

131 FERC 61,139  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 14, 2010

In Reply Refer To:  
TransCanada Keystone Pipeline, LP  
Docket No. IS10-208-000

Sidley Austin LLP  
1501 K Street, NW  
Washington, DC 20005

Attention: William A. Williams, Counsel for TransCanada Keystone Pipeline, LP

Reference: FERC Tariff Nos. 1 and 2

Dear Mr. Williams:

1. On April 15, 2010, TransCanada Keystone Pipeline, LP (Keystone) filed FERC Tariff Nos. 1 and 2, to be effective May 15, 2010. FERC No. 1 sets forth Keystone's Rules and Regulations and FERC No. 2 establishes proposed initial rates applicable to transportation on Keystone from the international boundary with Canada near Haskett, Manitoba to delivery points in Wood River and Patoka, Illinois. In accordance with 18 C.F.R. §§ 342.2(a) and 346, Keystone also filed cost, revenue and throughput data supporting the rates established in FERC No. 2. For the reasons discussed below, the Commission accepts the tariffs to be effective May 15, 2010, subject to conditions. The Commission will waive the thirty-day notice requirement to permit the tariffs to take effect with 29 days' notice on May 15, 2010.
2. Keystone states that the 2148-mile pipeline is a new pipeline that will begin transportation service from Hardisty, Alberta to Wood River and Patoka on or after May 15, 2010 and to Cushing, Oklahoma in the first quarter of 2011. Keystone states that the U.S. portion of the pipeline (including the portion of the pipeline that will make deliveries to Cushing) involves the construction of approximately 1382 miles of pipeline and 27 pump stations.
3. The Keystone pipeline system involves three distinct, but related, pipeline projects. First, there is the initial Keystone system which will have an initial capacity of 435,000 barrels per day (bpd) and will run from Hardisty, Canada to Wood River and

Patoka, Illinois (Base Keystone). Second, there is an extension to Cushing, Oklahoma which will increase the capacity of Base Keystone from 435,000 bpd to 591,000 bpd and allow shippers to transport Canadian crude oil from Hardisty to Cushing (the Cushing Extension). Finally, there is an extension and expansions of Keystone that will allow shippers to transport at least 500,000 bpd of Canadian crude oil directly from Hardisty to a delivery point on the U.S. Gulf Coast at Port Arthur, Texas (Keystone XL). Keystone XL involves the construction of a new pipeline and the expansion of part of the Cushing Extension to get barrels to Cushing, Oklahoma, and the construction of a new pipeline from Cushing, Oklahoma, to Port Arthur, Texas.

4. Keystone states that it filed a petition for declaratory order on March 28, 2008 in which it requested advance Commission approval of (1) a rate structure including committed and uncommitted rates; (2) the use of revenue crediting to calculate the uncommitted rate; (3) the use of projected throughput in calculating the uncommitted rate; (4) the option of utilizing a depreciated original cost rate base in computing uncommitted rates; and (5) the provision of firm transportation service to committed shippers. Keystone states that in its October 8, 2008 declaratory order the Commission approved each of Keystone's requests, except for its request to provide firm transportation service. *TransCanada Keystone Pipeline, LP*, 125 FERC ¶ 61,025 (2008). Keystone states that it has based its committed rates on the contractual principles attached to the petition for declaratory order which were accepted by the Commission. Although the interim uncommitted rates proposed have not been calculated and designed utilizing the revenue crediting principle or depreciated original cost rate base as approved in the October 8, 2008 Order, Keystone expressly reserves the right to utilize those principles in the calculation and design of future uncommitted rates.

5. Keystone states that the proposed tariff rates constitute interim rates that take into account the current circumstances of Keystone's initial phase of operations, including the availability of only the two Illinois delivery points and the level of throughput anticipated during the ramp-up period. Keystone states that it will file revised tariff sheets 30-60 days prior to the in-service date of the Cushing delivery point, establishing initial rates for transportation to Cushing and revised rates for Wood River and Patoka. Keystone states that it will also file cost support, if necessary, for the rates to all three delivery points in accordance with 18 C.F.R. Section 346.

6. On April 30, 2010, Tidal Energy Marketing (U.S.), L.L.C. (Tidal) filed comments on Keystone's filing. Tidal requests that the Commission require Keystone to provide further explanation regarding how the proposed Uncommitted Rates were developed. Tidal is not protesting the proposed rates at this time, but is seeking clarification regarding how those rates were developed so that Tidal can have sufficient information to determine whether or not it objects to the proposed rates. Tidal asserts that the filing contains no description or explanation of how the Uncommitted Rates were developed or how the rates are consistent with the rate principles described in Keystone's petition for

declaratory order. Further, Tidal requests the Commission to require Keystone to modify Item 7.2 of the proposed Rules and Regulations to eliminate the proposal to allocate available capacity at Port Arthur based on committed shippers' contract volumes to Port Arthur on Keystone XL. Tidal submits that this proposal would effectively provide firm transportation service to committed shippers in violation of the Commission's ruling on the petition for declaratory order and that, in any event, this provision does not belong in the Rules and Regulations for transportation service to Wood River and Patoka. Tidal argues that this proposed priority right for committed shippers on Keystone XL at Port Arthur does not belong in the Rules and Regulations that govern transportation service on the Keystone pipeline to Wood River and Patoka because Keystone XL is not expected to be in service until 2012.

7. On May 5, 2010, Keystone filed an answer in response to Tidal. Keystone states that it petitioned the Commission for approval to use a revenue crediting mechanism to calculate the uncommitted rate and the option to utilize a depreciated original costs rate base in computing uncommitted rates. Keystone states that under the revenue crediting mechanism approved by the Commission, a cost of service for uncommitted rates is first identified by taking the total system cost of service and subtracting the revenue generated by committed shippers. Keystone states that the difference is then divided by the projected uncommitted throughput to derive the uncommitted rate. Keystone states that in granting its request to utilize the revenue crediting option, the Commission noted it "will result in uncommitted rates bearing a higher share of the pipeline's cost on a per unit basis."<sup>1</sup> Likewise, in its request for the declaratory order, Keystone states that it demonstrated that the use of the Commission's standard trended original cost methodology might not be appropriate for the pipeline's initial uncommitted rates because the trended original cost methodology is designed to help a new entrant compete by enabling it to charge lower rates in the early years of its market entry, and Keystone had already achieved its competitive objectives by discounting its committed rates below the projected uncommitted rates to attract shipper commitments.<sup>2</sup> Keystone states that it nonetheless requested approval of the option to use depreciated original cost, which would result in higher initial rates, and the Commission granted this request.

8. In the transmittal letter to the April 15 filing, Keystone noted that it had elected not to use revenue crediting or a depreciated original costs rate base in calculating its proposed interim uncommitted rates, but it reserved the right to do so in future rate filings. Keystone asserts that use of either depreciated original cost or revenue crediting would have produced substantially higher interim uncommitted rates than those submitted in the April 15 filing. Keystone states that it elected not to utilize revenue

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<sup>1</sup>*TransCanada Keystone Pipeline, L.P.*, 125 FERC ¶ 61,025, at P 25 (2008).

<sup>2</sup>*Id.* at P 35-37.

crediting or a depreciated original cost rate base in order to keep its rates as low as possible during its initial, interim phase of operations in response to competitive forces.

9. Keystone contends that Tidal erroneously claims that the provisions of Item 7.2 provide a priority right to firm service to Port Arthur shippers. Contrary to this claim, Keystone submits that Item 7.2 does not provide firm service to Port Arthur shippers. Rather, Item 7.2 establishes only an initial historical entitlement for those shippers for the first 6 months of the operation of Keystone XL. Keystone states that if any shipper entitled to such an initial historical entitlement fails to ship or pay for the level of its entitlement in subsequent months, its entitlement would be reduced accordingly. Keystone asserts that this is not firm capacity. Keystone states that no shipper receives an absolute entitlement to capacity in the event of allocation, and this is not what Keystone is proposing. Rather, Keystone states that it is proposing an historically based entitlement to capacity in the event of allocation, which the Commission has repeatedly approved in prior cases. Keystone states that a new shipper on Keystone would be granted five percent of available capacity on a pro rata basis. Further, Keystone states that all shippers are able to increase their entitlement to capacity by developing shipping history.

10. Keystone states that it included an historical entitlement provision for Keystone XL shippers to Port Arthur because those shippers have entered into contracts for transportation to Port Arthur. Keystone states that it determined that it was appropriate to provide some assurance to Keystone XL shippers to Port Arthur that they would have capacity available to them once Keystone XL is operational.

11. Also, on May 5, 2010, Valero Marketing and Supply Company (Valero), an intervenor in the proceeding, filed a response to Tidal's comments. Valero states that Item 7.2 simply provides that the historical entitlement for term shippers to Port Arthur to capacity in the event of an allocation will be based on the term shipper's contractual volumes for the first six months after the full Keystone XL transportation path is in service. Valero asserts that Keystone correctly determined that it was appropriate to provide some assurance to Keystone XL shippers to Port Arthur that they would have capacity available to them once Keystone XL is operational. For example, Valero submits that it may be possible for term or spot shippers on the Base Keystone system or the Cushing Extension to move or divert barrels originally intended for delivery to Wood River, Patoka, or Cushing to Port Arthur before Keystone, as a complete transportation path, is available to contractually committed Keystone XL shippers, like Valero. Valero contends that Keystone's proposed language protects Keystone XL shippers but does not provide them with firm capacity or any other preference with regard to terms of service.

12. The Commission finds that Keystone is not required to provide any further supplemental information to its filing because it has complied with the Commission's regulations and in its answer has explained how its rates were calculated. Keystone has explained that it did not use revenue crediting or depreciated original cost rate base in

calculating the proposed interim uncommitted rates because it would have resulted in higher rates to the uncommitted shippers. In addition, the Commission finds that Item 7.2 is reasonable and it will not reject that item as requested by Tidal. Item 7.2 does not guarantee Keystone XL shippers firm capacity. Rather, it assures that certain shippers who are contractually committed to shipping barrels on the full Keystone XL transportation path from the Hardisty, Alberta to Port Arthur, Texas once all the facilities are completed are not at a disadvantage with respect to prorationing in relation to shippers who will be shipping on existing parts of the Keystone system. Item 7.2 allows the Keystone XL shippers to establish an historical pattern of shipment for the first six months of full operation. Such provision prevents shippers who are contractually supporting the construction of the additional facilities from being shut out of those facilities once they are fully operational in the event of prorationing.

13. The Commission is also requiring Keystone to make a number of changes to its tariff or provide an explanation as to why such changes are not needed. These changes are described in an Appendix to this order. Keystone is required to file revised tariffs and/or an explanation with the Commission within 30 days of the date of this order.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

## APPENDIX

### ITEM 1 – DEFINITIONS

- 1.1 **“Notice of Shipment”** – Keystone must add an email link for the prescribed form used by shippers to notify the Carrier of proposed Tenders for the following month.

### ITEM 5 – MEASUREMENTS

- 5.4 The following sentence states:

“Overages or shortages will be calculated and prorated to Net Standard Volumes for Petroleum shipped on a Monthly basis and settled in accordance with procedures posted on Carrier’s website.” (Emphasis Added)

Keystone must state these procedures in this tariff item.

### ITEM 7 – NOMINATIONS, TENDERS AND APPORTIONMENT

- 7.1 **Monthly Nominations.**

The following sentence states:

“Each Month, in respect of transportation service for the following Month, subject to Section 7.12, Shippers shall submit their respective Nominations (each a **‘Monthly Nomination’**) to Carrier on a Notice of Shipment delivered no later than 7:00 a.m., Mountain Standard Time, on Carrier’s designated Monthly Nomination date in accordance with Carrier’s procedures for submission and acceptance of Nominations as posted on Carrier’s website.” (Emphasis Added)

Keystone must state these procedures for submission and acceptance of Nominations in this tariff item and provide dates here.

- 7.4 **Tenders.**

The following sentence states:

“A Shipper desiring to Tender Petroleum for transportation shall make such Tender in accordance with Carrier’s established Tender process which process shall be posted on Carrier’s website.” (Emphasis Added)

Keystone must state the Tender process in this tariff item.

### 7.5 **Late Nominations.**

The following sentence states in part:

“If capacity is available and operating conditions permit, as determined by Carrier in its sole discretion . . . .”

Keystone must restate this to read “reasonable sole discretion.”

The following sentence states:

Carrier’s procedures for acceptance of Nominations after the designated Monthly Nomination date shall be posted on Carrier’s website.” (Emphasis Added)

Keystone must state the procedures for acceptance of Nominations after the designated Monthly Nomination date in this tariff item.

### 7.6 **Working Stock.**

The following sentence states:

“Shipper shall supply it proportionate share of Working Stock as determined from time to time by Carrier or for Term Shippers as specified in the Contract and as posted on Carrier’s website.” (Emphasis Added)

Keystone must state in this tariff item how it determines the shipper proportionate share of Working Stock.

## **ITEM 8 – APPLICATION OF RATES**

### 8.2 **Discounted Uncommitted Rates.**

The following sentence states:

“Any discount will be reflected on a rate tariff which shall be filed no later than the day on which Carrier receives a Tender of Light Crude or Heavy Crude eligible for such discount.”

Keystone must correct the sentence to read:

“Any discount will be reflected on a rate tariff which shall be filed as soon as possible, but on no less than one day’s notice, and will not become effective until

after the day on which Carrier receives a Tender of Light Crude or Heavy Crude eligible for such discount.”

## **ITEM 12 – DEFAULT, SUSPENSION AND TERMINATION**

12.4 The following sentence states in part:

“Carrier may, in its sole discretion and without limiting any other remedy . . . .”

Keystone must restate the phrase to read: “reasonable sole discretion.”

## **ITEM 21 – IN-LINE TRANSFERS**

21.1 The following sentence states:

“Subject to Section 21.2 and Carrier’s procedures relating to in-line transfers as posted on Carrier’s website, Shippers may transfer its rights to a Tendered batch of Petroleum to another Shipper, provided such initial transferring Shipper retains all liabilities and obligations under the Tariff relating to the transferred batch.”  
(Emphasis Added)

Keystone must state the procedures relating to in-line transfers in this tariff item.