

**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,**

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

**Domina Group  
Intervenors’  
Motion to  
Strike and Disallow  
Late  
Petitions for Intervention**

**Cheri G. Blocher and Michael J. Blocher,  
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,**

**Domina Group Intervenors' Motion to Strike and Disallow  
Late Petitions for Intervention**

1. The Nebraska Landowner Intervenors in the "Domina Group" respectfully request that the Hearing Officer and Public Service Commission issue an order striking, disallowing, in refusing to permit intervention by any party purporting to request or seek intervention at any time after the March 22, 2017 deadline established by the PSC in its Order issued in February 2017. The Domina Group requests that this order striking in refusing to permit intervention applied to all intervenors who have made filings and whose interventions were not allowed by express order of the PSC prior to at least 30 days before the close of discovery.

2. In the alternative, the Domina Group requests that the PSC vacate the date for the hearing scheduled August 7-11, 2017 and establish a new discovery schedule and hearing date after discovery to allow investigation of the claims of new Intervenors.

2.1. If a new schedule is established for discovery, the Domina Group requests that the amount of time permitted for this purpose be not less than 120 days from the date of an order ruling on this Motion.

2.2. Proceeding without discovery and with the addition of new parties would deprive the Domina Group of due process of law and an opportunity for a fair hearing following reasonable notice and reasonable opportunity to intervene and participate as an informant group of citizens directly affected by the Application.

3. This is an action in which a hearing is required because objections have been filed to the Application of TransCanada as a pipeline carrier. *Neb Rev Stat* § 57-1407. Statutory deadlines for action may be extended by the PSC for just cause. *Neb Rev Stat* § 57-1408(2).

4. No late Intervenor has made a filing which establishes grounds requiring that the proposed intervenor be a party to this contested case because the proposed Intervenor is a necessary and indispensable party. No late Intervenor has established standing to intervene by demonstrating that the late Intervenor is aggrieved party.

*Metropolitan Util Dist v. Aquila, Inc.*, 271 Neb 454, 712 N.W.2d 280 (2006) (PSC acted as neutral fact-finding body and was not a necessary party to an appeal. Indirect authority only.) See also, *Metropolitan Util Dist v. Aquila, Inc.*, 270 Neb 494 (2005); *Shaffer v Nebraska DHHS*, 289 Neb 740, 857 N.W.2d 313 (2014) (Health-care professional licensure proceeding. Indirect authority on point.)

5. The late Intervenors waived their rights to intervene by failing to do so on a timely basis. Failure to seasonably protest or intervene is a waiver of the right to do so. *Application of Moore's Transfer, Inc. of Norfolk*, 198 Neb 491, 253 NW2d 313 (1977).

6. Late Intervention should also be denied for other good and sufficient legal reasons. To permit late intervention without permitting the legitimate Intervenors to have an opportunity to conduct discovery while pretrial discovery is not always a due process element absolutely imperative to fair hearing, due process does require notice reasonably calculated to inform the parties, and reasonable time and opportunity to identify present opposing evidence. *McPherrin v. Conrad*, 248 Neb 561, 537 NW2d 498 (1995); *Geringer v. City of Omaha*, 237 Neb 928, 468 NW2d 372 (1991).

July 24, 2017.

Susan Dunavan, et al., Intervenors,

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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