

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)
)
)
_____)

TransCanada Keystone Pipeline, LP (“Keystone”), moves in limine for an order excluding all intervenors from referring to or mentioning during argument or from eliciting any testimony or evidence from any witness regarding the following types of evidence or topics:

1. **Any exhibit not produced during the course of discovery and identified on the parties’ exhibit lists filed in accordance with the Case Management Plan (“CMP”)**(See, Order Entering CMP, Appendix A; and, Order Granting Intervenors’ Motion For Extension of Time to Submit Evidence, dated May 24, 2017). Intervenors sought, and were granted, an extension of time until June 7 to submit testimony, exhibits, workpapers, and witness lists. Any attempt to use evidence - whether undisclosed or disclosed following that date - is improper and violates the CMP and prejudices the Applicant.

2. **Any testimony of any witness on direct examination which was not contained in that witness’ admissible pre-filed testimony.** The CMP (¶23) specifically requires pre-filed testimony for any witness intended to testify at the hearing. No party should be able to circumvent this requirement by providing testimony beyond the pre-filed testimony already filed.

3. **Any testimony by any person who has not submitted admissible pre-filed testimony in accordance with the CMP in this matter.** Again, the CMP (¶ 23) is unequivocal in this requirement. In order to testify, the witnesses must have pre-filed their testimony. And, if the pre-filed testimony has been ruled inadmissible in its entirety, then the witness should not

take the stand.

4. **Any cross examination of any witness or argument on topics relating to pipeline safety including but not limited to the risk or impact of pipeline leaks and spills, terrorist attacks, depth of cover, the chemical characteristics of crude oil, and spills or leaks from the Keystone Mainline.** The Hearing Officer has already determined that this topic is not even sufficiently relevant for discovery purposes because the topic is not reasonably calculated to lead to the discovery of admissible evidence. It is, therefore, not relevant or appropriate for cross examination or argument. (*See*, Commission's Order, page 4-5, dated June 14, 2017; Neb. Rev. Stat. § 57-1407(4))

5. **Any cross examination of any witness or argument on topics relating to the identity or nationality of the individuals or entities which own Keystone.** The Hearing Officer has already determined that this topic is not even sufficiently relevant for discovery purposes because the topic is not reasonably calculated to lead to the discovery of admissible evidence. It is, therefore, not relevant or appropriate for cross examination or argument. (*See*, Commission's Order, page 4-5, dated June 14, 2017; Neb. Rev. Stat. § 57-1407(4))

6. **Any cross examination of any witness or argument on topics relating to Keystone XL's necessity or commercial viability, including but not limited to Keystone's customers or their respective contract terms, the finite nature of the Canadian oil sands, or the energy needs of Nebraska.** The Hearing Officer has already determined that this topic is not even sufficiently relevant for discovery purposes because the topic is not reasonably calculated to lead to the discovery of admissible evidence. It is, therefore, not relevant or appropriate for cross examination or argument. (*See*, Commission's Order, page 5-7, dated June 14, 2017)

7. **Any cross examination of any witness or argument on topics relating to**

easement terms (including appraised values of property, compensation via lease or one-time payments), prior or future easement negotiations, the alleged treatment of land owners by land agents, or eminent domain (in the past or future). The Hearing Officer has already determined that this topic is not even sufficiently relevant for discovery purposes because the topic is not reasonably calculated to lead to the discovery of admissible evidence. It is, therefore, not relevant or appropriate for cross examination or argument. (*See*, Commission’s Order, page 6-7, dated June 14, 2017)

8. **Any cross examination of any witness or argument on topics relating to any person associated with Keystone that participated in the legislative process when the Siting Act was developed.** The Hearing Officer has already determined that this topic is not even sufficiently relevant for discovery purposes because the topic is not reasonably calculated to lead to the discovery of admissible evidence. It is, therefore, not relevant or appropriate for cross examination or argument. (*See*, Commission’s Order, page 5, dated June 14, 2017.)

9. **Any use of exhibits marked “confidential” without prior approval of and notice to the Hearing Officer so that the Hearing Room may be cleared in advance of confidential business information being publicly disclosed.**


CONCLUSION

The matters sought to be excluded are matters which, if allowed to be introduced into the proceeding, would run afoul of the existing orders in this case. The applicant and the intervenors are all aware of the Commission’s “narrow authority” to review the proposed route. (Order on Formal Intervention ¶ 2; *see also*, Neb. Rev. Stat. § 57-1407(4)). All parties have had ample notice of the deadlines in this case, and the Intervenors sought and obtained extensions of those deadlines. There is no reason or basis to change the scope of this hearing, and all parties should be specifically directed to comply with the orders in this case. Keystone, therefore, respectfully

requests an order in limine excluding the above-listed items or topics from being introduced or mentioned, in any way, at the hearing.

Dated this 24th day of July, 2017.

TRANSCANADA KEYSTONE PIPELINE,
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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2017, that a copy of the foregoing was served by email to the individuals and entities listed below:

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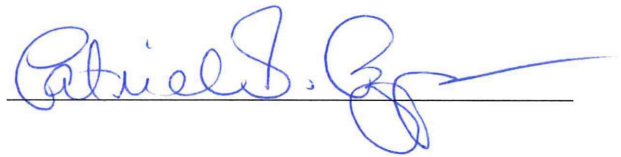
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A handwritten signature in blue ink, appearing to read "Gabriel S. [unclear]", written over a horizontal line.