Jeffery J. Oven
Mark L. Stermitz
Jeffrey M. Roth
CROWLEY FLECK PLLP
490 North 31st Street, Ste. 500
Billings, MT 59103-2529
Telephone: 406-252-3441
Email: joven@crowleyfleck.com
mstermitz@crowleyfleck.com
jroth@crowleyfleck.com

Peter C. Whitfield
Joseph R. Guerra
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005
Telephone: 202-736-8000
Email: pwhitfield @sidley.com
jguerra@sidley.com

Counsel for TransCanada Keystone Pipeline, LP and TC Energy Corporation

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

INDIGENOUS ENVIRONMENTAL NETWORK and NORTH COAST RIVERS ALLIANCE, Plaintiffs, vs. PRESIDENT JOSEPH R. BIDEN, et al., Defendants, TRANSCANADA KEYSTONE PIPELINE, LP, a Delaware limited partnership, and TC ENERGY CORPORATION, a Canadian Public company, Defendant-Intervenors.	CV 19-28-GF-BMM **TC ENERGY CORPORATION AND TRANSCANADA KEYSTONE PIPELINE, LP'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS BASED ON MOOTNESS**

INTRODUCTION

In accordance with the Notices filed on June 9 and June 24, 2021, Defendant-Intervenors TransCanada Keystone Pipeline, L.P. and its parent TC Energy Corporation (jointly "TC Energy") move to dismiss this case because the termination of the Keystone XL Pipeline Project ("Project") is a new circumstance that makes clear this case is moot. *See* Doc. 167; Doc. 168.

The termination of the Project removes any conceivable uncertainty about "whether President Biden or a future president" could "issue unilaterally another permit to TC Energy." Order on Mootness, Doc. 166, at 10 (May 28, 2021). Because it has terminated the Project, TC Energy will not pursue any permits, nor will it perform any construction activities in furtherance of the Project now or in the future. Doc. 168, at 2. There can be no reasonable expectation that any President will unilaterally issue another permit for a project that has been abandoned and for which no permit is sought. *See infra* at 11-13.

The termination of the Project also confirms that "no 'live' controversy remains between the parties," because the actions that allegedly threatened to injure Plaintiffs—the 2019 Permit and the Keystone XL Project—have both "evaporated or disappeared." *Ctr. for Biological Diversity v. Lohn*, 511 F.3d 960, 964 (9th Cir. 2007) (citation omitted). As a result, the declaratory judgment and injunction Plaintiffs have requested in this case would no longer provide them with

any "meaningful relief." *Id*. at 963. An injunction barring TC Energy from constructing or operating the Keystone XL Project, *see* First Am. Compl., Doc. 37, at 33 (July 18, 2019), would be meaningless, because the Project has been terminated. And a declaration that the 2019 Permit is "*ultra vires* and of no legal force and effect," *id.* at 32-33, would be equally meaningless because the Permit already lacks legal effect since it has been revoked. *See infra* at 7-9.

Plaintiffs' moot claims cannot be revived by suggesting that the Court could order "the removal of the constructed border segment." Order on Mootness, Doc. 166, at 9. Plaintiffs have not requested removal of the pipe, and the Court could not award such relief if they requested it. A "plaintiff must demonstrate standing separately for each form of relief sought." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000). Having predicated their standing on alleged harms from construction and operation of the Project, Plaintiffs cannot demonstrate any cognizable injury from the mere presence of the 1.2-mile segment of pipe in the ground at the U.S.-Canada border. *See infra* at 9-10.

BACKGROUND

Plaintiffs challenged President Trump's issuance, in March 2019, of a presidential permit authorizing TC Energy to construct and operate the 1.2 mile segment of the Keystone XL Pipeline that crosses the United States-Canada border in Montana. *See* Order on Mootness, Doc. 166, at 5-6 (describing Plaintiffs'

challenges to the 2019 Permit). Plaintiffs claimed that "they would be directly and irreparably harmed by the *construction and operation* of the Project," including by operational "oil spills that would pollute the lands and waters that [their] members use and enjoy." First Am. Compl., Doc. 37, ¶¶ 28-29 (emphasis added). To prevent these alleged harms, Plaintiffs asked the Court (1) to declare the 2019 Permit "*ultra vires* and of no legal force and effect"; and (2) to enjoin TC Energy "from initiating any activities in furtherance of the Project that could result in any change or alteration of the physical environment unless and until [the Federal Defendants] comply with" the Constitution, Executive Order 13,337, and various federal laws. *See* First Am. Compl., Doc. 37, at 32-33.

After TC Energy announced, in January 2020, that it planned to begin construction of the 1.2-mile border-crossing segment of the pipeline in April of 2020, Plaintiffs moved for a preliminary injunction. Doc. 82. The Court did not act on that motion, and TC Energy built that segment of Keystone XL. On October 16, 2020, this Court denied Plaintiffs' motion for a preliminary injunction (and their subsequent motion for a temporary restraining order) as moot. Doc. 147. Plaintiffs thereafter filed a notice of appeal. Doc. 151.

On January 20, 2021, President Biden revoked the 2019 Permit. *See* Executive Order 13,990, § 6, 86 Fed. Reg. 7,037, 7,041 (Jan. 25, 2021). That same day, TC Energy announced that it had suspended advancement of the Keystone XL

Project and was assessing the implications of the President's actions and considering its options.[1] On March 17, 2021, Texas and 20 other States filed suit in the Southern District of Texas challenging the legality of President Biden's revocation order. *See Texas v. Biden*, No: 3:21-cv-00065 (S.D. Tex. Mar, 17, 2021) (attached as Exhibit 1 to Doc. 161) (the "*Texas* lawsuit"). TC Energy is not a party to the *Texas* lawsuit, and it neither intervened in that lawsuit nor filed its own challenge to the President's action.

On April 7, this Court directed the parties to address whether this action was moot in light of the foregoing events. Doc. 162. In response, TC Energy and the Federal Defendants both argued that the case was moot, because all of Plaintiffs' claims challenge the 2019 Permit, which no longer exists. *See* Doc. 163, at 2-4; Doc. 164, at 3-7. They argued that the President revoked the 2019 Permit on policy grounds, not to avoid this lawsuit, and there was no reason to think that the revocation is temporary. *See* Doc. 163, at 4-6; Doc. 164, at 7-10. And they argued that the *Texas* lawsuit challenging the *revocation* of the Permit did not keep alive Plaintiffs' challenge to its *issuance*. *See* Doc. 163, at 6-10; Doc. 164, at 11-16.

---

[1] *See* TC Energy News Release, *TC Energy Disappointed with Expected Executive Action Revoking Keystone XL Presidential Permit* (Jan. 20, 2021), https://www.tcenergy.com/announcements/2021-01-20-tc-energy-disappointed-with-expected-executive-action-revoking-keystone-xl-presidential-permit/

Plaintiffs, in contrast, argued that the case was not moot. Their argument was premised on their belief that, notwithstanding the revocation of the 2019 Permit, the Keystone XL Project remained "very much alive." Doc. 165, at 6. Plaintiffs emphasized that TC Energy had not said it was abandoning the Project, and they speculated that, in light of the amount of time and money invested in the Project, the company would "resume construction if the *Texas v. Biden* case succeeds." *Id.* at 14; *see also id*. at 11-15. Plaintiffs also speculated that TC Energy was working "behind the scenes" to "persuade the Biden Administration to undo its Revocation Order and allow TransCanada to resume construction and begin operation." *Id*. at 16. They argued that if TC Energy "has no intention of throwing in the towel on this Project, there can be no basis for this Court to dismiss Plaintiffs' lawsuit on mootness grounds." *Id*. at 15.

On May 28, 2021, this Court entered an order stating that the case was not then moot. The Court held that, even though President Biden had revoked the 2019 Permit that Plaintiffs are challenging, there was a "live controversy because the Court can provide relief to Plaintiffs by ordering the removal of the constructed border segment." Doc. 166, at 9. The Court further held, in the alternative, that "President Biden's revocation represents the voluntary cessation of unlawful activity," and it "remains unclear whether President Biden or a future president simply could issue unilaterally another permit to TC Energy." *Id.* at 10.

Accordingly, the Court stated that it "will issue an order on the parties' pending motions for summary judgment in due course," and it directed Federal Defendants and TC Energy to "apprise the Court on any changes, expansions, or alterations to the existing pipeline infrastructure from the 1.2-mile border crossing segment during the pendency of this matter." *Id*. at 15.

On June 9, 2021, TC Energy announced that "after a comprehensive review of its options, and in consultation with its partner, the Government of Alberta, it has terminated the Keystone XL Pipeline Project." Doc. 167, at Attachment A. TC Energy will not pursue any permits for the Project or perform any construction activities in furtherance of the Project now or in the future. *See* Doc. 167, at 3. Rather, the "Company will continue to coordinate with regulators, stakeholders and Indigenous groups to meet its environmental and regulatory commitments and ensure a safe termination of and exit from the Project." *Id.* at Attachment A.

Following that announcement, TC Energy promptly advised the Court of the abandonment of the Project. *See* Doc. 167. Plaintiffs just as promptly claimed "victory" in this lawsuit, announcing that they had "defeated an oil giant" and that "Keystone XL is dead!"[2] Yet, despite these pronouncements, and despite the fact that the Rosebud Sioux Tribe and the Fort Belknap Indian Community have

[2] *See* https://www.mynewsletterbuilder.com/email/newsletter/1415261542 (last visited June 29, 2021).

stipulated to the dismissal without prejudice of their lawsuit challenging the 2019 Permit, *see* Order, *Rosebud Sioux Tribe v. Biden*, No. 4:18-cv-00118-BMM, Doc. 184 (D. Mont. May 17, 2021), Plaintiffs have taken the position that this suit is not moot. Instead, in correspondence with TC Energy's counsel, Plaintiffs' counsel has taken the position that a lawsuit over a revoked presidential permit for a publicly abandoned pipeline project is not moot until TC Energy provides "documentation" confirming, among other things, that it will not seek a new permit if former President Trump decides to run and is elected President *more than three years from now*. *See* Attachment A. In light of Plaintiffs' unreasonable position—including their demands for "documentation" addressing their speculations about future contingencies—TC Energy is forced to move for dismissal of this obviously moot lawsuit.

ARGUMENT

I. The Termination Of The Keystone XL Project Makes Clear That Plaintiffs' Claims And Request For Relief Are Moot

"Article III denies federal courts the power 'to decide questions that cannot affect the rights of litigants in the case before them,'…." *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990) (citation omitted). Federal courts may only resolve "real and substantial controversies admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Id.* (cleaned up). The doctrine

of mootness enforces the Article III requirement that "an actual controversy must be extant at all stages of review." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (citation omitted). It is "not enough that a dispute was very much alive when suit was filed." *Lewis*, 494 U.S. at 477. "The parties must continue to have a 'personal stake in the outcome' of the lawsuit," *id.* at 478 (citation omitted), because federal courts "are not in the business of pronouncing that past actions which have no demonstrable continuing effect were right or wrong." *Spencer v. Kemna*, 523 U.S. 1, 18 (1998). And that is particularly true in cases like this, where Plaintiffs are asking the Court to declare unconstitutional an action of a co-equal branch of the government. *See, e.g., Mills v. Rogers*, 457 U.S. 291, 305 (1982) (the "Courts' settled policy" of avoiding "unnecessary decisions of constitutional issues" is supported by "the prohibition on advisory opinions").

It is now clear that "no 'live' controversy remains between the parties because the challenged activity"—the 2019 Permit *and* the Keystone XL Project—has "evaporated or disappeared." *Ctr. for Biological Diversity*, 511 F.3d at 964 (citation omitted). As a result, the declaratory judgment and injunction Plaintiffs have requested would no longer provide them with any "meaningful relief." *Id.* at 963.

It would "serve no purpose," *id.* at 964, for the Court to grant Plaintiffs' request for a declaration that the 2019 Permit was "*ultra vires* and of no legal force

and effect," First Am. Compl., Doc. 37, at 32-33. The Permit has been revoked, and thus it already has "no legal force and effect." It would likewise serve no purpose to grant Plaintiffs' request for an injunction prohibiting TC Energy "from initiating any activities in furtherance of the Project that could result in any change or alteration of the physical environment." *Id.* at 33. TC Energy has terminated the Project and will not be "initiating any activities in furtherance of the Project," so there is nothing for the Court to enjoin.

In the earlier Order on Mootness, this Court found that the case is not moot because "the Court can provide relief to Plaintiffs by ordering the removal of the constructed border segment." Doc. 166, at 9. That is mistaken. Plaintiffs have not requested removal of the pipe, nor are they entitled to such relief. Plaintiffs lack standing to obtain a court-ordered removal of the border segment, because they cannot show that the mere existence of 1.2-miles of pipe buried at the U.S.-Canada border causes them any cognizable harm. *See Friends of the Earth*, 528 U.S. at 185 ("plaintiff must demonstrate standing separately for each form of relief sought"). Indeed, *removal* of the pipe could require the same type of "construction and surface-disturbing pre-construction" activities that Plaintiffs claimed would "irreparably destroy environmental and cultural resources" when the pipe was installed. *See* Memorandum Of Points And Authorities In Support Of Plaintiffs' Motion For Preliminary Injunction, Doc. 27-2, at 31-33 (July 10, 2019). Plaintiffs

cannot keep their case alive by asking the Court to order TC Energy to engage in the same type of ground-disturbing activities they previously sought to enjoin.

Instead, the termination of the Keystone XL Project following the revocation of the 2019 Permit brings this case within the "general rule that when actions complained of have been completed or terminated, declaratory judgment and injunctive actions are precluded by the doctrine of mootness." *Nevada v. United States*, 699 F.2d 486, 487 (9th Cir. 1983) (action to enjoin moratorium on settlement on federal land in Nevada and "have it declared unconstitutional" became moot when the moratorium was rescinded); *see also, e.g., City News & Novelty, Inc. v. Waukesha*, 531 U.S. 278, 283 (2001) (First Amendment challenge to licensing scheme for adult businesses became moot when the company "ceased to operate as an adult business and no longer [sought] to renew its license"); *Pub. Utils. Comm'n of Cal. v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996) (challenge to FERC grant of certificate authorizing expansion of natural gas pipeline became moot when the company refused the certificate and "determined not to proceed" with the project); *Ctr. for Biological Diversity*, 511 F.3d at 964 (challenge to policy used to issue a ruling that the Southern Killer whale was not an endangered species became moot when the agency issued a rule listing the whale as endangered).

II. The Termination Of The Keystone XL Project Makes Clear That This Case Does Not Fall Within The Voluntary Cessation To The Mootness Doctrine.

The termination of the Keystone XL Project also makes clear that this case does not fall within the "voluntary cessation" exception to the mootness doctrine. That doctrine provides that "the mere cessation of illegal activity in response to pending litigation does not moot a case, unless the party alleging mootness can show that the 'allegedly wrongful behavior could not reasonably be expected to recur.'" *Rosemere Neighborhood Ass'n v. EPA*, 581 F.3d 1169, 1173 (9th Cir. 2009) (quoting *Friends of the Earth*, 528 U.S. at 189). The voluntary cessation doctrine "protects plaintiffs from defendants who seek to evade sanction by predictable 'protestations of repentance and reform.'" *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Found., Inc.*, 484 U.S. 49, 67 (1987) (citation omitted).

The Mootness Order found that "President Biden's revocation represents the voluntary cessation of unlawful activity," and that it is "unclear" whether President Biden, "or a future president, could issue unilaterally another permit" for the Keystone XL Project. Doc. 166, at 10. There is, however, no evidence that President Biden revoked the 2019 Permit "in response to pending litigation." *Rosemere*, 581 F.3d at 1173. As our previous briefing explained, *see* Doc. 163, at 6, the Executive Order said the President revoked the permit because "[l]eaving the … permit in place would not be consistent with [his] Administration's economic

and climate imperatives." Executive Order No. 13,990, § 6(d), 86 Fed. Reg. at 7041. Courts "presume the government is acting in good faith," *Am. Cargo Transp., Inc. v. United States*, 625 F.3d 1176, 1180 (9th Cir. 2010), and there is no reason to think that the Executive Order's stated reason for the revocation is pretextual, or that the revocation of the permit was temporary.

But even if there previously was some conceivable basis for fearing that a President would unilaterally reissue another permit for the Keystone XL Project, that is no longer the case. The Project has been terminated, and TC Energy will not pursue any permits for the Project or take any steps to advance the Project now or in the future. *See supra* p. 6. To our knowledge, no President has ever unilaterally issued a permit for a terminated cross-border facility for which there was no application. And even if a President were to take such an unprecedented action, Plaintiffs could not suffer any cognizable harm unless TC Energy accepted the permit and began to construct the Project that TC Energy has already decided to terminate. Speculation that such a series of unprecedented events could theoretically occur does not give Plaintiffs the "'personal stake in the outcome' of the lawsuit" necessary to maintain an Article III case or controversy. *Lewis*, 494 U.S. at 478; *see also, e.g.*, *Hall v. Beals*, 396 U.S. 45, 49-50 (1969) (per curiam) (constitutional challenge to residency requirement for voting became moot when the law was amended and it would require a series of "speculative contingencies"

for plaintiffs to face "disenfranchisement" under the new law); *Williams v. Alioto*, 549 F.2d 136, 143-44 (9th Cir. 1977) (challenge to investigative "stop and frisk" program that "raised serious constitutional questions" became moot when the police department discontinued the program; "[a]lthough we can imagine its recurrence, we cannot consider it more than a speculative possibility").

Plaintiffs previously argued that this Court should be skeptical that revocation of the 2019 Permit mooted this case, given that TC Energy had invested billions in the Keystone XL Project—a project it had first announced over a decade ago and had fought for through multiple lawsuits. *See supra* p. 5. Moreover, the Government of Alberta had invested over $1 billion in the Project in 2020. *See* Second Decl. of Gary Salsman, Doc. 135-1, ¶ 13(a) (Apr. 14, 2020). Given these weighty considerations, it is a very significant act for a company to announce to investors and the public that it will abandon a multi-year, multi-billion dollar project. After nearly six months of deliberations, TC Energy has now taken that very action. In light of that action, Plaintiffs' speculations about possible contingencies years in the future are completely unreasonable, and provide no basis for concluding that this Court has authority to opine on the constitutionality of a presidential permit that has been formally revoked.

CONCLUSION

For the foregoing reasons, this case is moot and should be dismissed.

Dated: June 30, 2021

Respectfully Submitted,

CROWLEY FLECK PLLP

/s/ Jeffery J. Oven
Jeffery J. Oven
Mark L. Stermitz
Jeffrey M. Roth
490 North 31st Street, Ste. 500
Billings, MT 59103-2529
Telephone: 406-252-3441
Email: joven@crowleyfleck.com
mstermitz@crowleyfleck.com
jroth@jcrowleyfleck.com

SIDLEY AUSTIN LLP

/s/ Peter C. Whitfield
Peter C. Whitfield
Joseph R. Guerra
1501 K Street, N.W.
Washington, DC 20005
Telephone: 202-736-8000
Email: pwhitfield@sidley.com
jguerra@sidley.com

Counsel for TransCanada Keystone Pipeline LP and TC Energy Corporation

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), I certify that this brief contains 3,146 words, excluding the caption and certificates of service and compliance.

/s/ Jeffery J. Oven

CERTIFICATE OF SERVICE

I hereby certify that I electronically served today a copy of the foregoing by using the Court's CM/ECF system on all counsel of record.

/s/ *Jeffery J. Oven*
Jeffery J. Oven

ATTACHMENT A

From: Steve Volker
To: Whitfield, Peter
Cc: "Hajek, Luke (ENRD)"; Mueller, Kathleen; Guerra, Joseph R.; "Alexis Krieg"; "Stephanie Clarke"; "Jamey Volker"
Subject: RE: IEN litigation
Date: Wednesday, June 23, 2021 5:04:40 PM
Attachments: image001.png

Good afternoon Peter,

Thanks for your response. However, from our perspective it doesn't appear that you answered our questions.

Unless you have more to add, it appears that we will just have to agree to disagree on the continuing need for the Court's ruling on the long-pending summary judgment motions.

Regards,

Steve

Stephan C. Volker
Law Offices of Stephan C. Volker
1633 University Ave
Berkeley, CA 94703
Tel: (510) 496-0600
Fax: (510) 845-1255
svolker@volkerlaw.com

From: Whitfield, Peter [mailto:pwhitfield@sidley.com]
Sent: Monday, June 21, 2021 6:24 PM
To: Steve Volker
Cc: 'Hajek, Luke (ENRD)'; Mueller, Kathleen; Guerra, Joseph R.
Subject: RE: IEN litigation

Steve,
In response to your questions below, we would direct you to what we told the Court on June 9 and what TC Energy publicly announced in its press release, as those statements are definitive. TC Energy has terminated the Keystone XL Project. As a result, TC Energy will not pursue any permits for the Project, nor will it perform any construction activities in furtherance of the Project now or at any time in the future. IEN itself has publicly acknowledged that "Keystone XL is dead," *see* (https://www.mynewsletterbuilder.com/email/newsletter/1415261542), and the Rosebud plaintiffs agreed, even before TC Energy's announcement, that their constitutional challenges to the 2019 Permit (which largely tracked your challenges) were moot.

In light of the above, there is no legal basis for maintaining your lawsuit. Indeed, the court cannot award any of the relief you requested in your complaint, which sought to invalidate a Presidential Permit that has now been rescinded and to enjoin activities in furtherance of a pipeline project that has been terminated. We intend to file a notice with the court on Thursday indicating whether the parties agree that the case is moot or whether we will be filing a motion to dismiss. If you can let us know your position by the end of the day on Wednesday, we would appreciate it.

Regards,
Peter

PETER WHITFIELD

SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
please use cell to contact: 202.669.2160
+1 202 736 8531
pwhitfield@sidley.com

From: Steve Volker <svolker@volkerlaw.com>
Sent: Monday, June 21, 2021 12:26 PM
To: Whitfield, Peter <pwhitfield@sidley.com>
Cc: 'Hajek, Luke (ENRD)' <Luke.Hajek@usdoj.gov>
Subject: IEN litigation

Good morning Peter,

Thanks again for checking with plaintiffs about their reaction to TC Energy's News Release.

In response to your query, plaintiffs have a number of questions about the actual effect of the TC Energy News Release.

The TC Energy News Release does not address the *State of Texas v. Biden* litigation. We understand that the *State of Texas v. Biden* lawsuit remains pending in the Southern District of Texas. If the plaintiffs prevail in that matter, and President Biden's Revocation Order is vacated, will TC Energy proceed with the Keystone XL Pipeline Project? Please provide documentation that it will not.

The TC Energy News Release does not address restoration of the lands and waters impacted by the Keystone XL Pipeline construction to date. Please provide documentation of the specific actions TC Energy is taking to remove the infrastructure that was built and to remediate the environmental harm caused by the Keystone XL Pipeline construction to date.

TC Energy has been the recipient of a number of permits allowing construction of the pipeline from state and federal agencies, such as the easements granted by the Bureau of Land Management and the Clean Water Act section 401 certifications issued by Montana and other states. Please provide documentation of the specific actions TC Energy is taking to return those permits and comply with any permit requirements for restoration of resources disturbed by TC Energy.

Former President Trump has stated that he intends to run for President in 2024. He has never wavered in his fervent support for the Keystone XL Project. If he is re-elected and takes action to reapprove the project, will TC Energy proceed with the project at that time?

Thanks for your attention to plaintiffs' questions.

Regards,

Steve

Stephan C. Volker
Law Offices of Stephan C. Volker
1633 University Ave
Berkeley, CA 94703
Tel: (510) 496-0600
Fax: (510) 845-1255
svolker@volkerlaw.com

From: Whitfield, Peter [mailto:pwhitfield@sidley.com]
Sent: Thursday, June 10, 2021 12:07 PM
To: Steve Volker
Cc: 'Hajek, Luke (ENRD)'
Subject: RE: Time for a call to discuss IEN litigation

Ok, thanks

PETER WHITFIELD

SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
please use cell to contact: 202.669.2160
+1 202 736 8531
pwhitfield@sidley.com

> **From:** Steve Volker <svolker@volkerlaw.com>
> **Sent:** Thursday, June 10, 2021 2:49 PM
> **To:** Whitfield, Peter <pwhitfield@sidley.com>
> **Cc:** 'Hajek, Luke (ENRD)' <Luke.Hajek@usdoj.gov>
> **Subject:** RE: Time for a call to discuss IEN litigation
>
> Good morning Peter,
>
> Our clients are currently discussing the issues posed by TC Energy's News Release issued yesterday afternoon.
>
> When they have a position I will promptly let you know, and we can go from there.
>
> Thanks for checking with us.

Steve

Stephan C. Volker
Law Offices of Stephan C. Volker
1633 University Ave
Berkeley, CA 94703
Tel: (510) 496-0600
Fax: (510) 845-1255
svolker@volkerlaw.com

From: Whitfield, Peter [mailto:pwhitfield@sidley.com]
Sent: Thursday, June 10, 2021 10:39 AM
To: svolker@volkerlaw.com
Cc: Hajek, Luke (ENRD)
Subject: Time for a call to discuss IEN litigation

Steve,
Would you have time this afternoon to discuss whether your client's views on mootness have changed following TC Energy's announcement that it is cancelling Keystone XL? I am including Luke as well to see if there is a time convenient for all of us.

PETER WHITFIELD

SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, DC 20005
please use cell to contact: 202.669.2160
+1 202 736 8531
pwhitfield@sidley.com
www.sidley.com
SIDLEY