144 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

TransCanada Keystone Pipeline, L.P. Docket No. OR13-17-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 31, 2013)

1. On April 26, 2013, TransCanada Keystone Pipeline, L.P. (TransCanada Keystone) filed a Petition for Declaratory Order (Petition) requesting that the Commission confirm that certain rate principles previously approved for developing the cost of service underlying the uncommitted rates for transportation service on the existing TransCanada Keystone pipeline system will also apply to the rates applicable to the transportation service to the new destinations at Port Arthur and Houston, Texas (Gulf Coast). The Petition seeks Commission approval of the rate structure, and specifically, the uncommitted rate calculation methodology for transportation service from the International Border to the Gulf Coast. TransCanada Keystone requests Commission action by of August 1, 2013. As discussed below, the Commission grants the Petition.

Background

2. The current Keystone system is a bullet pipeline originating at the International Border and extends approximately 1,380 miles to delivery points at Wood River and Patoka, Illinois, and to Cushing, Oklahoma.

3. The proposed project will extend the system approximately 485 miles from Cushing to the Gulf Coast. Once the new facilities are placed into service, the TransCanada Keystone system will provide transportation service from the International Border to the two new delivery points in the Gulf Coast. The new facilities will provide shippers with an additional option to ship their crude oil from the International Border to the Gulf Coast, which will help alleviate the current transportation bottleneck out of Oklahoma.

4. TransCanada Keystone states that it will lease a portion of its pipeline capacity on the Gulf Coast leg to its affiliate, Marketlink, LLC (Marketlink).[1] Marketlink will construct ancillary interconnecting facilities at Cushing, including tanks and metering facilities, allowing shippers an opportunity to ship crude oil from Cushing to the Gulf Coast.

The pipeline will serve both committed and uncommitted shippers. Committed shippers have executed binding commitments for ship-or-pay term contracts to delivery points at Patoka, Wood River, or Cushing. These shippers, pursuant to their transportation service agreements (TSAs), have elected to divert some of their volume commitments to the new Gulf Coast destinations at Port Arthur and Houston. A diversion surcharge for transportation service to the Gulf Coast, in addition to the applicable transportation rates specified in their existing TSAs, will be assessed. The resultant rate for committed shippers will be lower than the uncommitted rate for service to the Gulf Coast. Committed shippers will be subject to prorationing, as the TSAs do not guarantee firm service.

Current Rate Structure and Requested Rulings

5. TransCanada Keystone states that in March 2008, it filed a petition for declaratory order requesting, among other things, that the Commission approve the pipeline's proposed rate structure and methodology to calculate uncommitted transportation rates. The Commission approved in large part the requested rulings pertaining to the cost of service.[2] In the 2008 Order, the Commission approved the committed shipper rate structure, the use of revenue crediting to establish rates for uncommitted shippers, and the option for TransCanada Keystone to use a depreciated original cost (DOC) rate base in computing rates for uncommitted shippers. In the instant petition, TransCanada Keystone requests the Commission confirm that these three principles may be utilized in developing the cost of service underlying the uncommitted rates for transportation service to the Gulf Coast.

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[1] A concurrent Petition for Declaratory Order was filed regarding the MarketLink project in Docket No. OR13-18-000.

[2] *See TransCanada Keystone Pipeline LP*, 125 FERC ¶ 61,025 (2008) (2008 Order).

Rate Principles

Revenue Crediting Mechanism

6. TransCanada Keystone requests permission to use the a revenue crediting mechanism to recognize the significant financial risks committed shippers have assumed in making ship or pay commitments under their long-term TSAs. The Commission granted TransCanada Keystone's request to use a revenue crediting mechanism in its 2008 Order. TransCanada Keystone states that the uncommitted rate design methodology for service to the Gulf Coast will also incorporate a revenue credit mechanism. TransCanada Keystone requests the Commission confirm that this methodology may be used in developing the uncommitted rates for transportation service to the Gulf Coast.

Option to Use Depreciated Original Cost

7. While the Commission generally adopted a trended original cost (TOC) methodology for deriving the rate base used in calculating oil pipeline rates through Opinion 154-B,[3] the Commission has recognized that in some situations, TOC may present problems for newer pipelines. In the 2008 Order, the Commission granted TransCanada Keystone's request to have the option to use a depreciated original cost (DOC) rate base rather than a TOC rate base to calculate uncommitted rates. TransCanada Keystone asserted that long-term shipper commitments and the discounts provided to them support an exception to the Commission's generally accepted TOC methodology. TransCanada Keystone requests the Commission confirm it may similarly use the DOC rate base to develop the cost of service underlying the uncommitted rates for service to the Gulf Coast.

Committed and Uncommitted Rate Structure

8. In the 2008 Order, the Commission approved the overall committed rate structure established under long-term contracts executed with shippers, including the principle that uncommitted shippers will pay more than committed shippers for nomination flexibility. Specifically, the Commission confirmed that the rates established in committed shippers' TSAs will be upheld and approved during the terms of the TSAs. Further, the Commission confirmed that rates for committed shippers would not be subject to

[3] *See Williams Pipeline Co.*, Opinion No. 154-B, 31 FERC ¶ 61,377 (1985), *order on reh'g,* Opinion No. 154-C, 33 FERC ¶ 61,327 (1985).

indexation, and committed shipper rates would be determined under the specific methodology set forth in the TSA.

9. TransCanada Keystone requests the Commission confirm that the diversion surcharge is not subject to the indexation, but rather subject to the specific methodology set forth in the executed TSA contracts. Further, TransCanada Keystone requests the Commission affirm its policy that "agreements executed by…committed shippers…would be upheld and applied during the established terms of the agreements between the pipeline and the shippers that made volume commitments."[4]

Rate Calculation Methodology

10. TransCanada Keystone proposes to calculate uncommitted rates for service from the International Border to the Gulf Coast by adding the currently effective uncommitted service rate from the International Border to Cushing, with the incremental unit cost calculated from the stand-alone cost of service applicable to transportation from Cushing to the Gulf Coast. TransCanada Keystone proposes to calculate the incremental cost of service from Cushing to the Gulf Coast on a standalone basis in a manner consistent with the Commission's cost of service methodology for oil pipelines.

11. To accomplish this, the pipeline will determine the total stand-alone cost of service to the Gulf Coast and subtract the total committed revenues for the same service. TransCanada Keystone will recover the remaining cost of service from uncommitted shippers. The pipeline will then take the total available capacity provided by Cushing to the Gulf Coast and subtract the total committed capacity to the Gulf Coast to derive the uncommitted capacity to the Gulf Coast (Uncommitted Capacity). Finally, TransCanada Keystone will add together the Incremental Unit Cost and the currently effective uncommitted rate from the International Border to Cushing, resulting in the total uncommitted rate for transportation service from the International Border to the Gulf Coast (Total Uncommitted Rate).

12. TransCanada Keystone states that the proposed rate calculation methodology ensures that the cost of the new Gulf Coast facilities are appropriately allocated to shippers in a non-discriminatory manner, and ensures that no cross-subsidization will occur. TransCanada Keystone seeks assurance from the Commission that the calculation of the Total Uncommitted Rate, as described, will be approved when the project goes into service.

[4] *See Seaway Crude Pipeline Co, LLC,* 142 FERC ¶ 61,201, at P 13 (2013).

Notice and Interventions

13. Notice of the Petition was issued April 30, 2013. Interventions and protests were due May 20, 2013. Pursuant to Rule 214 of the Commission's regulations,[5] all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

14. On May 31, 2013, MEG Energy Corp (MEG) filed a letter in the instant docket out of time, requesting that the Commission pay particular attention to TransCanada Keystone's proposed derivation of uncommitted rates, expressing concern that the rate derivation method employed by TransCanada could result in subsidization of committed shippers' service to Gulf Coast destination points by uncommitted shippers. MEG specifically states, however, that it is not protesting or intervening in the subject proceeding.

15. On June 14, 2013, TransCanada Keystone filed an answer to the letter, stating that the MEG letter does not comply with the Commission's procedural requirements, and improperly implies that TransCanada Keystone's request to extend the use of a revenue credit mechanism, previously approved for the pipeline system to develop the uncommitted rates, may be inconsistent with Commission precedent.

Discussion

16. TransCanada Keystone asks the Commission to confirm that the rate structure, the rate principles underlying the uncommitted rates, and the methodology to calculate the uncommitted rates for transportation service to the Gulf Coast will be upheld when the project goes into service and TransCanada Keystone files the appropriate tariffs to implement service. TransCanada Keystone states that the principles approved in the 2008 Order[6] should be extended to the rates applicable to the new Gulf Coast delivery points, in order to permit TransCanada Keystone to offer transportation service and rates to its shippers on its integrated pipeline system in a consistent and non-discriminatory fashion. TransCanada Keystone states that favorable action on this Petition is in the

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[5] 18 C.F.R. § 385.214 (2012).

[6] *See* 2008 Order, 125 FERC ¶ 61,025.

public interest because it will provide regulatory support for the commercial underpinnings of a much needed infrastructure project.

17. Several rulings requested in this Petition are identical to those requested and approved in the 2008 Order. The Petition essentially seeks the continuation of the pipeline system rate structure that is already in place and previously approved by the Commission. The Commission finds that the rate structure of the new Gulf Coast leg is consistent with the already operational segments of the TransCanada Keystone pipeline system, which will ensure that TransCanada Keystone will be able to offer transportation service and rates to its shippers in a consistent and non-discriminatory fashion from the International Border to the Gulf Coast.

18. The Commission finds that the MEG letter provides no specific basis for the allegation that the revenue crediting mechanism is not consistent with applicable Commission policy and precedent; additionally, MEG's letter was not a protest as defined by Commission regulations, and MEG has chosen not to intervene as a party in this proceeding.

19. The Commission confirms that TransCanada Keystone may continue to utilize the revenue crediting mechanism previously approved in the 2008 Order. The revenue crediting mechanism recognizes that committed shippers who have assumed the risk associated with term throughput commitments in order to enable the construction of a project are not similarly situated to uncommitted shippers.[7] The use of a revenue crediting mechanism is consistent with Commission precedent, and is approved.

20. The Commission also confirms that TransCanada Keystone may utilize the DOC rate base rather than the TOC rate base in the calculation of uncommitted rates if it so desires.[8] The Commission continues to recognize that in some situations, the TOC methodology may present some issues for newer pipelines.[9] The showing that TransCanada Keystone made in 2008 has not significantly changed, and TransCanada

[7] *See* 2008 Order, 125 FERC ¶ 61,025 at P 25. Petitioners also cite *Laclede Pipeline Co.*, 114 FERC ¶ 61,335 (2006), *reh'g denied*, 119 FERC ¶ 61,236 (2007).

[8] Currently, TransCanada Keystone notes that it utilizes a TOC methodology to derive the rate base used to calculate its rates; however, it reserves the right to implement a DOC methodology in the future by means of a tariff filing.

[9] *See* Opinion 154-B, 31 FERC ¶ 61,377 at 61,834.

Keystone may have the option of utilizing DOC in the future to ensure that it recovers its costs.

21. The Commission confirms that the diversion surcharge extending to the Gulf Coast delivery points for committed shippers will not be subject to the Commission's indexing methodology, and will be determined under the specific methodology set forth in the contractual rate principles of the individual TSAs.[10] Further, consistent with Commission precedent, uncommitted shippers will pay more than committed shippers, since they are not similarly situated.[11] The Commission finds that the proposed committed and uncommitted rate structures are consistent with Commission precedent, and are approved.

22. The Commission confirms TransCanada Keystone's proposed uncommitted rate calculation methodology may be utilized when the project goes into service and TransCanada Keystone files rates to initiate transportation service from the International Border to the Gulf Coast. The approved calculation methodology ensures that the cost of the new Gulf Coast leg is appropriately allocated to shippers in a non-discriminatory manner. Further, the methodology isolates the facilities and capacity that uncommitted shippers would use, and derives the uncommitted incremental unit cost. The Commission finds that the methodology ensures no shipper or group of shippers cross-subsidizes any other shipper.

23. As an added protection, when Keystone files to implement its initial rates, if the initial uncommitted rate is protested, the Commission will require TransCanada Keystone to comply with section 342.2(b)[12] of the regulations and support its uncommitted rate by filing cost, revenue, and throughput data supporting such rate in accordance with Part 346 of the Commission's regulations.[13]

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[10] *See, generally, Seaway Crude Pipeline Co, LLC*, 142 FERC ¶ 61,201 (2013).

[11] *E.g., Shell Pipeline Co., LP*, 139 FERC ¶ 61,228 (*Shell*); *Enbridge Pipelines (Southern Lights) LLC*, 121 FERC ¶ 61,310 (2007); *Mid-America Pipeline Company LLC*, 116 FERC ¶ 61,040 (2006).

[12] 18 C.F.R. § 342.2(b) (2012).

[13] 18 C.F.R. § 346.2 (2012).

The Commission orders:

The Petition is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.