

Service Date: August 16, 2010

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

IN THE MATTER OF TRANSCANADA	)	REGULATORY DIVISION
KEYSTONE PIPELINE, LP, Application	)	
for Recognition as a Regulated Common	)	DOCKET NO. D2010.3.22
Carrier	)	ORDER NO. 7097a

**ORDER**

**Background**

1. On January 20, 2010, the Montana Public Service Commission (PSC or Commission) received a letter from Governor Brian Schweitzer inquiring into the PSC's authority over TransCanada's Keystone XL Pipeline (Keystone). Based on that request, a PSC attorney researched the PSC's authority and jurisdiction over Keystone pursuant to Title 69, Chapter 13 of the Montana Code Annotated (MCA). A legal memorandum was drafted in preparation for a work session. On February 2, 2010, the PSC held a work session to discuss the PSC's authority over Keystone and voted to send a letter to TransCanada requesting a common carrier application to be filed with the PSC. On March 3, 2010, Keystone Pipeline filed a document titled "Acceptance of the Common Carrier Provisions of Title 69, Chapter 13, MCA."

2. On April 9, 2010, the PSC issued a Notice of Application and Intervention Deadline (Notice) with an intervention deadline of May 6, 2010. Keystone filed a Response to the Notice on April 21, 2010. On May 6, 2010, Continental Resources, Inc. (Continental) filed a Petition for General Intervention. No other party filed a Petition for Intervention.

3. Keystone subsequently filed an Objection to Petition for General Intervention by Continental Resources on May 10, 2010. On May 21, 2010, Continental filed a Response. On June 2, 2010, Keystone filed a Reply in Support of its Objection to Petition for General Intervention. Finally on June 11, 2010, Continental filed a Response to the Reply of Keystone.

4. The PSC held a work session on June 15, 2010, to discuss the legal briefs filed by Keystone and Continental and to decide whether to grant Continental's Petition for General Intervention. The PSC determined that Keystone had failed to clearly and completely accept all

provisions of Title 69, Chapter 13, MCA. The PSC issued Order No. 7097 requiring Keystone to file a supplemental acceptance of the provisions of Title 69, Chapter 13, MCA, in its entirety, before the PSC will grant common carrier status. The PSC also denied Continental's Petition for General Intervention on the basis that once Keystone files an updated and complete filing there would be no further case or controversy in this docket so intervention would be moot. The PSC determined that the appropriate docket to consider any interconnection issues would be subsequent to a filing of an Application for Interconnection.

#### **Discussion and Findings of Fact**

5. In PSC Order No. 7097, the PSC considered whether Keystone sufficiently accepted the common carrier provisions of Title 69, Chapter 13, MCA. The PSC determined that Keystone's original filing was not complete as it cannot expressly agree to only some provisions of Title 69, Chapter 13, MCA, and not all provisions. Keystone's acceptance of only the provisions of Title 69, Chapter 13, MCA, pursuant to §§ 69-13-103 and 104, MCA, was not adequate and was inconsistent with Title 69, Chapter 13, MCA, and past common carrier acceptance filings.

6. Keystone was required to re-file its acceptance of the common carrier provisions by expressly agreeing to "become a common carrier pipeline subject to all the duties and obligations conferred or imposed upon it pursuant to Title 69, Chapter 13, MCA." This language was required by the PSC in the most recent common carrier application filed by Westech Energy Corporation in Docket No. D2004.12.195. Common carrier status will not be granted until Keystone expressly agrees to be subject to all the duties and obligations conferred or imposed upon it pursuant to Title 69, Chapter 13, MCA.

7. On July 23, 2010, the PSC received Keystone's supplemental acceptance filing for recognition as a regulated common carrier. While Keystone indicates that it disagrees its original filing was improperly conditioned, it agreed to file a supplemental acceptance. The PSC held a work session on August 5, 2010, to determine whether the supplemental filing met the requirements of Title 69, Chapter 13, and was consistent with past common carrier acceptance filings. In the supplemental acceptance filing, Keystone agreed pursuant to §§ 69-13-103 and 104, MCA, that it shall be and become a common carrier pipeline, subject to all the duties and obligations conferred or imposed upon it pursuant to Title 69, Chapter 13, MCA. Keystone specifically acknowledges that its acceptance includes the interconnection provisions of § 69-13-

302, MCA. Keystone acknowledges that other state or federal agencies have exclusive or concurrent jurisdiction over various aspects of the pipeline, which by law Keystone cannot waive. The Commission determines that the supplemental filing complied with Order No. 7097 and meets the common carrier acceptance requirements of Title 69, Chapter 13, MCA.

8. The PSC, in Order No. 7097, denied Continental's Petition for Intervention. The PSC determined that the current docket for common carrier status is not the appropriate docket to review any possible interconnection issues. As the PSC required Keystone to re-file its acceptance expressly agreeing to all provisions of Title 69, Chapter 13, MCA, including specifically § 69-13-302, MCA, the controversy involving the sufficiency of the acceptance is resolved. Following the updated and complete supplemental filing there is no further case or controversy in this docket, so intervention is moot. Keystone in its supplemental acceptance, clearly acknowledged "that its acceptance includes the interconnection provisions of § 69-13-302, MCA." Therefore, Continental Resources' concerns about the sufficiency of the common carrier acceptance are resolved. Now that Keystone has sufficiently accepted common carrier status, the PSC will consider any and all interconnection requests and issues based on any subsequent filing of an Application for Interconnection pursuant to §§ 69-13-201 and 302, MCA.

#### **Conclusions of Law**

1. The Montana Public Service Commission has jurisdiction over common carrier pipelines pursuant to Title 69, Chapter 13, MCA.
2. Keystone anticipates operating a common carrier interstate pipeline transporting crude oil by pipeline along, across, or under public roads and highways in Montana pursuant to §69-13-101(1)(b), MCA.
3. Keystone will be or anticipates being made a common carrier by or under the terms of contract with or in pursuance of the law of the United States, and therefore, meets the requirements of §69-13-101(1)(e), MCA.
4. Keystone qualifies as a common carrier under §69-13-101(1)(b) and (e), MCA, and therefore, has submitted a filing accepting the duties and obligations conferred or imposed by Chapter 13 of Title 69, MCA.
5. Keystone has expressly agreed it shall be and become a common carrier pipeline subject to the duties and obligations conferred or imposed on it pursuant to Title 69, Chapter 13, MCA, and is subject to PSC intrastate common carrier jurisdiction.

6. The Commission may establish and enforce rates of charges and regulations for the use of storage facilities necessarily incident to the transportation and may prescribe and enforce rules for the government and control of common carriers in respect to their pipelines and receiving, transferring, and loading facilities. The Commission shall exercise the power upon petition by any person showing a substantial interest in the subject. § 69-13-201, MCA.

7. All findings of fact that can properly be considered conclusions of law and that should be considered as such to preserve the integrity of this order are incorporated herein as such.

### **Order**

IT IS HEREBY ORDERED:

1. Keystone has expressly agreed in writing that in consideration of the rights so acquired, it shall be and become a common carrier pipeline, subject to the duties and obligations conferred or imposed on it pursuant to Title 69, Chapter 13, MCA.

2. Keystone's supplemental acceptance filing meets the requirements of Title 69, Chapter 13, MCA, and Keystone is subject to PSC intrastate common carrier jurisdiction.

3. Any pipeline interconnection requests and issues will be reviewed by the PSC in a new docket if and when an Application for Interconnection is received.

DONE AND DATED this 5<sup>th</sup> day of August 2010 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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GREG JERGESON, Chairman

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KEN TOOLE, Vice Chairman

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GAIL GUTSCHE, Commissioner

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BRAD MOLNAR, Commissioner

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JOHN VINCENT, Commissioner

ATTEST:

Verna Stewart  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten days. See 38.2.4806, ARM.