

Before the Nebraska Public Service Commission

In the Matter of the Application

of

TransCanada Keystone Pipeline LP
For Route Approval of Keystone XL
Pipeline Project, Pursuant to *MOPSA*

Intervenors:

Susan Dunavan and William Dunavan,
Bartels Farms, Inc.
Johnnie Bialas and Maxine Bialas,
Bonnie Brauer,
James Carlson and Christine Carlson,
Timothy Choat, Gary Choat Farms LLC,
and Shirley Choat Farms, LLC,
CRC, Inc.,
Daniel A. Graves and Joyce K. Graves,
Patricia A. Grosserode a/k/a Patricia A.
Knust,
Terri Harrington,
Donald C. Loseke and Wanda G. Loseke,
Arla Naber and Bryce Naber,
Mary Jane Nyberg,
Kenneth Prosocki and Karen Prosocki,
Edythe Sayer,
Dan Shotkoski and Clifford Shotkoski,
Leonard Skoglund and Joyce Skoglund,
John F. Small and Ginette M. Small,
Deborah Ann Stieren and Mary Lou Robak,
Jim Tarnick,
Terry J. Van Housen and Rebecca Lynn
Van Housen,
Donald D. Widga,

Byron Terry "Stix" Steskal and Diana
Steskal,
Allpress Brothers, LLC,
Germaine G. Berry,
Karen G. Berry,
Cheri G. Blocher and Michael J. Blocher,

Application No: OP-003
(Filed by Applicant on 2/16/17)

**1st Amended Petition
of Formal Intervention
By
Certain Nebraska Landowners
With
Real Estate on Proposed Pipeline Route
Described In
TransCanada Keystone Pipeline LP
Application No. OP-003**

**L.A. Breiner and Sandra K. Breiner,
Jerry Carpenter and Charlayne Carpenter,
CHP 4 Farms, LLC,
Larry D. Cleary,
Jeanne Crumly and Ronald C. Crumly,
Ken Dittrich,
Lloyd Z. Hipke and Vencille M. Hipke.
R. Wynn Hipke and Jill Hipke,
Richard Kilmurry and Bonnie Kilmurry,
Rosemary Kilmurry,
Beverly Krutz and Robert Krutz,
LJM Farm, LLC,
Carol Manganaro,
Frankie Maughan and Sandra Maughan,
Beverly Miller and Earl Miller,
Edna Miller and Glen Miller,
Milliron Ranch, LLC,
Frank C. Morrison and Lynn H. Morrison,
Larry D. Mudloff, J.D. Mudloff, and Lori
Mudloff,
Constance Myers a/k/a Constance Ramold,
Nicholas Family Limited Partnership,
Ann A. Pongratz and Richard J. Pongratz,
Donald Rech,
Schultz Brothers Farms, Inc.,
Connie Smith and Verdon Smith,
Joshua R. Stelling,
Richard Stelling and Darlene Stelling,
Todd Stelling and Lisa Stelling,
Arthur R. Tanderup and Helen J.
Tanderup,
TMAG Ranch, LLC,
Tree Corners Farm, LLC,
Dave Troester and Sharyn Troester,
and
Gregory Walmer and Joanne Walmer,**

Intervenors,

In support of their 1st Amended Petition of Formal Intervention, Intervenors, individually and collectively, state as follows:

1. Pursuant to Neb. Admin. Code Title 291, Chpt. 1, §015.01, the above captioned Intervenors hereby petition the Nebraska Public Service Commission to allow

them to formally intervene in the above captioned matter and to become a party hereto for all purposes to demonstrate why their legal rights, duties, privileges, immunities, and or other legal interests may be substantially affected by Application No: OP-003 of TransCanada Keystone Pipeline, L.P. (“TransCanada”) for route approval of the Keystone XL Pipeline Project (“KXL”) pursuant to the Major Oil Pipeline Siting Act (“MOPSA”).

2. The Petitioners/Intervenors identified in the Caption, and again by name and number in ¶3 below, are persons or entities who own real estate that TransCanada Keystone Pipeline Co., LP attempted to condemn in County Court eminent domain proceedings TransCanada commenced in January 2015. TransCanada sought to condemn the real estate for its proposed Keystone XL Pipeline. These previous eminent domain proceedings were enjoined by Temporary Injunction Orders issued by two (2) Nebraska District Courts. TransCanada later filed a “Voluntary Dismissal” in each County Court case on or about October 1, 2015. However, pursuant to TransCanada’s February 16, 2017 Application to the PSC, the same preferred route proposed in 2015 that previously affected all Intervenors captioned above, is the same route Applicant now seeks approval for siting of its proposed pipeline.

Intervenors/Landowners

3. Intervenors 1 through 37 are:

	Name	Address & Email	Telephone
1-2	Susan Dunavan and William Dunavan	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
3-4	Johnnie Bialas and Maxine Bialas	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
5	Bonnie Brauer	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100

6-7	James Carlson and Christine Carlson	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
8-10	Timothy Choat, Gary Choat Farms LLC & Shirley Choat Farms, LLC	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
11	CRC, Inc.	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
12-13	Daniel A. Graves and Joyce K. Graves	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
14-15	Patricia A. Grosserode a/k/a Patricia A. Knust	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
16	Terri Harrington	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
17-18	Donald C. Loseke and Wanda G. Loseke	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
19-20	Arla Naber and Bryce Naber	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
21	Mary Jane Nyberg	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
22-23	Kenneth Prosocki and Karen Prosocki	c/o DOMINALAW Group pc llo 2425 S. 144 th St.	(402) 493-4100

		Omaha, NE 68144 dmina@dominalaw.com bjorde@dominalaw.com	
24	Edythe Sayer	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dmina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
25-26	Dan Shotkoski and Clifford Shotkoski	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dmina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
27-28	Leonard Skoglund and Joyce Skoglund	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dmina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
29-30	John F. Small and Ginette M. Small	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dmina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
31-32	Deborah Ann Stieren and Mary Lou Robak	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dmina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
33	Jim Tarnick	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dmina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
34-35	Terry J. Van Housen and Rebecca Lynn Van Housen	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dmina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
36	Donald D. Widga	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dmina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
37	Bartels Farms, Inc.	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dmina@dominalaw.com	(402) 493-4100

		bjorde@dominalaw.com	
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Intervenors 38 through 96 are:

	Name	Address & Email	Telephone
38-39	Byron Terry “Stix” Steskal and Diana Steskal	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
40	Allpress Brothers, LLC	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
41	Germaine G. Berry	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
42	Karen G. Berry	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
43-44	Cheri G. Blocher and Michael J. Blocher	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
45-46	L.A. Breiner and Sandra K. Breiner	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
47-48	Jerry Carpenter and Charlayne Carpenter	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
49	CHP 4 Farms, LLC	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
50	Larry D. Cleary	c/o DOMINALAW Group pc llo	(402) 493-4100

		2425 S. 144 th St. Omaha, NE 68144 dnomina@dominalaw.com bjorde@dominalaw.com	
51-52	Jeanne Crumly and Ronald C. Crumly	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dnomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
53	Ken Dittrich	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dnomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
54-55	Lloyd Z. Hipke and Vencille M. Hipke	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dnomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
56-57	R. Wynn Hipke and Jill Hipke	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dnomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
58-59	Richard Kilmurry and Bonnie Kilmurry	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dnomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
60	Rosemary Kilmurry	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dnomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
61-62	Beverly Krutz and Robert Krutz	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dnomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
63	LJM Farm, LLC	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 dnomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
64	Carol Manganaro	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144	(402) 493-4100

		ddomina@dominalaw.com bjorde@dominalaw.com	
65-66	Frankie Maughan and Sandra Maughan	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
67-68	Beverly Miller and Earl Miller	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
69-70	Edna Miller and Glen Miller	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
71	Milliron Ranch, LLC	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
72-73	Frank C. Morrison and Lynn H. Morrison	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
74-75	Larry D. Mudloff, J.D. Mudloff, and Lori Mudloff	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
76	Constance Myers a/k/a Constance Ramold	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
77	Nicholas Family Limited Partnership	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
78-79	Ann A. Pongratz and Richard J. Pongratz	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100

80	Donald Rech	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
81	Schultz Brothers Farms, Inc.	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
82-83	Connie Smith and Verdon Smith	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
84	Joshua R. Stelling	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
85-86	Richard Stelling and Darlene Stelling	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
87-88	Todd Stelling and Lisa Stelling	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
89-90	Arthur R. Tanderup and Helen J. Tanderup	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
91	TMAG Ranch, LLC	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
92	Tree Corners Farm, LLC	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100
93-94	Dave Troester and Sharyn Troester	c/o DOMINALAW Group pc llo 2425 S. 144 th St.	(402) 493-4100

		Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	
95-96	Gregory Walmer and Joanne Walmer	c/o DOMINALAW Group pc llo 2425 S. 144 th St. Omaha, NE 68144 ddomina@dominalaw.com bjorde@dominalaw.com	(402) 493-4100

Formal Intervention

4. All paragraphs above are incorporated here.
5. Formal intervention is respectfully requested and leave to do so sought pursuant to 291 *Neb Admin Code* § 015.
6. Communications regarding this Petition, including services of notices and orders of the Nebraska Public Service Commission should be addressed to the Intervenor c/o their lawyers, David A. Domina, NSBA #11043 and Brian E. Jorde, NSBA #23613, Domina Law Group pc llo, 2425 S. 144th Street, Omaha, Nebraska 68144, (402) 493-4100, ddomina@dominalaw.com and bjorde@dominalaw.com.
7. In addition to jurisdictional concerns, constitutional concerns, Intervenor have both Special Interests and General Interests in the Application. These are described below.

Basis for Intervention

Special Interests

8. All paragraphs above are incorporated here.
9. Each Intervenor has a special interest in the Application of TransCanada Keystone XL Pipeline LP; the special interests of the Intervenor are unique among Nebraskans. Each Intervenor owns real estate located upon TransCanada's proposed preferred route for construction of its pipeline, to the best of his, her or its knowledge.
10. TransCanada previously initiated eminent domain proceedings against each Intervenor in County Court in a county where the real estate owned by the Intervenor is located for the purpose of taking property and property rights from each Intervenor pursuant to LB 1161, Laws of Nebraska 2012, for the purpose of acquiring property upon

which TransCanada proposed to build the Keystone XL Pipeline. TransCanada's initial application with the PSC in 2015 contained a project area map and a preferred route which depicted the proposed pipeline crossing the land of all of the intervenors mentioned herein. TransCanada's 2017 PSC Application contains that same preferred route and those will implicate, again, the land and property of all intervenors referenced herein. For the Intervenor this is a special interest; it impacts them uniquely.

11. TransCanada's actions raise questions about its fitness as an Applicant. For the Intervenor this is a special interest; it impacts them uniquely.

12. TransCanada's proposed easement terms are also not reasonable or just. For the Intervenor this is a special interest; it impacts them uniquely.

13. TransCanada's proposed method of compensation to Landowners is not commercially reasonable or constitutionally just. This foreign for-profit company seeks to pay Intervenor once for rights it will hold forever while making a daily profit by using Intervenor's property. Intervenor contend they should be paid annually as is typical for energy projects impacting landowners' property such as wind towers and wind projects. For the Intervenor this is a special interest; it impacts them uniquely.

14. TransCanada's plan to take fee simple absolute title to easements is not reasonable or lawful and exceeds the needs and duration of the Keystone XL Pipeline it proposes. KXL has a finite life of approximately fifty (50) years and therefore no interest beyond a fifty (50) year easement should be taken. For the Intervenor this is a special interest; it impacts them uniquely.

15. TransCanada plans to construct KXL near homes and structures of Intervenor without regard for appropriate setbacks for construction. For the Intervenor this is a special interest; it impacts them uniquely.

16. TransCanada has not agreed to remove KXL from the land of Intervenor upon the end of the useful life of KXL or pay for this expense, or insure now that money necessary for this expense now exists. TransCanada instead plans to leave the pipeline in place to decay under Intervenor's land. TransCanada has failed to post an adequate bond

to guarantee payment of such foreseeable expense. For the Intervenors this is a special interest; it impacts them uniquely.

17. The easement terms TransCanada proposes allows it to sell the proposed KXL pipeline and all rights that go with it, including all of those negatively impacting Intervenors' land, to any entity or foreign country or Middle Eastern or other sovereign wealth fund. Intervenors have no say or veto power as to who may own and operate and maintain the proposed project which creates unnecessary uncertainty and risks. For the Intervenors this is a special interest; it impacts them uniquely.

18. The easement terms TransCanada proposes allows it to convert the proposed KXL pipeline and all rights that go with it, to a future use including but not limited to the transportation of water from Intervenors' land out of Nebraska. Intervenors have no say or veto power as to future conversion of use of this proposed project which creates unnecessary uncertainty and risks. For the Intervenors this is a special interest; it impacts them uniquely.

19. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the fair market value of Intervenors' land both along, near, and surrounding the pipeline route, and thus potential decrease the tax rolls of the communities affected by the potential pipeline. For the Intervenors this, is a general interest.

20. TransCanada seeks to hold Intervenors responsible and liable for any innocent mistake made by them or their family or any other person who may enter upon their land and accidentally cause any damage to KXL in any way. Intervenors should only be liable to TransCanada for intentional harm to KXL and not for any mere negligent act. For the Intervenors this is a special interest; it impacts them uniquely.

21. Intervenors are confronted with potentially needing to purchase additional liability insurance to protect themselves against foreseeable damages and negative effects of damage to or operation of KXL. TransCanada is not compensating Intervenors appropriately nor has it agreed to reimburse Intervenors for the increase in insurance

premiums proximately caused by KXL being place upon Intervenors' land. For the Intervenors this is a special interest; it impacts them uniquely.

22. TransCanada has not demonstrated ability to operate Keystone I safely or that it would operate the proposed Keystone XL Pipeline safely, nor has it demonstrated and proven it has necessary human, financial and other resources to keep Intervenors safe from foreseeable releases of the dangerous chemicals it proposes to transport. For the Intervenors these are a special interests; it impacts them uniquely.

23. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the environment of Intervenors' land both along, near, and surrounding the pipeline route. For the Intervenors this is a special interest; it impacts them uniquely.

24. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the natural resources of Intervenors' land both along, near, and surrounding the pipeline route. For the Intervenors this is a special interest; it impacts them uniquely.

25. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the soil of Intervenors' land both along, near, and surrounding the pipeline route. For the Intervenors this is a special interest; it impacts them uniquely.

26. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the groundwater of Intervenors' land both along, near, and surrounding the pipeline route. For the Intervenors this is a special interest; it impacts them uniquely.

27. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the surface water of Intervenors' land both along, near, and surrounding the pipeline route. For the Intervenors this is a special interest; it impacts them uniquely.

28. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the wildlife of Intervenors'

land both along, near, and surrounding the pipeline route. For the Intervenors this is a special interest; it impacts them uniquely.

29. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the plants of Intervenors' land both along, near, and surrounding the pipeline route. For the Intervenors this is a special interest; it impacts them uniquely.

30. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and be an intrusion upon the orderly development of Intervenors land affected by the proposed location of this pipeline and would prevent Intervenors from developing and using their land as they see fit and from maximizing it for the greatest economic benefit. For the Intervenors this is a special interest; it impacts them uniquely.

31. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the fair market value of Intervenors' land both along, near, and surrounding the pipeline route. For the Intervenors this is a special interest; it impacts them uniquely.

32. The 5th Amendment to our Federal Constitution and Article 1 Section 21 of the Nebraska Constitution both prevent taking of Intervenors' private property for "public use" unless just compensation is paid. There can be no argument that the proposed TransCanada interstate pipeline is of any "public use" for any Intervenor. For the Intervenors this, is a special interest; it impacts them uniquely.

33. No Intervenor can "use" the proposed pipeline in any way. There are no on or off-ramps in Nebraska where Intervenors can either on-load or off-load product to or from the proposed pipeline. This is a project is proposed for the purpose of enriching the owners of TransCanada's stock and its executives whose compensation is based upon revenue growth and stock performance. For the Intervenors this, is a special interest; it impacts them uniquely.

34. The Keystone XL Pipeline would not serve the public interest of Intervenors as Nebraskans and is not consistent with the public necessity, convenience,

common carriage needs, or advantages of Intervenor. For the Intervenor this is a special interest; it impacts them uniquely.

35. TransCanada is unsuitable for common carriage in Nebraska.

General Interests

36. All paragraphs above are incorporated here.

37. The 5th Amendment to our Federal Constitution and Article 1 Section 21 of the Nebraska Constitution both prevent taking of private property for “public use” unless just compensation is paid. There can be no argument that the proposed TransCanada interstate pipeline is of any “public use” for Nebraska or its citizens. For the Intervenor this, is a general interest.

38. No Nebraskan can “use” the proposed pipeline in any way. There are no on or off-ramps in Nebraska where our citizens can either on-load or off-load product to or from the proposed pipeline. This project is proposed for the purpose of enriching the owners of TransCanada’s stock and its executives whose compensation is based upon revenue growth and stock performance. For the Intervenor this, is a general interest.

39. TransCanada has lost industry support for its Keystone XL Pipeline. Shippers have abandoned their prior commitments to KXL. Major oil companies have abandoned investments and ventures in tar sands oil mining in Alberta Canada and no longer support the venture for which TransCanada claims the pipeline capacity is needed. For the Intervenor this, is a general interest.

40. The Keystone XL Pipeline would not serve the public interest of Nebraskans or Nebraska and is not consistent with the public necessity, convenience, common carriage needs, or advantages of Nebraskans or Nebraska. For the Intervenor this, is a general interest.

41. The Keystone XL Pipeline will not provide common carriage in Nebraska for Nebraskans. For the Intervenor this, is a general interest.

42. The Keystone XL Pipeline project will be environmentally unsafe, unsound, and deleterious to Nebraska and others. For the Intervenor this, is a general interest.

43. The proposed Keystone XL Pipeline project is not in the best interests of Nebraskans. For the Intervenors this, is a general interest.

44. The proposed pipeline carrier has not demonstrated compliance with all applicable statutes, rules, and regulations and local ordinances. For the Intervenors this, is a general interest.

45. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the environment of Nebraska both along, near, and surrounding the pipeline route. For the Intervenors this, is a general interest.

46. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the natural resources of Nebraska both along, near, and surrounding the pipeline route. For the Intervenors this, is a general interest.

47. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the soil of Nebraska land both along, near, and surrounding the pipeline route. For the Intervenors this, is a general interest.

48. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the groundwater of Nebraska both along, near, and surrounding the pipeline route. For the Intervenors this, is a general interest.

49. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the surface water of Nebraska both along, near, and surrounding the pipeline route. For the Intervenors this, is a general interest.

50. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the wildlife of Nebraska both along, near, and surrounding the pipeline route. For the Intervenors this, is a general interest.

51. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the plants of Nebraska both along, near, and surrounding the pipeline route. For the Intervenors this, is a general interest.

52. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the local and state government of Nebraska. For the Intervenors this, is a general interest.

53. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the fair market value of Intervenors' land both along, near, and surrounding the pipeline route, and thus potential decrease the tax rolls of the communities affected by the potential pipeline. For the Intervenors this, is a general interest.

54. TransCanada's proposed method of compensation to Landowners is not commercially reasonable or constitutionally just. This foreign for-profit company seeks to pay Intervenors once for rights it will hold forever while making a daily profit by using Intervenors' property. Intervenors contend they should be paid annually as is typical for energy projects impacting landowners' property such as wind towers and wind projects. If payment would be equitable in the form of annual payments the State of Nebraska would benefit from increased tax revenue collection. For the Intervenors this is a general interest.

55. Any construction, operation, maintenance, and existence of the proposed pipeline on, under, over, or across Nebraska land creates an unnecessary heightened risk of terrorist attack. For the Intervenors this, is a general interest.

56. The easement terms TransCanada proposes allows it to sell the proposed KXL pipeline and all rights that go with it, including all of those negatively impacting Intervenors' land and by association the land of Nebraska, to any entity or foreign country or Middle Eastern or other sovereign wealth fund. Nebraskans have no say or veto power as to who may own and operate and maintain the proposed project which creates unnecessary uncertainty and risks. For the Intervenors this, is a general interest.

57. The easement terms TransCanada proposes allows it to convert the proposed KXL pipeline and all rights that go with it, to a future use including but not limited to the transportation of water from Nebraska out of Nebraska. Nebraskans have no say or veto power as to future conversion of use of this proposed project which creates unnecessary uncertainty and risks. For the Intervenors this, is a general interest.

58. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon existing energy transmission infrastructure that would be affected by the proposed location of this pipeline within Nebraska. For the Intervenors this, is a general interest.

59. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the welfare of Nebraskans. For the Intervenors this, is a general interest.

60. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the protection of aesthetic values within Nebraska. For the Intervenors this, is a general interest.

61. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the protection of economic interests within Nebraska. For the Intervenors this, is a general interest.

62. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the protection of property rights within Nebraska. For the Intervenors this, is a general interest.

63. TransCanada has not demonstrated ability to operate Keystone I safely or that it would operate the proposed Keystone XL Pipeline safely, nor has it demonstrated and proven it has necessary human, financial and other resources to keep Nebraska and Nebraskans safe from foreseeable releases of the dangerous chemicals it proposes to transport. For the Intervenors these are general interests.

64. The fact that a utility corridor currently exists and is occupied by Applicant that could be feasibly utilized for this proposed project where relationships with landowners are already in place and infrastructure already exists is prima facie evidence

the proposed preferred and other alternative routes are not the most intelligent routes for such a pipeline. For the Intervenor this, is a general interest.

65. Any construction, operation, maintenance, and existence of the proposed pipeline would have detrimental impact and intrusion upon the orderly development of localities affected by the proposed location of this pipeline within Nebraska. For the Intervenor this, is a general interest.

66. Construction, operation, maintenance, and existence of the proposed pipeline would do nothing to assist Nebraska energy needs. For the Intervenor this, is a general interest.

67. Construction, operation, maintenance, and existence of the proposed pipeline is not for the purpose of benefiting Nebraska or Nebraskans in any way but rather, Nebraska is confronted with this proposed pipeline simply because our state is geographically convenient for TransCanada to traverse and such proposed routes are for the financial benefit of TransCanada and not Nebraska. For the Intervenor this, is a general interest.

68. The State of Nebraska has failed to use this opportunity in an economically intelligent way such as requiring the Applicant to pay a significant application fee, requiring a significant siting fee upon approval, if any, of the application, by failing to require a sufficient bond be in force to protect all Nebraskans from foreseeable risks and damages, by failing to require bonds put in force at county levels to assist with the foreseeable damages to roads and other infrastructure that come with major construction projects, and by failing to have a tax method to take the flow of product through pipeline to generate tax revenue for a state with a \$900 million budget shortfall. For the Intervenor these, are general interests.

Jurisdictional Objections

69. Intervenor shall raise issues of law and fact, including questions of statutory validity or invalidity, interpretation, and issues concerning the jurisdiction of the Commission to proceed with the Application. Further jurisdictional objections and

infirmities may become known and Intervenors do not waive raising further such objection should they found to be absent from this Petition.

Constitutional Objections

I. MOPSA's Unconstitutional Limitations Regarding "Safety"

70. The Major Oil Siting Act ("MOPSA"), *Neb Rev Stat 57-1401 to 57-1413*, contains inconsistent declarations and direction for its implementation as to safety issues. 57-1402 states as follows:

- 70.1. The Major Oil Pipeline Siting Act is intended to deal solely with the issue of siting or choosing the location of the route aside and apart from **safety considerations**. (emphasis added)
- 70.2. The Legislature acknowledges and respects the exclusive federal authority over safety issues established by the federal law, the Pipeline Safety Act of 1994, 49 U.S.C. 60101 et seq., and the express preemption provision stated in that act.
- 70.3. The Major Oil Pipeline Siting Act is intended to exercise only the remaining sovereign powers and purposes of Nebraska which are not included in the category of **safety regulation**. (emphasis added)

71. MOPSA simultaneously precludes the PSC from reviewing any "safety consideration" of any kind in its analysis of major oil pipeline route applications but then provides that the PSC under MOPSA may exercise in consideration of major oil pipeline route applications any and all remaining powers which not specifically preempted by the Pipeline Safety Act ("PSA") of 1994, 49 U.S.C. 60101 et seq. The tension between these two inconsistent directives and laws unconstitutionally prevents the PSC from conducting a thorough and lawful analysis of the permit application in question because the PSC is unconstitutionally prevented from considering any safety aspect of any kind. However, such limitation is inconsistent with the finite issues of safety preempted by the PSA.

72. The PSA's preemption relative to "safety" is that exclusively of "safety standards" specifically, "State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." 49 U.S.C.

§ 60104(c). Therefore, the PSC is in fact allowed and must review and consider any and all safety issues and considerations other than specific “safety standards” when evaluating the veracity of a major oil pipeline route application. Therefore, the portion of MOPSA stating – “The Major Oil Pipeline Siting Act is intended to deal solely with the issue of siting or choosing the location of the route aside and apart from safety considerations” is an unconstitutional limitation on the powers of the PSC and until such unconstitutional law is corrected and the powers of the PSC restored, no review or evaluation of the application in question can occur and any such evaluation that does occurs does so unconstitutionally.

73. The PSC is purportedly prohibited from reviewing the risk and impact of oil spills or leaks within, on, under, through, or upon the lands and water of Nebraska in the determination of Application denial, approval, or modification. However, the only aspect of “safety” pre-empted by federal law is that of the safety standards related to aspects of the physical design, installation, inspection, testing, construction, operation, maintenance, and replacement of such a pipeline as noted above. Federal Law does not preempt the PSC from reviewing, on behalf of Nebraska’s citizens and stakeholders, the risks and impacts of potential spills and leaks when determining the most prudent and intelligent location, if any, of such a major oil pipeline across Nebraska.

74. Any law of this state purportedly restricting the PSC in such a manner unconstitutionally limits the power of the very constitutional body that is charged with the responsibility on behalf of the entire State of Nebraska to site major oil pipelines. If the PSC is prohibited from considering the risk and impact of foreseeable and predicable spills and leaks of tar sands crude oil and other dangerous chemicals, who exactly is looking out for Nebraska and the economic viability of our State in this regard?

75. The FAQ section of the PSC’s website devoted to the KXL Pipeline Application at http://www.psc.nebraska.gov/natgas/Oil_Pipeline/FAQs%20on%20MOPSA.pdf states as follows:

6. Does the Commission consider safety concerns regarding risk of any spills or leaks with the pipeline as proposed to be constructed by the pipeline carrier?

Answer: No, the Commission's review does **not** include an evaluation of safety concerns including the potential risks of spills or leaks. MOPSA explicitly prohibits the Commission from evaluating the safety of the pipeline proposed. *Neb. Rev. Stat. § 57-1407(4)*. The safety considerations and other environmental issues are reviewed as part of the federal permitting process. Agencies such as the U.S. Pipeline and Hazardous Materials Safety Administration (PHMSA) are responsible for overseeing the construction, safe operation and maintenance of interstate pipelines.

76. However, pipeline safety statutes allow for States to assume safety authority over gas and hazardous liquid pipelines through Certifications and Agreements with PHMSA under 49 U.S.C. §§ 60105- 60106. The District of Columbia, Puerto Rico, and all States (including Nebraska) except Alaska and Hawaii participate in the pipeline safety program. If States did not participate in the pipeline safety program, these pipeline facilities would be PHMSA's responsibility for inspection and enforcement. To participate in the pipeline safety program States must adopt the minimum pipeline safety regulations; however, States may pass more stringent regulations for pipeline safety through their State Legislatures. PHMSA does not preempt a States consideration of risks and impacts of major oil pipelines when making routing and siting decisions. When analyzing risks and impacts the PSC may also consider aspects related to safety.

77. Regardless of whether the PSA or PHMSA or both preempt certain limited safety standards as to the construction aspects of major oil pipelines, it is constitutionally within the purview and powers of the PSC to consider safety in terms of the risks and impacts of the construction, operation, maintenance, and existence of major oil pipelines, as well as, risks and impacts of spills or leaks within, on, under, though, or upon the lands and water of Nebraska in the determination of Application denial, approval, or modification and such considerations should be undertaken by the PSC in review of Application No: OP-003.

II. MOPSA's Review Standard of "Public Interest" as Opposed to "Public Use" is Unconstitutional

78. PSC approval of any route of a major oil pipeline within or across Nebraska is the trigger for eminent domain rights to vest within a foreign for-profit oil company. Because the PSC approval would trigger rights of eminent domain, the PSC process must consider the application of TransCanada in terms of the Federal and State constitutional requirements and limitations defining when the power of eminent domain may be utilized to take land of private citizens such as Intervenors here.

79. The 5th Amendment to our Federal Constitution and Article 1 Section 21 of the Nebraska Constitution both prevent taking of private property for “public use” unless just compensation is paid. There can be no argument that the proposed TransCanada interstate pipeline is of any “public use” for Intervenors, for Nebraska, or for its citizens.

80. No Intervenor and no Nebraskan can “use” the proposed pipeline in any way. There are no on or off-ramps in Nebraska where Intervenors or Nebraska citizens can either on-load or off-load product to or from the proposed pipeline. This is a project is proposed for the purpose of enriching the owners of TransCanada’s stock and its executives whose compensation is based upon revenue growth and stock performance.

81. While the PSC has the exclusive power to make routing decisions and whether or not TransCanada’s application be granted in whole or in part or denied in whole or in part, the PSC cannot review such application against an unconstitutional standard of “public interest” when “public use” is the determining factor for grant of eminent domain powers.

82. Because neither the Federal or State constitutional requirements for the use of eminent domain against a private landowner – i.e. “public use” exist in reference to the present TransCanada application, any PSC approval that would trigger and vest eminent domain powers with TransCanada over Intervenors would be unconstitutional.

83. MOPSA is unconstitutional and void. It suffers from individual and distinct constitutional infirmities each of which alone, and all of which collectively, require adjudication that MOPSA, and its pertinent provisions as described above or so much thereof as offends any constitutional guarantee, be declared null and void.

Conclusion

84. For all the foregoing reasons, TransCanada's Application No: OP-003 must be denied. The application contains no proposed route that satisfies the elements necessary for PSC approval.

Requests for Relief

85. On the foregoing basis, Intervenors, individually and collectively, respectfully request that:

- 85.1. The PSC issue an Order authorizing them to intervene; and
- 85.2. The PSC issue an Order finding the present MOPSA review standard of "public interest" as the trigger for eminent domain powers to TransCanada is unconstitutional; and
- 85.3. The PSC issue an Order finding the present MOPSA limitations on PSC review and consideration regarding elements of safety issues and impacts and concerns, other than the limited issues preempted by Federal law, is unconstitutional; and
- 85.4. The PSC issue an Order denying TransCanada Application No: OP-003; and
- 85.5. Such other relief as may be deemed necessary, just, and or appropriate be granted to Intervenors, including but not limited to, reimbursement of reasonable costs and reasonable legal fees.

86. In the alternative to the above relief and should the PSC not find unconstitutional infirmities with the PSC process and MOPSA and move forward with evaluating TransCanada's Application No: OP-003, Intervenors respectfully request that:

- 86.1. The PSC issue an Order authorizing them to intervene; and
- 86.2. Intervenors be permitted to participate in this proceeding as parties who have formally intervened with all rights to participate in all aspects of the proceedings, including other pleadings, discovery, hearings, presentation of evidence, and requests for relief; and

- 86.3. Intervenor be granted leave to file any further Amended Petition in Intervention and raise additional issues as necessary; and
- 86.4. TransCanada's Application No: OP-003 be denied; and
- 86.5. Should TransCanada Application No: OP-003 not be completely denied, that an Order issue finding that the only permissible route for KXL in Nebraska be that of completely twinning or paralleling TransCanada's now existing Keystone I pipeline corridor owned and controlled by them; and
- 86.6. Such other relief as may be deemed necessary, just, and or appropriate be granted to Intervenor, including but not limited to, reimbursement of reasonable costs and reasonable legal fees.

April 4, 2017.

Susan Dunavan, *et al.*, Intervenor,

By: _____



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Certificate of Service

Pursuant to 291 *Neb Admin Code* § 015.01(b), a copy of the foregoing is served upon all Intervenor of record to this proceeding or their attorneys of record as follows:

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