

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA

TRANSCANADA KEYSTONE PIPELINE, LP) CASE NO. PU-06-421
30-INCH CRUDE OIL PIPELINE/CAVALIER TO)
SARGENT COUNTIES SITING APPLICATION)

ORDER ON REQUEST TO AMEND ROUTE

On April 11, 2007, TransCanada Keystone Pipeline, LP (Keystone) filed an application for a certificate of public convenience and necessity (PCN) under N.D.C.C. Chapter 49-03.1 to construct and operate the Keystone Pipeline in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties of North Dakota. Approximately 218 miles of the crude oil pipeline is located in North Dakota.

On April 11, 2007, Keystone filed an application for a waiver of procedures and time schedules, and consolidated applications for a certificate of corridor compatibility and a route permit authorizing construction of approximately 218 miles of 30-inch crude oil pipeline and associated facilities in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties of North Dakota. (Case No. PU-06-421)

On February 21, 2008, the Commission issued its Findings of Fact, Conclusions of Law and Order for Judgment and issued Certificate of Corridor Compatibility for a Transmission Facility Corridor No. 101 and Route Permit for Construction of a Transmission Facility No. 111 to construct the Keystone Pipeline.

On April 7, 2008 Keystone moved for approval of forty-nine (49) route refinements. Keystone served all parties and notified, by mail, all agencies listed under N.D. Admin. Code § 69-06-01-05 of the motion for approval of the route refinements.

On April 16, 2008, The Commission issued a Notice of Opportunity for Hearing and Notice of Informal Hearing on Keystone's forty-nine (49) route refinements. In the Notice, the Commission required that comments and requests must be received by May 19, 2008. The Commission further noticed that it may determine the matter without a hearing.

On April 29, 2008, Keystone filed a Motion for Approval of five (5) route refinements which are contingent on Keystone obtaining voluntary easements from the affected landowners. Keystone served the required notice of these route refinements with the North Dakota Agencies listed in Section 69-06-01-05 of the North Dakota Administrative Code.

On May 12, 2008, Keystone provided Notice to State Agencies and Officials as Identified Pursuant to Section 69-06-01-05 ND Admin Code, by email and noticed that they had until 5:00 p.m. on Friday May 16, 2008, to file written comments with the Commission concerning Keystone's motions for the forty-nine (49) route refinements and on the five (5) route refinements.

On May 13, 2008, Keystone provided Notice to County Auditors, County Commissions, and legislators, pursuant to Section 69-06-01-02 ND Admin Code, by email that they had until 5:00 p.m. on Friday May 16, 2008, to file written comments with the Commission concerning Keystone's motions for the forty-nine (49) route refinements and on the five (5) route refinements.

On May 13, 2008 the Commission held an Informal Hearing on the Keystone proposal for the route crossing the Sheyenne River and Sheyenne River Valley between mile post markets 168 and 170, and to consider Keystone's Motion for Approval of the five (5) route refinements.

There were three responses received from agencies. Job Service North Dakota indicated no comment on the project. North Dakota Parks and Recreation indicated no issue existed with the adjusted realignment. The State Historic Preservation Office indicated their review remains ongoing. No other agencies, counties or representatives have communicated a concern regarding the proposed route changes.

An Informal Hearing on this application was held by the Commission on May 21, 2008.

Loys A Gray, Engineering and Construction Manager for the United States portion of the Keystone Pipeline, evaluated the forty-nine (49) route refinements and in an affidavit dated March 31, 2008 stated the forty-nine (49) route refinements were initiated for the following reasons:

- A. Landowner requests to avoid shelter belts and newly planted trees, increase distance from residences, to move farther from graves, and to shorten length.
- B. At the request of U.S. Fish and Wildlife to avoid wet land easements
- C. Revised Stream Crossings to minimize crossing lengths of streams
- D. To avoid power poles, transmission towers, and guy wires
- E. Variations to accommodate HDD of rivers
- F. Relocation of valves, and agreements to place additional valves
- G. Movement of pump stations at landowner request
- H. Eliminating bend in pipeline, and
- I. Avoiding cultural site

The route refinements cross the property of the same landowners as the current approved route, and if new landowners are involved, the new landowners have agreed to the route refinement and have signed voluntary easements. All rural residences in the area of the route refinements are more than 500 feet from the pipeline and any that are not have submitted waivers. No new section lines, roads or water crossings are impacted. No new naturally occurring woody areas are impacted. No new shelterbelt/tree rows are impacted, and no archaeological areas of potential exposure are impacted by the route refinements.

Lois A Gray, Engineering and Construction manager for the United States portion of the Keystone Pipeline, in an Affidavit dated April 28, 2008 testified that the five (5) route refinements were initiated for the following reasons:

- A. Gray met with five (5) landowners or landowner's attorneys who are currently part of eminent domain proceedings to attempt to voluntarily acquire easements from these landowners.
- B. The five (5) reroutes filed by Keystone on April 29, 2008 will accommodate landowner requests and prevent Keystone's need to utilize eminent domain proceedings to acquire easements from these landowners.
- C. Keystone is or has compiled civil and cultural resource surveys on these landowners requested reroutes.
- D. All five (5) of these proposed reroutes are located within the north corridor and are compatible with environmental preservation and the efficient use of resources and will result in minimal adverse effects on the environment, natural resources and upon the welfare of the citizens of North Dakota.
- E. Keystone requests that the five (5) route refinements be approved by the Commission contingent upon the filing of voluntary easements from the affected landowners. If the voluntary easements cannot be obtained and filed for any of the five (5) route refinements, that route refinement will not take effect.

We find that the proposed route refinements are compatible with the environmental preservation and the efficient use of resources and will result in minimal adverse effects on the environment, natural resources, and upon the welfare of the citizens of North Dakota while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

Order

The Commission orders:

1. TransCanada Keystone Pipeline, L.P.'s request for forty-nine (49) changes in the transmission line route, listed on Exhibit 1 attached hereto, is granted.
2. TransCanada Keystone Pipeline, L.P. request for five (5) additional route refinements in the transmission line route, attached as Exhibit 2, is granted conditional upon the landowners granting voluntary easements to Keystone and the filing of the easements with the Commission.
3. TransCanada Pipeline, L.P. is issued First Amended Route Permit No. 108.

PUBLIC SERVICE COMMISSION

Tony Clark
Commissioner

Susan E. Wefald
President

Kevin Cramer
Commissioner