

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**TransCanada Keystone Pipeline, LP
Keystone Pipeline
Public Convenience and Necessity**

Case No. PU-07-152

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

November 21, 2007

Appearances

Commissioners Susan E. Wefald, Tony Clark and Kevin Cramer.

Thomas D. Kelsch and Todd D. Kranda, Kelsch Kelsch Ruff & Kranda, 103 Collins Avenue, Mandan, ND 58554 on behalf of the Applicant TransCanada Keystone Pipeline, LP.

Nicholas R. Delaney, Rinke Noonan, US Bank Plaza, Suite 300, St. Cloud MN 56302 on behalf of Interveners, Dakota Resources Council, Ramona Klein, Merle and Linette Kratochvill, Janie and John Capp, and Mark Novak.

Janie and John Capp, 12466 60th ST NE, Lankin, ND 58250, Interveners

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, Bismarck, ND 58505, on behalf of The Public Service Commission.

Al Wahl, Office of Administrative Hearings, 1707 North 9th Street, Bismarck, ND 58501 as Procedural Hearing Officer.

Preliminary Statement

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. The crude oil pipeline route is specifically shown by route maps included in Keystone's application. Approximately 218 miles of the Keystone Pipeline is located in North Dakota, Case No. PU-07-152.

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 the Keystone Pipeline, Case No. PU-06-421.

On May 2, 2007 the Commission issued a Notice of Opportunity for Hearing setting forth the issues to be considered and inviting interested parties to comment or request a hearing by June 22, 2007. On June 21, 2007 the Commission received a request for a public hearing from the Dakota Resource Council.

On June 5, 2007 the Commission's Director of Accounting filed a memorandum indicating that Keystone has the financial ability to provide service.

On June 21, 2007 Gary R. Scistico and Nicholas R. Delaney, Attorneys at Law, on behalf of the Dakota Resource Council, filed a request to postpone the hearings until completion of the United States Department of State Environmental Impact Study (EIS) and the related comment period. As an alternative, the Dakota Resource Council demanded that the Commission's approval of the application be postponed until after completion of the EIS and related comment period.

On June 27, 2007 the Commission denied Dakota Resource Council's request to postpone the hearings and to postpone approval of the application.

Also on June 27, 2007 the Commission issued a Notice of Hearing scheduling a public hearing for July 23, 2007 at 9:00 a.m. C.D.T. at the Barnes County Courthouse, Valley City, ND. On July 17, 2007 the Commission moved the place of the scheduled hearing to the Valley City Auditorium located at 320 Central Avenue South, Valley City, North Dakota

The Notice of Hearing identified the following issues to be considered in this matter:

1. Whether public convenience and necessity will be served by construction and operation of the pipeline facilities.
2. Whether the applicants are fit, willing and able to provide service.

On July 11, 2007 Nicholas Delaney, Attorney at Law, filed a Petition to Intervene in both proceedings on behalf of The Dakota Resource Council, Ramona Klein, Merle and Linette Kratochvill, John and Janie Capp, and Mark Novak. The Dakota Resource Council is a non-profit membership based organization which seeks to, among other things, preserve the environmental integrity of North Dakota. A number of its members are landowners who will be affected by the proposed project. The Petitioners own property which will be affected by the proposed project.

On July 12, 2007 John and Janie Capp requested to intervene in both proceedings on their own behalf. John and Janie Capp own land that will be affected by the proposed project.

On July 13, 2007 the Commission granted the requests to intervene by The Dakota Resource Council, Ramona Klein, Merle and Linette Kratochvill, John and Janie Capp, and Mark Novak.

The hearing in Case No. PU-07-152 on July 23rd was recessed to July 24, 2007 in Park River.

Having allowed all interested persons an opportunity to be heard and having heard, reviewing and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Keystone's parent company is TransCanada Corporation (TransCanada).
2. Keystone proposes to construct and operate the Keystone Pipeline in the state of North Dakota. The 30-inch crude oil pipeline with associated facilities would cross approximately 218 miles of North Dakota from the Canadian border to the South Dakota border in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom, and Sargent Counties. The crude oil pipeline route is specifically shown by route maps included in Keystone's application. The total estimated cost to construct the pipeline is \$2.1 billion, of which approximately \$277 million will be located in North Dakota.
3. The purpose of the pipeline is to transport crude oil from Hardisty, Alberta, Canada, to Patoka, Illinois, with an extension to Cushing, Oklahoma.
4. The need for the Keystone Pipeline is dictated by:
 - a. Increasing Canadian crude oil supplies combined with insufficient export pipeline capacity.
 - b. Increasing crude oil demand in the U.S., coupled with decreasing domestic supply.
 - c. The opportunity to reduce U.S. dependence on foreign offshore oil through increased access to stable, secure Canadian crude oil supplies.
 - d. Demonstrated shipper interest in the Keystone Pipeline Project.
6. The Canadian Association of Petroleum Producers ("CAPP") reports that established crude oil reserves in the Western Canadian Sedimentary Basin (WCSB) are estimated at 179 billion barrels. Over 97 percent of those reserves are sourced from Canada's oil sands region. The Alberta Energy and Utilities Board ("AEUB") estimates that there are 175 billion barrels of established reserves recoverable from the oil sands. The Oil and Gas Journal has reported that Alberta has the second largest crude oil reserves in the world, second only to Saudi Arabia.
7. The Keystone Pipeline serves a national interest by providing refineries and markets with access to Canadian crude oil to meet growing United States demand for petroleum products.
8. According to the Energy Information Administration (EIA), United States demand for petroleum products has increased by over 17 percent or three million barrels per day

(bpd) over the past 10 years and is expected to increase further. The EIA estimates that total United States petroleum consumption will increase by approximately 5.3 million bpd over the next 20 years, representing average demand growth of approximately 265,000 bpd each year.

9. Growing oil production in Canada has the potential to decrease the United States' dependence on crude oil from more unstable parts of the world.

10. Mark Makelky, Director of the North Dakota Pipeline Authority of the Industrial Commission of North Dakota testified that a direct benefit of the Keystone Pipeline is an additional delivery path for North Dakota produced crude oil to access Midwest markets. A majority of North Dakota crude oil is shipped through the Montana- Wyoming-Colorado-Nebraska pipeline infrastructure referred to as the "Guernsey Hub" which is filled to capacity with oil supplies from Canada. An indirect benefit of the Keystone Pipeline is the expected relief to current Guernsey Hub capacity strain. The result of the direct and indirect benefits of the Keystone Pipeline would be a potential for increased North Dakota crude oil production. Makelky stated that at least one North Dakota company has expressed an interest in connecting its facilities to the Keystone system.

11. North Dakota produces approximately 100,000 bpd (barrels per day) of crude oil.

12. Capacity bottlenecks on present pipeline infrastructure have created a situation where North Dakota crude oil has suffered price penalties of \$5.00 to \$30.00 per barrel.

13. Under North Dakota Century Code section 49-19-11 a common pipeline carrier that accepts the provisions of North Dakota Century Code Chapter 49-19 shall agree expressly that it, without discrimination, will accept, carry, or purchase the oil of any person not the owner of any pipeline, operating a lease or purchasing oil at prices and under regulations to be prescribed by the commission.

14. Keystone has agreed to accept the provisions of Chapter North Dakota Century Code 49-19.

15. Under North Dakota Century Code section 49-19-20 a common pipeline carrier shall receive and transport crude petroleum delivered to it for transportation and shall receive and transport the same and perform its other duties with respect thereto without discrimination.

16. Makelky testified that, according to United States Department of Transportation statistics, pipelines are the safest method of transporting petroleum products. He also stated that pipelines are the most efficient and economical method of shipping the large quantities needed by the United States on a daily basis.

17. The Keystone Pipeline will provide the following economic benefits for North Dakota:

- a. Construction will involve two spreads in North Dakota with 500-600 workers for each spread.
 - b. An additional 20 workers will be hired for construction of each pump station.
 - c. 10-15% of the workforce will be hired locally.
 - g. Food and lodging for construction will be approximately \$3.25 million dollars.
 - d. Based on 2005 property assessment and tax rate information, Keystone's North Dakota property taxes will be approximately \$5.2 million in the first year after construction, and will be continued to be paid over the lifetime of the pipeline.
 - e. Direct and contract employees will be hired locally for pipeline operations.
 - f. Keystone will pay sales and use taxes.
18. TransCanada has 36,500 miles of wholly owned pipeline.
19. TransCanada has more than 50 years of pipeline construction and operating experience.
20. TransCanada has expertise in large-diameter, cold weather pipeline design, construction, operation and maintenance.
21. TransCanada's 2006 annual financial report shows the following (in Canadian dollars):
- a. \$25,909,000,000 in total assets;
 - b. \$7,520,000,000 in gross revenues; and
 - c. \$1,079,000,000 in total net income.
22. TransCanada PipeLines Limited currently generates approximately \$2 billion of cash from operations each year. For the last ten years, TransCanada's unsecured debt has been rated by Standard and Poor's as A- (stable) and by Moody's Investor Services as A2 (stable).
23. The June 5, 2007 memorandum of Mike Diller, Director of Accounting for the Commission, states that Keystone has access to assets through its parent, TransCanada, to operate and provide services for a crude oil pipeline in North Dakota. TransCanada is a public owned company traded under the symbol TRP on the New York Stock Exchange. TransCanada reported shareholder equity of \$7.7 billion for the year ending 2006.
24. The Commission finds that the public convenience and necessity will be served by the construction and operation by Keystone of the proposed Keystone Pipeline. The Commission finds that Keystone is fit, willing and able to provide the proposed pipeline service.

From the foregoing Findings of Fact, the Commission makes its:

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapters 49-03.1, Chapter 49-19, and Chapter 49-22.
2. The crude oil pipeline proposed by Keystone is an energy transmission facility as defined North Dakota Century Code 49-22-03 (12).
3. Keystone is a common pipeline carrier as defined by North Dakota Century Code 49-19-01 (1), in that Keystone will own, operate or manage a pipeline with this state for the transportation of crude oil petroleum to or for the public for hire, or engaged in the business of transporting crude petroleum.
4. Keystone is a common pipeline carrier as defined by North Dakota Century Code 49-19-01 (4), in that Keystone is made a common carrier by or under the terms of a contract with or pursuant of the laws of the United States.
5. Keystone is fit, able, and has the technical, financial and managerial ability to provide the proposed pipeline services.
6. Keystone's proposed pipeline services are adequate.
7. Keystone has agreed to accept the provisions of North Dakota Century Code Chapter 49-19.

From the foregoing Findings of Fact and Conclusions of Law, the Commission makes its:

Order

The Commission orders:

1. The application of TransCanada Keystone Pipeline, LP for a certificate of public convenience and necessity to construct and operate the Keystone Pipeline, approximately 218 miles of 30-inch crude oil pipeline and associated facilities, in Cavalier, Pembina, Walsh, Nelson, Steele, Barnes, Ransom and Sargent Counties, North Dakota is GRANTED.
2. Certificate of Public Convenience and Necessity No. 5335 is issued to TransCanada Keystone Pipeline, LP to construct and operate the Keystone Pipeline.
3. Certificate of Public Convenience and Necessity No. 5335 specific to this proceeding is conditioned upon and its effectiveness is subject to the Commission granting a certificate of corridor compatibility and a route permit for the specific corridor and route requested by Keystone in its application for a certificate of public convenience

and necessity in Case No. PU-07-152 and in its siting application in Case No. PU-06-421.

PUBLIC SERVICE COMMISSION

**Tony Clark
Commissioner**

**Susan E. Wefald
President**

**Kevin Cramer
Commissioner**