone Pipeline, LP, which would allow it "to construct and operate a new 2,000 mile, NPS 36-inch pipeline from Hardisty, Alberta to the Port Arthur and east Houston areas of Texas."[3] The special permit requested by TransCanada would allow it to operate this pipeline at a higher maximum operation pressure than otherwise permitted under the Department of Transportation's pipe pressure regulation, 49 C.F.R. section 195.106. Simply stated, it would allow the company to use thinner pipe.

The USW is the largest industrial union in North America with 850,000 active members. The USW represents workers in all the primary manufacturing sectors, including producers of large diameter oil and gas transmission pipe and producers of

[1] Pipeline and Hazardous Materials Safety Administration, pipeline Safety: Requests for Special Permit, 74 Fed. Reg. 4296 at 4298 (Jan. 23, 2009).

[2] The United Steel, Paper and Forestry, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW). The USW is filing out of time, but asks for consideration of its comment due to the importance of the issue and because the USW only just became aware of the outstanding request for a special permit.

[3] Letter to Jeff Weise, Associate Administrator for Pipeline Safety, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration from Robert Jones, P. Eng., vice President, TransCanada Keystone Pipeline LP (October 10, 2008) requesting a special permit from application of 49 C.F.R. section 195.106.

the steel coils, which are the primary input into such large diameter pipe. Large diameter pipe for transmission of crude oil is produced in the United States in a manner that fully meets the pressure and safety requirements of 49 C.F.R. section 195.106, and USW members work in that industry in the United States.

For the reasons discussed below, and in agreement with the serious safety concerns filed by the Sierra Club,[4] the USW objects to the special permit request because noncompliance with 49 C.F.R. section 195.106 would increase the risk of ruptures, leaks and spills and lessen pipeline safety by the use of thinner pipe and greater operating pressure. Moreover, there is more than ample supply of pipe meeting this regulatory standard being produced in the United States today by highly-skilled workers, and thus no reason to discard this important regulatory safety standard, especially in regard to one of the largest crude oil pipeline proposals in North America.

- Crude oil pipelines – liquid hazardous material pipelines – historically have a much greater risk of rupturing because of the overpressure that occurs in surge events. Here the risk is especially problematic due to the very large size of the proposed pipeline, the flow rate, material density, inadequate segmentation and pressure relief equipment that is inadequate to the task. Yet, TransCanada's application[5] utterly failed to incorporate adequate design or operational controls and, as noted, fails to address if the proposed pipeline can survive overpressure events throughout its operational lifetime.

- TransCanada failed to adequately assess the greater risk of ruptures and leaks that are undetectable that would result from the use of thinner wall pipe. Neither maintenance nor operation practices can reduce the pipeline's capacity to withstand or resist mechanical damage. The special permit terms desired by TransCanada could not, therefore, provide the level of protection guaranteed under 49 C.F.R. 195.106.

- TransCanada proposes to transfer tar sands bitumen, which largely differs from typical crude oil in its chemistry and mineral components. The company does not address what internal corrosion may occur from the higher mineral content existing in tar sand bitumen. This poses a different and substantial threat than typical corrosion and fatigue transporting conventional crude oil, in particular at the high flow rates occurring in large diameter pipe which could cause site-specific turbulence

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[4] Letter to Dockets Operations, U.S. Department of Transportation from Eric Huber and Paul Blackburn of the Sierra Club (February 23, 2009) (Docket No. PHMSA-2008-0285 opposing special permit of TransCanada).

[5] Petition of TransCanada Keystone Pipeline, LP For a Special Permit To Design, Construct and Operate A New 36-inch Crude Oil Pipeline at Design Pressures Up To 80 Percent SMYS And Request For Expedited Consideration to the U.S. Pipeline and Hazardous Materials safety Administration (October 10, 2008).

and thus site-specific wear. Allowing operation at a greater percentage of maximum operating pressure means allowing construction with thinner pipe, which will have less ability to withstand corrosion over time. Yet TransCanada has not addressed if the bitumen it intends to transport is more corrosive than conventional crude oil, which would require additional safety measures, not fewer measures. Importantly, given the very limited experience of TransCanada transporting tar sands bitumen, PHMSA should err on the side of safety and caution and not waive its well-established regulation.

- Tellingly, TransCanada recognizes that using thinner pipe could well cause damage and harm due to ruptures, leaks and spills because it has not requested a special permit for using thinner pipe for pump stations, road and railroad crossings and in non-rural areas. Clearly, TransCanada has made a business judgment that rural and agricultural areas need not receive the same level of protection required by law than other areas in the United States. This glaring disparity in protection, however, is not allowed under U.S. law, including under the Administrative Procedure Act (5 U.S.C.A. section 551 et seq.).

- Moreover, the pipe produced for the proposed pipeline at issue could well be produced overseas (as has occurred in other TransCanada Keystone crude oil pipelines being built in the United States, which have used pipe produced in India). Using foreign-manufactured pipe might reduce cost somewhat but would also reduce the ability of the company to control for quality. Yet, TransCanada failed to provide for adequate inspection in its proposal to assure for adequate manufacturing quality controls. Indeed, TransCanada may be intentionally seeking a special permit to waive existing safety law specifically to purchase thinner pipe off-shore, even though there are several U.S. producers manufacturing this pipe in full accordance with such law. The safety of the pipeline should not depend on cost, but should be determined based on the standards encompassed in 49 C.F.R. section 195.106.

Finally, it is our understanding that while PHMSA recently completed a rulemaking related to maximum operation pressure (MOP) standards for natural gas pipelines, it has not engaged in a similar rulemaking for crude oil pipelines. Instead, PHMSA has decided to issue special permits waiving the requirements of 49 C.F.R. section 195.106 for crude oil pipelines, even though crude oil pipelines historically have posed a much greater risk. In effect, by doing so PHMSA is amending a promulgated regulation. Such de facto amendment would appear to exceed the authority provided to PHMSA and is especially problematic when it involves such a large crude oil pipeline proposal. Consequently, the USW would urge PHMSA to examine the merits of changing regulatory pipeline safety standards through the normal notice and comment rulemaking process, as was done when the standard under 49 C.F.R. section 195.106 was promulgated.

For all these reasons, the USW urges the special permit requested by TransCanada be denied. Our members work hard to produce quality steel and large diameter crude oil transmission pipe right here in the United States that meets all U.S. safety requirements and do not want to be denied the opportunity to provide that quality pipe based on a waiver of a fundamental safety regulation promulgated under the normal rulemaking procedures.

Sincerely,

Thomas M. Conway
Vice President (Administration)

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