



OF-Surv-FIns-T241-2015 0101
24 May 2016

Mr. Alexander Pourbaix,
Chief Operating Officer
TransCanada Keystone Pipeline GP Ltd. (Keystone)
450 – 1st Street SW
Calgary, AB T2P 5H1
Facsimile (403) 920-2347

Dear Mr. Pourbaix:

**TransCanada Keystone Pipeline GP Ltd. (Keystone)
Certificate OC-56 Keystone XL Pipeline
Order MO-020-2016**

On 27 April 2010, the National Energy Board (Board or NEB) issued Certificate OC-56, pursuant to section 52 of the *National Energy Board Act* (NEB Act), to Keystone authorizing the construction and operation of the Keystone XL Pipeline Project (Project). On 2 September 2015, during an environmental inspection, NEB Inspectors observed that reclamation of the Horizontal Directional Drill (HDD) pads and construction access roads at the Red Deer River crossing had not been completed, and that environmental protection measures related to erosion control and weed management did not comply with the requirements set out in the Keystone XL – Final Environmental Protection Plan – Horizontal Directional Drills at the South Saskatchewan and Red Deer Rivers.

Accordingly, the NEB Inspection Officer issued Notices of non-compliance on 19 October 2015, and requested additional information in that regard. On 1 December 2015, in response to the information request (IR), Keystone confirmed that reclamation of the Horizontal Directional Drill (HDD) pads and construction access roads at the South Saskatchewan River had not been completed, and that monitoring and maintenance for environmental protection measures were ongoing.

Since the compliance verification activity, CVA 1516-431, on 26 February 2016, the Board issued IR No. 1 requesting additional information regarding the status of the Project; and, on 17 March 2016, the Board issued IR No. 2 requesting additional information regarding the results of consultation with potentially impacted parties. The Board has considered Keystone's

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responses to these IRs dated 8 March 2016 and 4 April 2016, respectively, and acknowledges that Keystone has indicated:

Keystone remains committed to obtaining regulatory approval for the Keystone XL Pipeline Project and to constructing the pipeline. At this point, Keystone continues to evaluate its options concerning how to best advance the interests of the project. For example, nothing precludes Keystone from filing a future presidential permit application.

This being the case, Keystone has no plans to conduct reclamation activities for either the access or the horizontal directional drill pads located at the Red Deer River and South Saskatchewan River HDD crossings. Similarly, Keystone's plan for the existing pipeline segments under both of these rivers would be to maintain them in the expectation of the completion of the balance of the pipeline at a future date.

In light of Keystone's response and given the current status of the Project, the Board has decided to issue an order requiring Keystone to conduct additional environmental evaluations and consultation to ensure that protection of the environment is being met at the Red Deer River and South Saskatchewan HDD River crossings during the extended construction activity for the Project. The order also requires that Keystone file periodic updates with the Board regarding the status of the Project and the outstanding regulatory approval for a Presidential Permit from the United States of America Department of State.

Safety of Canadians and protection of the environment are the Board's top priorities. Therefore, the Board has issued the attached Order MO-020-2016 to Keystone, pursuant to paragraphs 12(1)(b) and 13(a) of the NEB Act and paragraph 6(c) of the *National Energy Board Onshore Pipeline Regulations*.

Yours truly,

Original signed by

Sheri Young
Secretary of the Board

Attachment



ORDER MO-020-2016

IN THE MATTER OF the *National Energy Board Act* (NEB Act) and the regulations made thereunder; and

IN THE MATTER OF compliance verification activity (CVA) 1516-431, environmental protection requirements for the Keystone XL Pipeline Project, specifically at the Red Deer, and South Saskatchewan River Horizontal Directional Drill (HDD) crossings, including the associated landscape disturbances for the access roads and right-of-way, under File OF-Fac-Oil-T241-2009-01 01.

BEFORE the Board on 12 May 2016.

WHEREAS the Board regulates the construction and operation of the Keystone XL Pipeline Project (Project) by way of Certificate of Public Convenience and Necessity OC-56 (Certificate) issued to TransCanada Keystone Pipeline GP Ltd. (Keystone) on 27 April 2010 pursuant to section 52 of the NEB Act;

AND WHEREAS Keystone completed the horizontal directional drill (HDD) crossing of the Red Deer River in January 2012 and the HDD crossing of the South Saskatchewan River in March 2012 (HDD River Crossings);

AND WHEREAS on 2 September 2015, during an environmental inspection, NEB Inspectors observed that reclamation of the HDD pads and construction access roads at the Red Deer River crossing had not been completed, and that environmental protection measures related to erosion control and weed management did not meet the requirements set out in the Keystone XL – Final Environmental Protection Plan – Horizontal Directional Drills at the HDD River Crossings;

AND WHEREAS on 19 October 2015, the NEB Inspection Officer issued Notices of Non-compliance related to erosion control and weed management, which required corrective actions; and, requested additional information regarding HDD construction activity at the South Saskatchewan River crossing, and post-construction environmental monitoring and maintenance at the HDD River Crossings;

AND WHEREAS on 1 December 2015, in response to the Inspection Officer's information request (IR), Keystone confirmed that reclamation of the HDD pads and construction access

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roads at the South Saskatchewan River had not been completed, and that monitoring and maintenance for environmental protection measures were ongoing;

AND WHEREAS on 26 February 2016, the Board issued IR No. 1 to Keystone requesting additional information regarding the status of the Project in light of the United States of America (US) Department of State's 3 November 2015 decision to not issue a Presidential Permit to construct and operate the US section of the Keystone XL Pipeline;

AND WHEREAS on 8 March 2016, in response to Board IR No. 1, Keystone indicated that it remains committed to obtaining US regulatory approval for the US section of the Keystone XL Pipeline and to constructing the Canadian section of the Keystone XL Pipeline and that it has no plans to conduct reclamation activities for either the access or the horizontal directional drill pads located at the HDD River Crossings until mainline construction has been completed;

AND WHEREAS on 4 April 2016, in response to Board IR No. 2 dated 17 March 2016, Keystone provided a summary of communication with affected leaseholders, which identified concerns regarding reclamation of the Keystone XL right-of-way for the HDD River Crossings;

AND WHEREAS the Board is of the view that precautionary measures are necessary for protection of the environment;

NOW THEREFORE, pursuant to paragraphs 12(1)(b) and 13(a) of the NEB Act and paragraph 6(c) of the *National Energy Board Onshore Pipeline Regulations* Keystone shall:

1. File the following with the Board by 1 December 2016, unless the Board otherwise directs, for the HDD River Crossings and associated landscape disturbances:
 - a) A report that includes but is not limited to:
 - a.1) the results of confirmatory surveys for species of management concern and *Species at Risk Act* (SARA) listed amphibians;
 - a.2) a detailed mitigation plan for each of the species affected by construction, including consideration of new recovery strategies for species at risk; and
 - a.3) evidence of consultation with appropriate provincial and federal regulatory authorities and copies of correspondence from these regulatory authorities regarding satisfaction with the mitigation that has been applied to date, the surveys and an updated mitigation plan.
 - b) A report that includes but is not limited to:
 - b.1) the results of the surveys for rare and SARA listed plants and rare ecological communities;
 - b.2) a detailed mitigation plan for each of these species affected by construction activity, including consideration of new recovery strategies for species at risk; and

- b.3) evidence of consultation with appropriate provincial and federal regulatory authorities and copies of correspondence from these regulatory authorities regarding satisfaction with the mitigation that has been applied to date, the surveys and an updated mitigation plan.
 - c) A report that includes but is not limited to:
 - c.1) the results of a comprehensive wetland survey;
 - c.2) a mitigation plan for each wetland; and
 - c.3) evidence of consultation with appropriate provincial and federal regulatory authorities and copies of correspondence from these regulatory authorities regarding satisfaction with the mitigation that has been applied to date, the surveys and an updated mitigation plan.
 - d) A report that includes but is not limited to:
 - d.1) the results of construction weed surveys to identify the presence and density of weeds in areas that are affected by the construction of the Project at the HDD River Crossings;
 - d.2) a detailed mitigation plan for affected areas both on and off of the right-of-way; and
 - d.3) evidence of consultation with appropriate provincial and federal regulatory authorities and copies of correspondence from these regulatory authorities regarding satisfaction with the mitigation that has been applied to date, the surveys and an updated mitigation plan.
 - e) A report describing reclamation scenarios comparing the effects on soil productivity of conducting reclamation versus not conducting reclamation for each of the following:
 - e.1) replace topsoil immediately;
 - e.2) postpone reclamation until 1 April 2017;
 - e.3) postpone reclamation until 1 November 2018; and
 - e.4) leave reclamation undone indefinitely.
 - f) An environmental monitoring report for the HDD River Crossings that:
 - f.1) describes the methodology used for monitoring, the criteria established for evaluating success and the results found;
 - f.2) assesses the effectiveness of the mitigation measures applied during construction against the criteria for success;
 - f.3) identifies locations on a map or diagram where corrective action was taken during construction and the current status of corrective actions; and
 - f.4) provides proposed measures and the schedule Keystone shall implement to address any unresolved concerns.
2. File the following with the Board by 1 December 2016, unless the Board otherwise directs, for the HDD River Crossings and associated landscape disturbances:

- a) A report summarizing the consultation conducted by Keystone with relevant provincial and federal authorities, including potentially impacted parties, about the status of construction of the Project at the HDD River Crossings indicating whether there are any outstanding issues or follow-up actions prompted by the consultation.
 - b) A copy of Keystone's Landowner Consultation Tracking Table, which pursuant to Certificate Condition 18, is required to be maintained and available to the Board upon request.
3. File a report, by 1 December 2016 and annually by that date thereafter, describing:
- a) Keystone's plans for the existing pipeline segments installed at the HDD River Crossings; and
 - b) the status of mainline construction and the Project, including regulatory approval from the US Department of State (that is, the required US Presidential Permit).

This report must be filed until mainline construction of the Project has commenced.

NATIONAL ENERGY BOARD

Original signed by

Sheri Young
Secretary of the Board