

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION	:	
BY TRANSCANADA KEYSTONE	:	DOCKET NUMBER HP _____
PIPELINE, LP FOR A PERMIT UNDER	:	
THE SOUTH DAKOTA ENERGY	:	
CONVERSION AND TRANSMISSION	:	PETITION FOR ORDER
FACILITIES ACT TO CONSTRUCT THE	:	ACCEPTING CERTIFICATION
KEYSTONE XL PROJECT	:	UNDER SDCL § 49-41B-27
	:	

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Petitioner TransCanada Keystone Pipeline, LP (Keystone) sought and obtained a permit from the South Dakota Public Utilities Commission (Commission) in 2010 to construct and operate the Keystone XL hydrocarbon pipeline project (Project) through western South Dakota. The Commission granted a final permit in Docket No. HP09-001 on June 29, 2010. More than four years have passed since that time. State law provides that permits are perpetual but if construction has not commenced within four years of issuance, the applicant must certify to the Commission, prior to commencing construction, that the Project continues to meet the conditions upon which the permit was issued (SDCL 49-41B-27). By this filing, Keystone makes the required certification and requests that the Commission issue an order accepting Keystone's certification and finding that the Project continues to meet the conditions upon which the permit was issued.

I. BACKGROUND

On March 12, 2009, Keystone filed an application in Docket HP 09-001 seeking a permit to construct and operate the Project in South Dakota. A hearing was held before the Commission from November 2-4, 2009. Keystone, Commission staff, and Dakota Rural Action were parties to the proceeding and participated in the hearing. The Commission issued a Final Decision and Order dated March 12, 2010. The Commission issued an Amended Final Decision and Order dated June 29, 2010, to which 50 conditions are attached.

As stated in the Amended Final Decision and Order, the Project originally was proposed to be developed in three segments: the Steele City Segment from Hardisty, Alberta, to Steele City, Nebraska; the Gulf Coast Segment from Cushing, Oklahoma, to Liberty County, Texas; and the Houston Lateral Segment from Liberty County, Texas to refinery markets near Houston, Texas. The Project was conceived to transport incremental crude oil production from the Western Canadian Sedimentary Basin to refineries and markets in the United States. Construction of the Project was proposed to begin in May 2011 and to be completed in 2012.

The Project, as proposed, has been delayed. A Presidential Permit required by Executive Order 11423 of August 16, 1968, and Executive Order 13337 of April 30, 2004, allowing the pipeline to cross the border between Canada and the United States, is still under review before the United States Department of State (DOS). Keystone submitted a Presidential Permit application to the DOS on September 19, 2008. After that application was denied without prejudice due to the Administration's inability to complete its review by a Congressionally imposed deadline, Keystone submitted a revised application on May 4, 2012. Drawing upon an

extensive public record and multiple draft and final Environmental Impact Statements, DOS issued a Final Supplemental Environmental Impact Statement (Final SEIS) on January 31, 2014.¹

In the Final SEIS, the DOS concluded, among other things, that:

- Keystone has long-term commitments to ship both Canadian and Bakken oil to Gulf Coast refineries, production of Canadian and Bakken oil is projected to increase, and there is existing demand by Gulf Coast area refiners for stable sources of crude oil. (Final SEIS §§ 1.3.1, 1.4.)
- The analyses of potential impacts associated with construction and normal operation of the pipeline “suggest that significant impacts to most resources are not expected along the proposed Project route” assuming that the Project complies with applicable laws, regulations, and permit conditions. (Final SEIS § 4.16.)
- Due to market developments, the transportation of Canadian crude by rail is already occurring in substantial volumes (an estimated 180,000 bpd), with a greater risk of leaks and spills, as well as injuries and fatalities, than if the oil were transported by pipeline. (Final EIS, §§ E.S. 3.1, E.S.5.4.3.)

On April 18, 2014, the Administration announced an indefinite delay in the current Presidential Permit review process, referencing on-going litigation related to the approval of a revised pipeline route in Nebraska.²

During the pendency of the current Presidential Permit application, Keystone proceeded with the Gulf Coast Segment as a stand-alone project based on its independent utility.

Construction is complete and that pipeline from Cushing, OK to Liberty County, Texas was placed in service on January 22, 2014. Construction of the Houston Lateral segment is currently

¹ <http://keystonepipeline-xl.state.gov/finalseis/index.htm>.

² In 2012, the Nebraska Legislature approved legislation giving the Governor authority to approve a revised route for the pipeline in that State. After an extensive public review process led by the Department of Environmental Quality, the Governor approved Keystone’s proposed re-route in Nebraska. In February 2014, a Nebraska lower court declared the legislation unconstitutional. That case is currently on appeal to the Nebraska Supreme Court and the effect of the lower court’s decision is stayed pending the outcome of that appeal.

under way. The currently pending Presidential Permit application involves consideration of the former Steele City segment only (see Appendix A; map of the current proposed Project).

Since the Amended Final Decision and Order, the Bakken Marketlink Project has been made part of the Project. Bakken Marketlink includes a five-mile pipeline, pumps, meters, and storage tanks near Baker, Montana, to deliver light sweet crude oil from the Bakken formation in Montana and North Dakota for transportation through the Project. Bakken Marketlink became commercial after the Amended Final Decision and Order in this case, as the result of a successful open season that closed on November 19, 2010. Bakken Marketlink will deliver up to 100,000 bpd of domestically-produced crude oil into the Keystone XL Pipeline. Approximately 700,000 bpd of Bakken formation production is currently being shipped by rail. Bakken Marketlink may relieve the need for some of that rail transportation while providing improved ratatability and lower transportation costs for American producers.

The material aspects of the proposed construction and operation of the Project in South Dakota remain essentially unchanged since the Commission granted its approval in 2010. The Project will extend 315 miles, use 36-inch nominal diameter pipe made of high-strength steel, and be protected by an external fusion bonded epoxy coating and cathodic protection by impressed current. The route corridor through South Dakota is largely unchanged from the route analyzed by the Commission as part of the permitting process.³ The pipeline will have batching capabilities and will be able to transport products ranging from light crude oil to heavy crude oil.

³ Keystone has implemented minor route variations designed to accommodate landowner concerns and improve constructability. As required by Condition No. 6 of the Amended Final Decision and Order, any material route changes will be provided to the Commission for review prior to construction.
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Since the Amended Final Decision and Order, Keystone has filed seventeen quarterly reports with the Commission as required by Condition No. 8 of the Amended Final Decision and Order. Each report is submitted by Keystone's public liaison officer and addresses the status of land acquisition, construction, permitting, and other items. The most recent quarterly report was submitted on July 29, 2014, and a copy of this report is attached hereto as Appendix B.

II.
THE PROJECT CONTINUES TO MEET THE CONDITIONS UPON WHICH THE PERMIT WAS ISSUED

Accompanying this petition is a Certification, signed by the President of the Keystone Pipeline business unit, attesting that: (i) the conditions upon which the Commission issued the facility permit in this docket continue to be satisfied; (ii) Keystone is in compliance with the conditions attached to the June 29, 2010 order, to the extent that those conditions have applicability in the current pre-construction phase of the Project; and (iii) Keystone will meet and comply with all of the applicable permit conditions during construction, operation, and maintenance of the Project. Compliance with those conditions is further reflected in Keystone's July 29, 2014 Quarterly Report (Appendix B). Thus, Keystone has satisfied the statutory requirement to certify that the Project continues to meet the conditions upon which the Commission's approval was issued.

In addition, Keystone submits that the circumstances and factual underpinnings of the Project that led the Commission to issue the facility permit remain valid. The factual findings underlying the Commission's decision are set forth in the June 29, 2010 Amended Final Decision and Order. In support of this petition, Appendix C hereto presents those findings of fact from the

Commission's Amended Final Decision and Order that have changed since 2010 and describes the nature of those changes. As Appendix C makes clear, to the extent that there have been changes in the underlying facts, those changes are either neutral or positive to the Commission's concerns. In sum, the need, impacts, efficacy, and safety of the Project have not changed since the Amended Final Decision and Order.

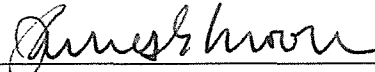
III. CONCLUSION

The attached Certification, together with this petition and the supporting appendices, provides the necessary basis for the Commission to find that the Project continues to meet the conditions upon which the June 2010 permit was issued. Accordingly, Keystone respectfully requests that the Commission accept its certification under SDCL § 49-41B-27.

Dated this 15th day of September, 2014.

WOODS, FULLER, SHULTZ & SMITH P.C.

By _____



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