

the affiliated companies in the ownership chain between TransCanada and Keystone. The Permit also requires that “Keystone shall undertake and complete all of the actions that it and its affiliated entities committed to undertake and complete in its Application and in its testimony before the Commission at the hearing.” (*Id.* Conditions ¶ 5.)

With respect to liability, the Permit conditions state:

- that “Keystone shall repair or replace all property removed or damaged during all phases of construction and operation of the proposed transmission facility,”
 - that “Keystone shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement,”
 - that in the event of well contamination “Keystone shall pay all costs associated with finding and providing a permanent water supply,”
 - that any damage caused by soil disturbance “shall be paid for by Keystone,” and
 - that “Keystone shall pay commercially reasonable costs and indemnify and hold the landowner harmless” for any damages resulting from Keystone’s use of the easement.
- (*Id.*, Conditions ¶¶ 53-57.)

The Permit provides that it “shall not be transferable without the approval of the Commission pursuant to SDCL 49-41B-29.” (Final Decision & Order, Conclusions of Law ¶ 4.)

The Keystone docket was closed on May 2, 2013.

2. The Proposed Transaction

In May 2019, TransCanada, the parent company of Keystone, changed its name to TC Energy Corporation (“TC Energy”). TC Energy’s stock is publicly traded on the Toronto and New York Stock Exchanges. On July 27, 2023, TC Energy publicly announced that its board of directors had approved plans to spin off its Liquids Pipelines business unit (the “Transaction”).

(Aff. of Richard Prior ¶ 4.) When the Transaction is completed, there will be two independent, investment-grade, publicly listed companies, one containing the Liquid Pipelines business unit and the other containing the remainder of TC Energy’s businesses. (*Id.* ¶¶ 4-5.)

The name of the new company that will own the Liquids Pipelines business unit will be South Bow Corporation (“South Bow”). While TC Energy will focus on natural gas infrastructure, nuclear power, pumped hydro energy storage, and new energy opportunities, South Bow will own and operate North American liquids pipeline infrastructure delivering oil produced in the Western Canadian Sedimentary Basin to critical U.S. refining markets in the Midcontinent and Gulf Coast regions, as well as delivering U.S. domestically produced oil from the Midcontinent region to the Gulf Coast region. South Bow will focus on enhancing the value of this asset base. (*Id.* ¶ 5.)

The transaction must be approved by TC Energy’s current shareholders, which is expected in mid-2024. If approved, current shareholders will retain their interest in TC Energy’s shares and receive a pro-rata allocation of common shares in South Bow. (*Id.* ¶ 6.)

Hal Kvisle will chair South Bow’s board of directors. Mr. Kvisle was the President and CEO of TransCanada from 2001 to 2010 and has worked in the oil and gas industry since 1975. Other directors will be announced before the Transaction is completed. (*Id.* ¶ 9.)

Bevin Wirzba will be South Bow’s President and CEO and Richard Prior Senior Vice President and Chief Operating Officer. Currently, Mr. Wirzba is TC Energy’s Executive Vice President and Group President, Liquids Pipelines and Coastal GasLink, and Mr. Prior is TC Energy’s President, Liquids Pipelines. The proven operational and deep management team for TC Energy’s Liquids Pipelines business unit will remain in place as employees of South Bow. No major changes to the procedures and programs for safety, pipeline integrity, and operations

and maintenance will occur as a result of the Transaction. (*Id.* ¶ 7.) South Bow will be headquartered in Calgary, Alberta, with a secondary office in Houston, Texas. Operational resources will continue to be located in proximity to the Keystone Pipeline system. (*Id.* ¶ 8.)

More information is available on TC Energy’s website at

<https://www.tcenergy.com/investors/liquids-spinoff/>

3. Changes in Affiliated Companies in the Ownership Chain

The Transaction, if approved, will not change the permit holder or operator. Keystone will continue to hold the permit. (*Id.* ¶ 10.) Its ultimate parent company will change from TC Energy to South Bow, and South Bow will continue to operate the Liquids Pipelines business unit, including operation and maintenance of the Keystone Pipeline.¹ (*Id.*)

4. The Commission Should Approve Keystone’s Change in Corporate Ownership Because Keystone’s Personnel and Financial Resources Will Remain Substantially the Same

Keystone asks that the Commission enter an order acknowledging that after the Transaction is completed the ultimate parent corporation of the Permit holder will be South Bow, a new entity different from the current parent corporation, TC Energy. Keystone anticipates that the Commission may have questions about the Transaction and may want assurances that nothing about the Transaction will negatively affect the operation and maintenance of the Keystone

¹ SDCL 49-41B-29 provides that “[a] permit may be transferred, subject to the approval of the Public Utilities Commission, to a person who agrees to comply with the terms, conditions and modifications contained therein.” Per its plain language, the statute is applicable only if ownership of a permit is transferred. Here, the statute is not applicable because the Permit is not being transferred. The Permit for the Keystone Pipeline was granted to Keystone, and the Transaction, if approved, will not change the Permit holder, Keystone. (Prior Aff. ¶ 10.) Nonetheless, while reserving the right to raise this issue, Keystone submits this motion for Commission approval for the reasons stated herein.

Pipeline or the financial responsibility of Keystone for any damages caused by its operation. As explained in more detail below, the Transaction will not affect the daily operation and maintenance of the Keystone Pipeline and will not result in a change in the level of experience and expertise shared by the employees who operate and maintain the pipeline. The financial resources Keystone will have to respond to an incident will not change.

First, the persons responsible for operating and maintaining the Keystone Pipeline will not change because of the Transaction. As a general rule, the persons presently responsible for the operation and maintenance of the Keystone Pipeline will continue as employees of South Bow, and the front-line employees who deal with daily operations and stakeholder relations will remain the same. (*Id.* ¶ 11.)

Second, the purpose and mission of South Bow will be to own and operate the present Liquids Pipelines assets of TC Energy. The spinoff will result in a parent company that is focused on the Liquids Pipelines business unit and whose assets consist of liquids pipeline infrastructure. Unlike TC Energy's current operations, the nature of South Bow's business will focus exclusively on the operation of the Keystone Pipeline and other liquids pipelines currently held by TC Energy. (*Id.* ¶ 12.)

Third, the overall management and governance team responsible for running South Bow will be as experienced in the specifics of the Liquids Pipelines business unit as the current management of TC Energy. (*Id.*)

Fourth, South Bow will have a substantial balance sheet that will include all liquids pipelines currently owned by TC Energy, including the Keystone Pipeline. It will be sufficient to fund South Bow's operations and liabilities, including any regulatory liability that may arise

from an accidental release. (*Id.* ¶ 13.) In addition, South Bow will carry insurance coverages against catastrophic losses in the amount of \$500 million USD. (*Id.* ¶ 15.)

Taken together, these facts establish that the Transaction will not change anything about management's experience, daily pipeline operations and maintenance, or the financial responsibility of the parent company that would create any new risk for landowners associated with the Keystone Pipeline.

Conclusion

Keystone requests an order under the statute approving the anticipated change in its corporate ownership, conditioned on the Transaction being completed, based on past Commission precedents. Because Keystone's leadership, employees, assets, and financial resources will remain substantially the same after the change in corporate ownership, Keystone respectfully requests that its motion be granted.

Dated this 6th day of February, 2024.

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