

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION ) APPLICATION NO. OP-0003  
OF TRANSCANADA KEYSTONE )  
PIPELINE, LP FOR ROUTE APPROVAL OF ) **MOTION IN LIMINE**  
THE KEYSTONE XL PIPELINE PROJECT )  
PURSUANT TO THE MAJOR OIL )  
PIPELINE SITING ACT )  
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\_\_\_\_\_ )

TransCanada Keystone Pipeline, LP (“Keystone”), requests an order from the Hearing Officer that prohibits cross-examination of witnesses by parties with aligned interests. In support of this motion, Keystone states as follows:

1. The Case Management Plan in this matter makes it clear that parties “must submit written pre-filed testimony of any witness they intend to testify at the hearing....” The CMP also instructs that “[a]ll witnesses that pre-file testimony must be available at the hearing for cross-examination by other Parties, unless cross-examination is waived by all other Parties to the proceeding.”

2. In this case, while there are a number of parties, the interests of the parties are clearly divided. There are proponents of the Preferred Route, which include Keystone and the intervenors with socioeconomic interests. On the other hand, there are opponents of the Preferred Route (or the pipeline in its totality), which includes the remaining formal intervenors. The Order on Formal Intervention Petitions set forth the scope of each group’s intervention, and for example, the Natural Resources Petitioner and the Cultural/Social Petitioners have different interests with a specified number of witnesses with testimony limited to those topics.

3. MOPSA and the CMP set forth a logical and even-handed approach to the submission of evidence. Keystone, the Applicant, submitted evidence when it filed its application. The remaining intervenors then submitted their pre-filed testimony in accordance

with the CMP and the scope of their intervention as described in the Order on Formal Intervention Petitions.

4. The Commission has scheduled the hearing in this matter for five (5) days, and it has reinforced its desire to adhere to that schedule. (*See, e.g.*, Commission’s Order Setting Fourth Public Meeting, ¶ 2 (June 29, 2017); Commission’s CMP ¶ 8 (April 5, 2017)) The Commission’s adherence to its schedule is necessary for the Commission to have sufficient time to comply with the statutory deadline for rendering a decision, which is set forth in MOPSA. Neb. Rev. Stat. §57-1408(1). This is amplified by the fact that the United States Department of State has issued a Presidential Permit for the construction of the Keystone XL pipeline, which mandates that the Commission must issue a decision no later than November 23, 2017. Neb. Rev. Stat. §57-1408(2).

5. The point of this motion in limine is to prohibit parties with aligned interests from eliciting evidence via “cross-examination,” which should have been submitted in the pre-filed direct testimony. It also prevents cross examination of witnesses, who were submitted by a party with a limited scope of intervention, on issues beyond that intervention. For example, a witness submitted by the Natural Resources Petitioner, should not be cross examined on economics or any matters beyond the scope of Natural Resources Petitioners’ intervention.

6. Allowing this type of “cross-examination” runs counter to (a) the Order on Intervention, which limited the scope of certain direct testimony to specific areas of intervention, and (b) the CMP, which required all parties to pre-file their testimony. (*See*, Order on Intervention; Commission’s CMP ¶ 23, April 5, 2017; Commission’s Order, *inter alia*, Modifying the CMP, page 2, May 10, 2107.) On the other hand, eliminating this type of “cross-examination” reduces the risk of unfair surprise to the opposing party, which is a critical benefit

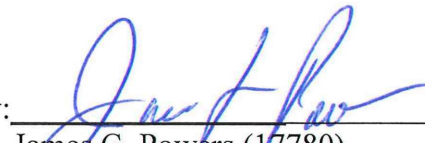
of limiting witnesses to their pre-filed testimony.

WHEREFORE, Keystone moves the Commission to prohibit cross-examination of witnesses by parties with interests aligned to the party who originally offered the witness.

Dated this 24th day of July, 2017.

TRANSCANADA KEYSTONE PIPELINE,  
LP

By: \_\_\_\_\_



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## CERTIFICATE OF SERVICE

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