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PUBLIC SERVICE
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March 3, 2010

Montana Public Service Commission
1701 Prospect Avenue, Vista Building
P.O. Box 202601
Helena, MT 59620-2601
Attention: Utility Division Administrator Kate Whitney

RE: TransCanada Keystone Pipeline, LP
Acceptance of Provisions of Title 69, Chapter 13, MCA
Our File No.: 91-530-002

Dear Ms. Whitney:

This letter is submitted on behalf of TransCanada Keystone Pipeline, LP ("Keystone") with respect to its proposed Keystone XL Pipeline Project ("KXL" or "Project"), a 36-inch crude oil pipeline and related facilities running from Hardisty, Alberta, Canada, to the Port Arthur and east Houston areas of Texas. With respect to Montana, it will run from the Montana/Alberta international border north of Malta, Montana, to the southeast corner of Montana into South Dakota. Keystone is a Delaware limited partnership organized under the laws of the State of Delaware, and owned by affiliates of TransCanada Corporation, a Canadian public company organized under the laws of Canada.

This letter is provided in response to the February 11, 2010 letter from the Montana Public Service Commission ("PSC" or "Commission") to Robert Jones of TransCanada, requesting that Keystone submit an "application for common carrier status" consistent with the provisions of Montana Code Annotated ("MCA") Title 69, Chapter 13, MCA, by March 3, 2010. Consistent with that request, as a "common carrier," and pursuant to MCA §§ 69-13-103 and 104, Keystone hereby files its acceptance of the provisions of Title 69, Chapter 13, MCA.

In Montana, the Project requires a certificate under the Montana Major Facility Siting Act ("MFSA"). Keystone filed a MFSA application with the Montana Department of Environmental Quality ("DEQ") in December, 2008, and the application is still pending before DEQ. The Project will also require the issuance of a Presidential Permit by the United States Department of State to cross the US/Canada border, and the Project will require other governmental approvals.

Once the necessary governmental approvals are obtained, including the MFSA certificate, KXL will be constructed, operated, and maintained as an interstate common carrier crude oil pipeline in accordance with applicable laws and regulations.

Keystone qualifies as a “common carrier” under several provisions of MCA §69-13-101(1). Specifically, upon completion of construction and commencement of operations, Keystone will be “engage[d] in the business of transporting crude petroleum . . . by pipelines.” (MCA §69-13-101(1)(a)). In addition, Keystone is “made a common carrier . . . in pursuance of the law of the United States.” (MCA §69-13-101(1)(e)). As an interstate oil pipeline, Keystone is a common carrier under the federal *Interstate Commerce Act*. 49 App. U.S.C. 1(1), (4), and (7). Finally, depending on the route ultimately approved by the U.S. Department of State and the Montana Department of Environmental Quality, Keystone may be “owning, operating, or managing [a] pipeline . . . for the transportation of crude petroleum . . . to or for the public for hire when the pipeline is constructed or maintained upon, along, over, or under any public road or highway.” (MCA §69-13-101(1)(b)). MCA §69-13-101(1)(c) could also potentially be applicable.

For these reasons, Keystone qualifies as a common carrier, eligible to submit its acceptance of the provisions of Title 69, Chapter 13. As stated above, by this filing Keystone expressly accepts those provisions, and Keystone expressly agrees in writing to the provisions of MCA §§ 69-13-103 and 104 as required by those statutes.

Please note this submittal is exclusively an acceptance of common carrier status and the provisions of Title 69, Chapter 13, for the purposes of MCA §§ 69-13-103 and 104, and in response to the above-referenced February 11, 2010 letter. The express terms of MCA §§ 69-13-103 and 104 provide that a party making a submittal under such statutes “file with the commission [an/its] acceptance of the provisions of [Title 69, Chapter 13, MCA].” The statutes contain no provisions for further proceedings beyond the filing itself. Accordingly, Keystone submits that this acceptance is unlike a rate, tariff, or other filing, which would trigger a notice or other action involving potential intervenors, or any contested case procedures under Title 69, MCA or the Commission’s rules or regulations. In this regard it is similar to the filing made by Express Pipeline (“Express”) in 1996 in PSC Docket D96.5.91. In that docket, the Commission did not conduct proceedings beyond accepting Express’s tender of common carrier status (see the docket information as shown by PSC eDocuments).

With respect to PSC regulation, Keystone would point out that, similar to Express, KXL is an *interstate pipeline*, with contracts to provide interstate service only at this time. As such, the rates, books, and records applicable to KXL’s common carrier interstate transportation service, as well as the terms and conditions governing such service, are subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) under the *Interstate Commerce Act* and are regulated by FERC under 18 CFR Part 340, *et seq.*

Because KXL is an interstate pipeline under FERC jurisdiction, FERC, not the PSC, regulates the rates, terms, conditions of service, and the books and records associated with interstate transportation. Moreover, Keystone submits that PSC jurisdiction under MCA § 69-13-302, which applies to certain pipeline interconnection matters within Montana, is not implicated at

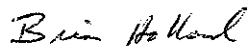
this time, because no application for an interconnection in Montana with KXL has been received by Keystone or submitted to the PSC.

In conclusion, as set forth above Keystone accepts the provisions of Title 69, Chapter 13, MCA pursuant to MCA §§ 69-13-103 and 104.

Please contact the undersigned if you have any questions.

Sincerely yours,

CROWLEY FLECK PLLP

A handwritten signature in cursive script that reads "Brian Holland".

Brian Holland