
Feature Stories

Independent Refiner CVR Sues TransCanada's Keystone Pipeline

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A unit of independent refiner CVR Energy is suing TransCanada's Keystone Pipeline, seeking \$250 million in damages or release from transportation agreements for the planned Keystone pipeline from Hardisty, Alberta, to Cushing, Oklahoma.

In litigation filed earlier this week in Calgary, CVR's Coffeyville Resources Refining and Marketing alleged that Keystone was negligent in representing the tolls it would charge to transport oil from Hardisty to Cushing when soliciting contracts from shippers for the pipeline project.

It said the final tolls for the Canadian segment of the pipeline were 145% higher than initially presented, while the tolls for the US segment were 92% higher. Consequently, CVR said, over the 10-year term of the contract, the company would incur \$250 million of additional costs for shipping 25,000 barrels of oil per day through the line.

CVR, headquartered in the Houston suburb of Sugar Land, owns and operates a 115,000 b/d refinery in Coffeyville, Kansas. It markets primarily transportation fuels in the Midcontinent region. The company also has the only petroleum coke-fueled ammonia and urea ammonium nitrate fertilizer plant in the US, located adjacent to the refinery.

According to the lawsuit, the information binder that TransCanada circulated in January 2007 to prospective shippers on Keystone stated that the tolls that shippers would pay would be a combination of fixed and variable costs.

The fixed portion of the tolls would be unchanged for the term of the contract, while the variable portion would be a flow through of the actual costs. Those costs were provided by an independent engineering consulting firm.

The information binder also stated that the final project costs and Keystone tolls would not materially differ from those estimated.

The information binder "stated numerous times that the estimated Keystone tolls represented a competitive toll advantage over other transportation options to Cushing, including transporting crude oil via the rival Enbridge Lakehead/Spearhead pipeline."

Enbridge is another Canadian pipeline company that also is constructing oil pipelines from Alberta to Cushing. Its systems are in competition with Keystone for throughput.

Based on Keystone's claims of having the more competitive position, Coffeyville Resources signed the transportation agreements in March 2007 and sent them to Keystone.

The copies that Keystone returned to Coffeyville in July 2007, however, were not executed. Consequently, those agreements, combined with the higher costs that Keystone delivered in contradiction of its earlier terms, were no longer in force, the company said in the litigation.

Keystone informed Coffeyville of the higher tolls in September 2008.

Coffeyville said that Keystone was negligent in making representations to prospective shippers because it failed to determine the full scope of the work and expenses that would be incurred and failed to provide all the information to its engineering consulting firm to allow the firm to prepare proper and accurate cost estimates.

In addition, Coffeyville said in the filing, Keystone changed the scope of work or added additional expenses related to the construction, but failed to obtain an updated cost estimate in a timely manner.

Keystone also "failed to take into account increases in the cost of material and labor known and anticipated within the oil and gas industry and in particular the pipeline industry" at the time the project was in development, Coffeyville said.

TransCanada declined to comment on the lawsuit, noting that it was currently providing testimony to Canada's National Energy Board (NEB) about the Keystone project.

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