

1 sworn.

2 MR. MARTINEZ: I told you that we've really  
3 focused on trying to narrow down the scope of Mr. Vokes's  
4 testimony. And just to give you kind of a little bit of  
5 roadmap, we're going really focus on one incident that  
6 occurred for the project plan for the KXL Pipeline itself  
7 as opposed to going into a lot of other matters.

8 DIRECT EXAMINATION (Continued)

9 Q. (BY MR. MARTINEZ) Mr. Vokes, did you work on the  
10 KXL project?

11 A. Yes, I did.

12 Q. Which segments?

13 A. I worked on one section in Canada and some support  
14 actions in the United States.

15 Q. Which sections in the United States?

16 A. It was for the KXL Gulf Coast, I believe. I'm not  
17 sure if it was for Phrase 3 or not.

18 Q. Okay. Are you familiar with a particular contractor  
19 called Weldsonix?

20 A. I am very familiar with a contractor called  
21 Weldsonix.

22 Q. Who was Weldsonix?

23 A. Weldsonix is a nondestructive examination company.  
24 They're a contract -- they're an inspection contractor.

25 Q. Were you familiar -- was Weldsonix hired to do work

1 for the KXL Pipeline project?

2 A. We went and saw that KXL was used on the Gulf Coast  
3 Extension.

4 Q. Okay. Now were you familiar with Weldsonix prior to  
5 any work that they did on KXL?

6 A. Yes, I was. Previously Nova Gas Transmission, a  
7 portion of TransCanada Corporation, previously dismissed  
8 Weldsonix and asked them to be removed from the  
9 recommended suppliers, qualified suppliers.

10 Q. Why was that?

11 A. Because they had problems with performance, serious  
12 performance issues that affected pipeline construction.

13 Q. And when you said that they were engaging in the  
14 nondestructive examination of the pipeline, I'm presuming  
15 that that was -- they were in charge of inspecting or  
16 using that particular inspection technique to inspect  
17 welds on the pipeline; is that correct?

18 A. That's correct. To inspect and accept welds on the  
19 pipeline.

20 Q. Okay. Now given what you've described, that they  
21 were either dismissed or not supposed to be part of the  
22 overall supply chain or approved list of contractors, how  
23 did they become then a contractor on the KXL project?

24 A. We were in the process of updating our supply chain  
25 management list. And the Keystone project went and put

1 forward the use of Weldsonix as a contractor. And a  
2 member of the Keystone quality management team objected  
3 to their inclusion in the list.

4 Q. Well, let me take a step back. Were you told by any  
5 particular individuals at TransCanada that you should go  
6 ahead and use Weldsonix on this project?

7 A. I was ordered by David Taylor and Meera Kothari that  
8 Weldsonix would be qualified.

9 Q. What do you mean by "qualified"?

10 A. The qualification is a technical process where we  
11 bring them to our facility and they have a series of  
12 tasks to perform within a week. They were given a set of  
13 specific instructions that they had to carry out to  
14 enable them to carry out those tasks.

15 Q. But apparently you obviously had issues with  
16 Weldsonix and their performance; is that correct?

17 A. I did.

18 Q. Okay. Did you raise those issues with Mr. Taylor?

19 A. Yes.

20 Q. Did you also raise those issues with Mrs. Kothari?

21 A. No. There was no communication with Ms. Kothari.  
22 During the qualification there was no communication with  
23 Ms. Kothari about the performance of the contractor.

24 Q. Did you raise those issues with her prior to the  
25 qualification?

1 A. Yes. We absolutely raised those issues. Other  
2 people raised those issues as well, including the --

3 Q. I was going to say you've preempted my next question  
4 which was going to be did other individuals within  
5 TransCanada raise issues with Weldsonix using them as a  
6 contractor to either Mr. Taylor or Mr. Kothari?

7 A. Yes. The supply chain management had raised  
8 objections. Keystone quality management team also raised  
9 objection. And the -- the grandfather of automated  
10 ultrasonic testing, Dave Hodgkinson, had also raised  
11 objection to the qualification of Weldsonix.

12 Q. Now these objections, did those occur during the  
13 course of discussions during project team meetings?

14 A. These appeared -- occurred over a period of months.

15 Q. And were you involved in those discussions?

16 A. Yes.

17 Q. Okay. Were there other concerns raised in those  
18 discussions that you had about Weldsonix?

19 A. During the qualification there was definitely some  
20 concerns raised with performance and safety.

21 Q. Did you discuss, for instance, during those  
22 discussions any issues that Weldsonix had with other  
23 pipelines, for example, let's say any of the Kinder  
24 Morgan Pipelines that they worked on?

25 A. That was made well-known that Weldsonix was key

1 to Kinder Morgan's fine when they built the Rocky  
2 Mountains Express, and problems with the welding  
3 inspector resulted in a series of hydro test failures.

4 Q. Now did you have any information from other sources  
5 such as maybe PHMSA about this particular contractor and  
6 issues that had arisen with their performance?

7 A. Yes. There was actually publicly available  
8 documents that people could find online and also I knew  
9 one of the operators from that pipeline and he actually  
10 went -- he told a complete story of what happened.

11 Q. Now hold on. The publicly available documents that  
12 you referred to, were those from PHMSA?

13 A. Yes.

14 Q. And did you obtain those and then raise those as  
15 issues during the course of the discussions you had with  
16 the KXL project team?

17 A. There were so many pieces of evidence introduced  
18 into the qualification of Weldsonix.

19 Q. Okay. Were there concerns that you had concerning  
20 Weldsonix's ability or even its failure to comply with  
21 the regulatory requirements that PHMSA had?

22 A. That's correct.

23 Q. Okay. Now when you raised all of these response --  
24 or questions, when you and others within TransCanada  
25 raised these questions concerning this particular

1 contractor, what was Mr. Taylor's response, for instance?

2 A. I was supposed to go ahead and make sure it  
3 happened. And when there was a safety violation he went  
4 and turned it back to be my fault that the contractor did  
5 something wrong.

6 Q. Ultimately did you proceed with qualifying Weldsonix  
7 as a contractor even over the objections that you and  
8 others raised?

9 A. I never completed the qualification of Weldsonix as  
10 a contractor. They had completed the technical portion  
11 of the visit, and there was information gathering and  
12 analysis left to do.

13 Q. Okay. What can you tell us that could potentially  
14 happen to a pipeline in the event a contractor such as  
15 Weldsonix didn't follow the rules with regard to the  
16 inspection of pipeline welds?

17 A. I think the Kinder Morgan Rocky Mountain Express is  
18 the classic example where you have multiple hydro test  
19 failures, and I believe they also had an in-service  
20 failure.

21 Q. And by a failure do you mean a pipeline leak or  
22 breach?

23 A. That's correct.

24 Q. Do you know if Weldsonix was ultimately hired by  
25 TransCanada to perform services with respect to the KXL

1 Pipeline?

2 A. Yes. I saw them in Texas.

3 Q. Okay.

4 MR. ELLISON: Excuse me. I notice Chairman  
5 Hanson is -- do we need a break, Chairman Hanson?

6 COMMISSIONER HANSON: No. If I lay down, then  
7 you'll need a break. Thank you.

8 MR. MARTINEZ: And that was actually my last  
9 question for Mr. Vokes. So I'm finished with Mr. Vokes  
10 at this time.

11 MR. SMITH: Keystone, are you ready to go?

12 MR. WHITE: Mr. Smith, I don't know whether  
13 Mr. Martinez intends to offer Mr. Vokes's prefiled  
14 testimony. There was a pending objection to that on  
15 Saturday. It might be appropriate to take that up before  
16 we understand what the scope of our cross needs to be.

17 MR. MARTINEZ: We will need to offer that as an  
18 exhibit and offer that into evidence. I believe we had  
19 designated it as DRA Exhibit 3-A.

20 MR. WHITE: We do have objections to portions of  
21 DRA Exhibit 3-A on hearsay grounds as preliminarily  
22 discussed on Saturday, but we've taken the opportunity to  
23 go through and identify the paragraphs by number.

24 They're not numbered. The lines aren't  
25 numbered, but if we could maybe take it on a

1 paragraph-by-paragraph basis, that might be useful.

2 MR. SMITH: Okay. Just a minute. I want to try  
3 to find it here.

4 I found it.

5 MR. WHITE: Okay. So with respect to the first  
6 two paragraphs, we have no objection. With respect to  
7 what I'll call paragraph 3 which deals with allegations  
8 around things that occurred in the year 2015, all of  
9 those allegations which are apparently related to  
10 conversations with "another ex-TransCanada Pipeline's  
11 employee" could not have been within personal knowledge  
12 of Mr. Vokes. They occurred well after he ceased being  
13 an active employee in 2011.

14 So whatever he testifies to here must  
15 necessarily have been learned from others and cannot be  
16 of his own personal knowledge and, therefore, constitutes  
17 hearsay. So object to the admission of paragraph 3.

18 MR. MARTINEZ: Can we perhaps take and sort of  
19 deal with the objections as we address each particular  
20 paragraph as opposed to having to go through the whole --

21 MR. WHITE: Up to the Commission, but I'm happy  
22 to do it that way.

23 MR. SMITH: I think that would be -- better  
24 personally.

25 MR. MARTINEZ: I think it would make more sense



1 in terms of the flow and trying to get it resolved.

2 Obviously, we disagree with that particular  
3 objection because I think it's very well-known that  
4 Mr. Vokes in particular as a whistle blower has been  
5 involved in making a number of complaints and has  
6 actually been called, for instance, to testify in front  
7 of the National Energy Board, the Canadian Senate about a  
8 lot of these matters.

9 And, you know, by virtue of his participation in  
10 those National Energy Board proceedings and the Canadian  
11 Senate proceedings, these items are certainly within the  
12 scope of his personal knowledge, regardless of whether or  
13 not they occurred before or after his employment with  
14 TransCanada.

15 MR. WHITE: Whether or not he participated in  
16 hearings well after the fact does not go back and make  
17 this -- make these allegations matters that could have  
18 been within his personal knowledge at a time when he  
19 wasn't there.

20 MR. SMITH: Staff, do you have a position on  
21 this?

22 MR. CREMER: Staff does not take a position.  
23 Thank you.

24 MR. SMITH: Okay. We'll sustain that.

25 MR. WHITE: Next objection is with respect to

1 paragraph 4, the next paragraph.

2 So this paragraph pertains to allegations  
3 regarding an incident that occurred in October of 2013.  
4 Again, Mr. Vokes was not an employee of TransCanada in  
5 2013 so anything that he says or thinks -- or purports to  
6 know about an event and the cause of an event that  
7 occurred in 2013 could not possibly be within his  
8 personal knowledge. He was gone for two years.

9 Hearsay objection.

10 MR. MARTINEZ: I would seriously disagree with  
11 that. While the pipeline did indeed rupture  
12 postemployment with respect to Mr. Vokes, he's clearly  
13 testifying that in his opinion that occurred as a result  
14 of cost and scheduling decisions that were made by his  
15 peers and project managers back during the time when he  
16 actually was employed and would have had knowledge of the  
17 particular circumstances that he believes resulted in  
18 ultimately that pipeline breach.

19 MR. WHITE: And since he wasn't there at the  
20 time that the incident occurred, he cannot know what the  
21 exact cause was so he can't relate the cause back to his  
22 speculation around what the cause might have been. He  
23 was not there at the time the cause was determined.

24 MR. MARTINEZ: Well, he's expressed his opinion  
25 as to what those causes are. The Commission may or may

1 not take that, you know, as it desires. But he's  
2 certainly demonstrated his knowledge of these particular  
3 issues and the fact that he certainly believes that that  
4 may be the case. And I would suggest that that is  
5 admissible.

6 And also I would suggest that TransCanada could  
7 certainly present rebuttal testimony. In fact, they've  
8 already designated a rebuttal witness if they don't  
9 believe that --

10 MR. WHITE: Whether or not we have a rebuttal  
11 witness prepared has nothing to do with the admissibility  
12 of this portion of his exhibit.

13 MR. SMITH: Okay. The Commissioners feel it  
14 should be overruled. So we're overruling at this point.

15 MR. WHITE: The final paragraphs we'll address  
16 are paragraphs 10 through 13. These paragraphs have to  
17 do with the Gulf Coast project. The Gulf Coast project,  
18 as we've heard earlier in this proceeding, was  
19 constructed between August of 2012 and December of 2013.

20 Mr. Vokes was not an employee during that  
21 period. In fact, has testified that his -- he was not --  
22 he was not showing up for work starting October 26, 2011,  
23 well before the commencement of construction of the  
24 Gulf Coast project.

25 Therefore, anything that he purports to know

1 about the Gulf Coast project well postdates his  
2 employment and cannot be within his personal knowledge  
3 and, therefore, hearsay objection.

4 MR. SMITH: Can you point to us, where are these  
5 paragraphs?

6 MR. WHITE: Okay. So I started numbering, and  
7 going through the document what I call paragraph 10 is  
8 the last paragraph on the bottom of page 3. And that  
9 carries on to 11, 12, and 13 around the middle of page --  
10 well, it's unnumbered, but it must be page 4.

11 MR. MARTINEZ: My suggestion with that would be  
12 that what Mr. Vokes testified to this morning was  
13 specifically related to the selection of the welding  
14 inspections. And, you know, that occurred -- or for the  
15 Gulf Coast segment while he was actually employed at  
16 TransCanada.

17 And, you know, based on his testimony it  
18 certainly would, you know, appear that whatever issues  
19 that resulted from welding certainly could have then been  
20 tied to the selection of the welding inspection  
21 contractor at that point in time.

22 To the extent that Mr. Vokes is testifying about  
23 those particular issues that related to the selection of  
24 the inspection team and the processes that occurred and,  
25 as he has testified, the fact that TransCanada went ahead

1 and proceeded to use a critical inspection contractor  
2 that Mr. Vokes and others within TransCanada clearly had  
3 issues with, I think is very relevant. And that  
4 certainly -- that portion of his testimony would not be  
5 hearsay.

6 MR. WHITE: If you look at paragraph 10, it  
7 specifically refers to information that he received from  
8 a former worker that was forwarded to him after his  
9 dismissal. So obviously he's using information gathered  
10 after his termination of employment.

11 The material or the information contained in  
12 these paragraphs relates to the period of time that the  
13 Gulf Coast was under construction. If you look at  
14 paragraph 13, "During Gulf Coast construction I had." So  
15 these paragraphs pertain to activities that occurred  
16 posttermination of employment.

17 MR. MARTINEZ: Well, and I would suggest that  
18 we've already entered as exhibits DRA Exhibits No. 69 and  
19 70, which specifically do relate to the Gulf Coast. And,  
20 furthermore, I think it's clearly within bounds for  
21 Mr. Vokes to testify about any communications he may have  
22 had with TransCanada employees either prior to or  
23 subsequent to the termination of his employment with the  
24 company.

25 And the other thing that we also have is we

1 clearly have an exception to statements of hearsay,  
2 particularly as they relate to admissions by party  
3 opponents. That's clearly a portion of the South Dakota  
4 hearsay rules.

5 CHAIRMAN NELSON: If I could just ask,  
6 paragraph 13 was the last one that was in question at  
7 this point; is that correct?

8 MR. WHITE: Yes. Yes, it is.

9 MR. MARTINEZ: 13 is the one that starts with, I  
10 believe, During the Keystone Gulf Coast construction.

11 Is that what you're referring to, Mr. White?

12 MR. WHITE: Yes, it is.

13 MR. MARTINEZ: Okay. Thank you, sir.

14 MR. SMITH: I'm going to sustain with respect to  
15 10, 11, and 12 and deny with respect to 13.

16 MR. MARTINEZ: Do you have any other objections  
17 with respect to the prefiled testimony?

18 MR. WHITE: We have no other objections to the  
19 Prefiled Direct Testimony at this time.

20 MR. MARTINEZ: I've concluded with the witness.

21 MR. SMITH: Yes. And you offered this; correct?

22 MR. MARTINEZ: Yes.

23 MR. SMITH: And the exhibit number is what?

24 MR. MARTINEZ: We're designated as 3-A.

25 MR. SMITH: What thousands are you?

1 MR. MARTINEZ: That would be 1003, I believe is  
2 what it would start with.

3 MR. SMITH: So 1003-A?

4 MR. MARTINEZ: Correct.

5 MR. SMITH: Is admitted. Those portions which  
6 were not subject to granting of exclusion motions by  
7 Keystone.

8 MR. WHITE: And sorry.

9 MR. SMITH: Are you done with your direct exam?  
10 Okay. Mr. White.

11 MR. WHITE: Just a few questions for  
12 cross-examination of the witness.

13 CROSS-EXAMINATION

14 BY MR. WHITE:

15 Q. Mr. Vokes, I think you testified on Saturday evening  
16 that your current employment is with your own company; is  
17 that correct?

18 A. That's correct.

19 Q. And what's the name of that company?

20 A. Kantana Metallurgican Process Services.

21 Q. And how many employees does that company have?

22 A. One.

23 Q. And who would that be?

24 A. Me.

25 Q. And what services does your company provide?