

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

Energy Transfer Equity, L.P., and Energy)
Transfer Partners, L.P.,)
)
Plaintiffs,)

Case No. 1:17-cv-00173

Greenpeace International (aka “Stichting)
Greenpeace Council”); Greenpeace, Inc.;)
Greenpeace Fund, Inc.; Banktrack (aka)
“Stichting Banktrack”); Earth First!; Cody)
Hall; Krystal Two Bulls; Jessica Reznicek;)
Ruby Montoya; Charles Brown; and John and)
Jane Does 1-20,)

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR
EXTENSION OF TIME TO SERVE
OR FOR ALTERNATIVE FORM OF
SERVICE**

Defendants.

Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. (together, “Energy Transfer” or “Plaintiffs”) respectfully submit this memorandum of law in support of their motion for a 45-day extension of time to serve Defendants Jessica Reznicek, Ruby Montoya, Krystal Two Bulls, and Cody Hall or, in the alternative, for leave to serve these defendants by alternative means.

PRELIMINARY STATEMENT

Good cause exists for a 45-day extension of time to serve Defendants Jessica Reznicek, Ruby Montoya, Krystal Two Bulls, and Cody Hall. Since filing the amended complaint in this action, Plaintiffs have made diligent, extensive, and persistent efforts to locate and serve Ms. Reznicek, Ms. Montoya, Ms. Two Bulls, and Mr. Hall. To this end, Plaintiffs engaged private investigators, process coordinators and servers, and sheriff’s offices to assist in locating and serving defendants; conducted interviews of people with potential knowledge of defendants’ whereabouts; surveilled and canvassed potential locations where defendants may be located; and

made dozens of attempts to serve defendants across seven states. While Energy Transfer believes its investigators have been close to locating and serving defendants, Energy Transfer believes that these defendants are making conscious efforts to avoid detection and, as a result, have evaded service to date. Indeed, two of the defendants, Ms. Reznicek and Ms. Montoya, have publicly stated that they have “gone into hiding” and are staying at hotels under assumed names. Likewise, based on its investigative efforts, Energy Transfer believes that Ms. Two Bulls and Mr. Hall have moved frequently within and between cities and also are staying in hotels under assumed names. As set forth herein, Energy Transfer has gone to extraordinary lengths to locate and serve defendants within the allotted time period, but, given efforts by defendants to evade service, Energy Transfer been unsuccessful to date. Because Energy Transfer’s inability to serve defendants is a direct result of defendants’ efforts to avoid service, and not a lack of diligence on the part of Energy Transfer, Energy Transfer respectfully requests that the Court grant a 45-day extension of time to serve defendants, or, in the alternative, authorize an alternative form of service as set forth herein or as the Court deems appropriate.

FACTUAL BACKGROUND

Energy Transfer filed the Amended Complaint on August 6, 2018, naming Jessica Reznicek, Ruby Montoya, Krystal Two Bulls, and Cody Hall as new defendants in this action. (ECF No. 95.) Immediately thereafter and continuing to this date, Energy Transfer has made diligent, extensive, and persistent efforts to locate and serve Ms. Reznicek, Ms. Montoya, Ms. Two Bulls, and Mr. Hall. (*See* Declaration of Jennifer S. Recine (“Recine Decl.”) ¶¶ 3-23; Declaration of Denise Vasquez (ECF No. 108 ¶¶ 4-16).) Energy Transfer’s efforts to locate and serve defendants are as follows:

A. Ruby Montoya and Jessica Reznicek

On August 10, 2018, Plaintiffs attempted to serve Montoya and Reznicek at the Berrigan Catholic Worker House (“Berrigan House”) located at 713 Indiana Avenue, Des Moines, Iowa 50314. (ECF No. 108 ¶ 4.) Ms. Reznicek and Ms. Montoya used the Berrigan House as a base in Iowa for their operations against the Dakota Access Pipeline (“DAPL”). (*Id.*) Law enforcement raided the Berrigan House after Ms. Reznicek and Ms. Montoya publicly admitted to committing multiple acts of arson on DAPL and Energy Transfer’s construction equipment. (*Id.*) Service was not effected at the Berrigan House because no one answered the door and no one was present at the address. (*Id.*) A phone line associated with the address was disconnected. (*Id.*)

That same day, Plaintiffs attempted to serve Ms. Reznicek at 813 Crocker St, Apt. #4, Des Moines, Iowa 50309, an address associated with Ms. Reznicek. (*Id.* ¶ 5.) Service was not effected because the apartment building located at this address was demolished. (*Id.*) Construction of new apartment buildings at the address was ongoing, and construction workers confirmed that no one was living at the address. (*Id.*)

On August 16, 2018, Plaintiffs attempted to serve Ms. Montoya at 10575 Utah Drive, Falcon, Missouri, an address at which Ms. Montoya had lived. (*Id.* ¶ 6.) An occupant named “Steve” answered the door and stated that Ms. Montoya had not lived at the residence for more than a year. He believed that Ms. Montoya, along with a female friend, had been arrested during a pipeline protest. (*Id.*)

On August 25, 2018, Plaintiffs attempted to serve Ms. Reznicek at 421 W. Lane Street, Centerville, Iowa 52544, a residence owned by Ms. Reznicek’s ex-husband, Francis Reznicek. (*Id.* ¶ 7.) Mr. Reznicek answered the door and stated that he reached out to Ms. Reznicek’s

relatives in the past to determine her current address, but had not been successful. (*Id.*) He believed that Ms. Reznicek most recently worked for the Des Moines Catholic Worker. (*Id.*)

On August 30, 2018, Plaintiffs attempted to serve Ms. Reznicek and Ms. Montoya at three Des Moines addresses associated with the Des Moines Catholic Worker: (1) Bishop Dingman House at 1370 7th Street; (2) Rachel Corrie House at 1301 8th Street; and (3) Chelsea Manning House at 1317 8th Street. Service was not effected at any of these addresses. (*Id.* ¶ 8.) Individuals present at these addresses were not willing to talk about or look at photographs of Ms. Reznicek and Ms. Montoya. (*Id.*)

That same day, Plaintiffs attempted to serve Ms. Reznicek and Ms. Montoya again at the Berrigan House, but service was not effected because there was no response at the door. (*Id.* ¶ 9.) Plaintiffs' process server also attempted service at the residence next door, 715 Indiana Avenue, where he observed a mailbox with a sign stating, "Jessica Reznicek and Ruby Montoya reside here, 713 Indiana." (*Id.*) Service was not effected at 715 Indiana Avenue because there was no response at the door. (*Id.*) Individuals in the vicinity of these residences were not willing to provide information or comment on photographs of Ms. Reznicek and Ms. Montoya. (*Id.*)

Plaintiffs continued attempting to serve Ms. Reznicek and Ms. Montoya at the Berrigan House in September, but individuals at the Berrigan House would not acknowledge the server or cooperate. Plaintiffs' process server determined that the Berrigan House was a "very hostile location" and that "[no one] is going to come forward with any helpful information." (Recine Decl. Exs. 1, 2.) Public sources confirm that Ms. Reznicek and Ms. Montoya have reportedly "gone into hiding" after the law enforcement raid on the Berrigan House. (ECF No. 108 ¶ 10.)

In early October 2018, after these initial attempts to serve Reznicek and Montoya were unsuccessful, Plaintiffs engaged a private investigation firm to research and investigate other

potential locations that Plaintiffs could serve Reznicek and Montoya. (Recine Decl. ¶ 3.)

Research conducted in October 2018 indicated that Ms. Reznicek was living in various hotels in the Dayton, Ohio area, and Ms. Montoya was living in various hotels in the West Des Moines, Iowa area. (*Id.* ¶¶ 7, 11.) Investigators were deployed to these locations to monitor these hotels and canvass the surrounding areas to locate and serve Ms. Reznicek and Ms. Montoya. (*Id.*)

Investigators first determined that Ms. Reznicek was likely staying at the SpringHill Suites, a hotel located at 3591 York Plaza Lane, Dayton, Ohio 45414. (*Id.* ¶ 8.) Hotel employees shown photographs of Ms. Reznicek indicated to investigators that she had in fact been staying there. (*Id.*) Investigators surveilled the hotel continuously for several days, but Ms. Reznicek was not observed entering or leaving the hotel. (*Id.*)

Investigators checked other hotels in the Dayton area in an effort to locate Ms. Reznicek. (*Id.* ¶ 9.) Investigators visited the Residence Inn, Courtyard by Marriott, Quality Inn, Comfort Inn and Suites, and Hawthorne Suites. Employees of these hotels did not recognize Ms. Reznicek from photographs. (*Id.*) Investigators also canvassed local restaurants and stores in an effort to locate Ms. Reznicek, but were not successful. (*Id.*)

Through these efforts, investigators developed information that suggested Ms. Reznicek was staying at the Drury Inn and Suites at 6616 Miller Lane, Dayton, Ohio, and commenced surveillance of that location. (*Id.* ¶ 10.) Investigators also canvassed local businesses in the vicinity of the Drury Inn, in an effort to locate Ms. Reznicek. (*Id.*) To date, while Ms. Reznicek has not been observed coming or going from the hotel, information suggests Ms. Reznicek remains resident at that location. (*Id.*)

Meanwhile, research and investigation suggested that Ms. Montoya was likely staying at the Homewood Suites, located at 6620 Stagecoach Drive, West Des Moines, Iowa 50266. (*Id.*)

¶ 11.) Investigators spent several days monitoring the hotel, but did not see Ms. Montoya entering or leaving. (*Id.* ¶ 12.) Investigators spoke to employees of the hotel and showed them photographs of Ms. Montoya. (*Id.*) Hotel employees indicated to investigators that Ms. Montoya had been a guest of the hotel, but was believed to have left in the preceding days. (*Id.*) Plaintiffs' investigators also canvassed hotels and restaurants in the West Des Moines area but did not locate Ms. Montoya. (*Id.* ¶ 13.)

Through these efforts, investigators developed information that suggested Ms. Montoya was staying at the Drury Inn and Suites at 5505 Mills Civic Parkway, West Des Moines, Iowa 50266. (*Id.* ¶ 14.) Investigators began monitoring the Drury Inn, but have not seen Ms. Montoya entering or leaving the hotel. (*Id.*) To date, while Ms. Montoya has not been observed coming or going from the hotel, information suggests Ms. Montoya remains resident at that location. (*Id.*)

B. Krystal Two Bulls

On August 9, 2018, Plaintiffs attempted to serve Ms. Two Bulls at 2418 Wyoming Boulevard, NE, Albuquerque, New Mexico, 87112, an address at which Ms. Two Bulls had recently lived. (ECF No. 108 ¶ 11.) Jim Coriz, a current tenant at the residence answered the door and stated that Ms. Two Bulls had lived there while dating his roommate, Sheldon Tenorio, but that she had moved out approximately eight months ago. (*Id.*) Mr. Coriz stated that he had not heard from Ms. Two Bulls and that he did not know where she was. (*Id.*) Plaintiffs' process server left his contact information for Mr. Tenorio and requested that Mr. Tenorio contact him if

he could assist in efforts to locate Ms. Two Bulls, but Plaintiffs' process server did not hear back from Mr. Tenorio or Mr. Coriz. (*Id.*)

On August 17, 2018, Plaintiffs attempted to serve Ms. Two Bulls at 5244 Wyoming Boulevard, NE, Apt E4, Albuquerque, New Mexico, 87111, another address associated with Ms. Two Bulls, but service was not effected. (*Id.* ¶ 12.) Plaintiffs' process server determined that the apartment was vacant. (*Id.*)

In October 2018, Plaintiffs engaged an investigation firm to assist in locating and serving Ms. Two Bulls. (Recine Decl. ¶ 3.) Research and investigation suggested that Ms. Two Bulls was living at a residence located at 323 Wildrye Street, Colstrip, Montana 59323. (*Id.* ¶ 16.) Investigators surveilled the location, but did not see Ms. Two Bulls enter or leave the residence, and no one answered the door when an effort was made to serve Ms. Two Bulls. (*Id.*) Neighbors interviewed by investigators stated they had seen Ms. Two Bulls "recently," but could not remember the exact date. (*Id.*) They also stated that they believed she was "just visiting." (*Id.*)

Information developed by investigators suggested that Ms. Two Bulls was staying at residence at 33 Juniper Avenue, Colstrip, Montana 59323. (*Id.* ¶ 17.) Investigators surveilled the residence, but did not see Ms. Two Bulls, or anyone, enter or leave the property, and no one answered the door when an effort was made to serve Ms. Two Bulls at that address. (*Id.*)

The investigation now suggests that Ms. Two Bulls is staying at the Colstrip Inn at 6227 Main Street, Colstrip, Montana 59323. (*Id.* ¶ 18.) Investigators have surveilled the hotel, but Ms. Two Bulls has not been observed entering or leaving the hotel. (*Id.*)

C. Cody Hall

On August 8, 2018, Plaintiffs commenced efforts to serve Mr. Hall at 419 2nd Avenue, W., Mobridge, South Dakota 57601, an address at which Mr. Hall was associated and was believed to be living. (ECF No. 108 ¶ 13.) Plaintiffs' process coordinator informed Plaintiff that the address is in a remote area covered by the Walworth County Sheriff's Department. (*Id.*) Because the area is remote, the sheriff visits only once every three or four days. (*Id.*) Between August 8 and August 23, Sheriff Josh Boll attempted to serve Mr. Hall at this address three times, but service was not effected because no one answered the door. (*Id.* ¶¶ 14-16.) On August 23, Sheriff Boll contacted the owners of the property, who confirmed Mr. Hall was a former renter of the property but had vacated the premises. (*Id.* ¶ 16.) The owners informed Sheriff Boll that they had no knowledge of Mr. Hall's location but believed he could be living on reservation land. (*Id.*)

On October 5, 2018, Plaintiffs began attempting to serve Mr. Hall at 29500 U.S. Highway 212, Gettysburg, South Dakota 57442, a residence associated with Mr. Hall that is covered by the Potter County Sheriff's Department. (Recine Decl., Ex. 3.) Sheriff Curtis Hamburger attempted service. (*Id.*) Mr. Hall's parents answered the door and did not accept service. (*Id.*) They informed Sheriff Hamburger that they last heard that Mr. Hall was living in North Dakota, but they did not know his current address. (*Id.*)

After these initial attempts to serve Mr. Hall were unsuccessful, Plaintiffs engaged an investigation firm to assist in locating and serving Mr. Hall. (Recine Decl. ¶ 3.) The investigation indicated Mr. Hall was staying at the Courtyard by Marriott at 945 Pennsylvania Avenue, Pittsburgh, Pennsylvania. (*Id.* ¶ 19.) Plaintiffs' investigators conducted surveillance of the hotel, but Mr. Hall was not observed entering or leaving the hotel. (*Id.* ¶ 20.) Plaintiffs'

investigators also canvassed other hotels, bars, restaurants, and stores in the Pittsburgh area but did not locate Mr. Hall. (*Id.* ¶¶ 20, 22.) Investigators canvassed a Greyhound bus station near the Courtyard by Marriott. (*Id.* ¶ 21.) A security guard at the station confirmed that Mr. Hall’s car had been parked in the station lot in the days prior. (*Id.*) The investigation continues to suggest that Mr. Hall is staying at the Courtyard by Marriott. (*Id.* ¶ 23.)

ARGUMENT

I. PLAINTIFFS DEMONSTRATE GOOD CAUSE FOR NOT TIMELY SERVING DEFENDANTS.

The Federal Rules of Civil Procedure provide that “if the plaintiff shows good cause for the failure [to timely serve] the court *must* extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m) (emphasis added). The Eighth Circuit has determined that good cause exists when “the plaintiff has acted diligently in trying to effect service or there are understandable mitigating circumstances” or “defendant has evaded service of process.” *Kurka v. Iowa Cnty., Iowa*, 628 F.3d 953, 957 (8th Cir. 2010); *Lewis v. MSM, Inc.*, 63 Fed. App’x 972, 972 (8th Cir. 2003) (good cause is demonstrated by “a good-faith attempt to effect timely service”). Where, as here, a motion for extension of time to serve is made before the expiration of the 90-day period, “motions to extend are to be liberally permitted.” *Baden v. Craig-Hallum, Inc.*, 115 F.R.D. 582, 585 (D. Minn. May 11, 1987).

Plaintiffs demonstrate good cause for not having timely served defendants. As set forth above, Plaintiffs have made diligent, extensive, and persistent efforts to locate and serve Ms. Reznicek, Ms. Montoya, Ms. Two Bulls, and Mr. Hall. Plaintiffs’ good faith efforts include conducting research; engaging private investigators, process coordinators and servers, and sheriff’s offices to assist in locating and serving defendants; interviewing people with knowledge of defendants; surveilling potential locations where defendants may be located; canvassing areas

surrounding defendants' potential locations; and dozens of attempts to serve defendants across seven states. (*See* ECF No. 108 ¶¶ 4-16; Recine Decl. ¶¶ 3-23) While Energy Transfer believes it has been close to locating and serving defendants, Energy Transfer believes that defendants have engaged in conscious efforts to avoid detection and have evaded service to date. (Recine Decl. ¶ 5.) Indeed, Ms. Reznicek and Ms. Montoya, have publicly stated that they have "gone into hiding" (ECF No. 108 ¶ 10), and are staying at hotels under assumed or alternate names (Recine Decl. ¶¶ 5, 7-14.). Ms. Two Bulls and Mr. Hall likewise do not maintain stable residence and are believed to have moved from address to address within and between cities and are believed to be staying in hotels under assumed or alternate names. (ECF No. 108 ¶¶ 11-16; Recine Decl. ¶¶ 5, 15-23, Ex. 3.) The facts set forth above demonstrate that Plaintiffs have made a diligent -- indeed, extraordinary -- effort to serve defendants. Plaintiffs' inability to serve defendants, despite these efforts, taken together with defendants' efforts to evade service, provide good cause for Plaintiffs' inability to serve defendants to date. Accordingly, Plaintiffs submit that a 45-day extension of time to serve defendants is warranted. *See* Fed. R. Civ. P. 4 advisory committee's note, 1993 Amendment (relief under Rule 4(m) justified "if the defendant is evading service"); *Lewis*, 63 Fed. App'x at 972 (good cause to extend time where plaintiff showed good-faith attempt to effect timely service); *Baden*, 115 F.R.D. at 585 (D. Minn. 1987) (good cause where plaintiff "demonstrated some diligence and a reasonable effort to effect service").

II. THE COURT SHOULD GRANT LEAVE TO SERVE DEFENDANTS BY ALTERNATIVE MEANS.

In the alternative to an extension of time to serve defendants, Plaintiffs request that the Court grant Plaintiffs leave to serve defendants by alternatives means. Specifically, Energy Transfer requests permission to serve Ms. Reznicek and Ms. Montoya by service upon attorney

William Quigley, who is reportedly providing legal representation for Ms. Reznicek and Ms. Montoya in connection with a federal investigation into their arson of DAPL. (Recine Decl. ¶ 24.) Energy Transfer also requests permission to serve Ms. Two Bulls and Mr. Hall by publication, email, or any other means that the Court deems appropriate.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court grant Plaintiffs an additional 45 days to serve Defendants Hall, Two Bulls, Reznicek, and Montoya. In the alternative, Plaintiffs respectfully request that the Court grant Plaintiffs leave to serve Reznicek and Montoya by service upon their attorney, William Quigley, and Two Bulls and Hall by publication, email, or other means the Court deems appropriate.

DATED this 5th day of November, 2018.

FREDRIKSON BYRON P.A.

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