

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) Application No. OP-0003  
of TransCanada Keystone Pipeline, )  
L.P., Calgary, Alberta, seeking ) ORDER ENTERING CASE  
approval for Route Approval of the ) MANAGEMENT PLAN,  
Keystone XL Pipeline Project ) SCHEDULING TELEPHONIC  
Pursuant to the Major Oil Pipeline ) PLANNING CONFERENCE, AND  
Siting Act. ) NOTICE OF HEARING  
)  
) Entered: April 5, 2017

BY THE HEARING OFFICER:

1. On February 16, 2017, TransCanada Keystone Pipeline, L.P., of Calgary, Alberta, ("TransCanada" or "Applicant") filed an Application with the Nebraska Public Service Commission ("Commission") seeking approval of a route for the Keystone XL Pipeline Project pursuant to the Major Oil Pipeline Siting Act, *Neb. Rev. Stat. §§ 57-1401 - 57-1413* ("Siting Act").
2. The Commission is given 210 days, or seven (7) months, to enter a decision on an application to approve a route of a major oil pipeline under the Siting Act. Two hundred and ten (210) days from the date the application in the above-captioned docket was filed is September 14, 2017. There is a provision in the Siting Act to extend that time to up to a year for just cause. However, the Siting Act requires that upon the issuance of a Presidential Permit authorizing the construction of the major oil pipeline seeking route approval in Nebraska, the Commission is not allowed any extension beyond eight (8) months of the date the permit issued.<sup>1</sup> The Presidential Permit for the Keystone XL Pipeline was issued on March 23, 2017, making the absolute latest date for the Commission to enter a final order, November 23, 2017.

**Interventions**

3. Petitions for Intervention were received and a Hearing Officer Order entered on March 31, 2017, regarding each petition. In the above-captioned proceeding, petitions for formal intervention were due to the Commission by the end of business on March 22, 2017.<sup>2</sup> Due to clerical error, one petition for informal intervention was received, but was not included in the March 31, 2017 Order. Cindy Myers provided documentation that she had

<sup>1</sup> *Neb. Rev. Stat. § 57-1408(2)(2016 Cum. Supp.)*.

<sup>2</sup> 291 NAC 1 § 015.01B (May 4, 1992).

requested informal intervention status prior to March 22, 2017. I find Ms. Myers petition for Informal Intervention should be granted consistent with the terms contained within my March 31, 2017 Order.

#### Case Management Plan

4. This order serves to establish the Case Management Plan ("CMP") and provide a timeline and procedural guidelines for the above-captioned proceeding.
5. A telephonic planning conference shall be held in the above-captioned docket on **April 10, 2017, from 11:00 a.m. to Noon CDT** via telephone bridge. The bridge may be accessed at **(888) 820-1398, code 4207969#**. The conference will be limited to addressing the CMP and will not include any advocacy by any party.
6. The Hearing Officer will issue Hearing Officer Orders following any conferences with counsel and at such times as he deems appropriate. This CMP, together with any/all Hearing Officer Orders, will apply to and bind all parties, will control the course of the proceedings, and may be modified only by order of the Hearing Officer. Failure to comply with the CMP or Hearing Officer Orders may result in sanctions that include a Party being dismissed from this proceeding.

#### Filings

7. Unless otherwise specified herein, all pleadings, briefs, motions or other filings shall be filed on unglazed, white, 8½- by 11-inch paper of at least 16 pound weight and shall be bound by a single paper clip or binder clip in the upper left-hand corner only. The print on such filings shall be black in color, shall be on only one side of each sheet, and may be mechanically reproduced on uncoated white paper by any method which provides a clear and distinct image of the type. Type may be underlined, *italicized*, or **boldfaced** for emphasis. Quoted material of 50 words or more shall be indented five spaces from the left margin. A page shall contain not more than 25 lines, and margins shall be at least 1 inch at the sides, top, and bottom. The use of programs which condense the space between letters or words is not permitted. Filings shall be in not less than 12-point Courier, Arial or Helvetica, or Times or Times New Roman font, double spaced, with not less than 12 points of

leading. All electronic filings shall be in pdf form and shall conform with the style and format specified above.

### Hearing and Pre-hearing Conference

8. A Public Hearing in Docket No. OP-0003 will be held at the Lincoln Marriott Cornhusker Hotel, 333 South 13<sup>th</sup> Street, Lincoln, Nebraska beginning on **Monday, August 7, 2017, at 9:00 a.m. CDT and continuing through Friday, August 11, 2017.** The hearing on each day shall commence at 9:00 a.m. CDT.
9. A pre-hearing conference to make final arrangements for the hearing shall be held on **Monday, July 31, 2017,** at a place and time to be determined.

### Public Meetings

10. Pursuant to *Neb. Rev. Stat. § 57-1407(2)*, the Commission may hold public meetings for the purpose of receiving input from the public. The dates, times, and locations, of any public meetings have yet to be determined and will be announced closer to the date of the meeting. Public input received at the public meetings shall be limited as directed by the Siting Act. Any comments received will be made a part of the permanent record of this proceeding.

### Service

11. Unless otherwise specified in this CMP, all pleadings, motions, briefs and other papers filed with the Commission in this matter, shall be done in accordance with the Commission's rules of procedure, 291 NAC Chapter 1. All Parties and Informal Intervenors must receive a copy of any filings. A statement by the filing Party certifying that a copy of the filing was served on all Parties and Informal Intervenors in the docket must be included with any filing. Parties may meet filing deadlines outlined herein by sending an electronic copy of the filing via electronic mail to [psc.kxlfilings@nebraska.gov](mailto:psc.kxlfilings@nebraska.gov) so long as all parties are served via electronic mail contemporaneously with the email filing and a hard copy is received by the Commission within three (3) days of the email filing.

12. A service list will be available on the Commission's website. Parties are responsible for maintaining an accurate service list.

### **Discovery**

13. Parties should reference Nebraska Discovery Rules for general guidance as to the conduct of discovery. Should the CMP conflict with any provision of the Nebraska Discovery Rules, the CMP controls. Parties should make good faith efforts to resolve any discovery disputes.
14. All discovery responses are due within ten (10) business days of service, unless otherwise agreed to by the Parties. Any discovery request served after 3:00 p.m. local time shall be considered filed the following day for purposes of calculating response time.
15. Each party may serve not more than fifty (50) interrogatories, including discrete subparts, on any other party. Parties are expected to be reasonable in their interpretation of what may constitute a subpart for purposes of discovery limits.
16. Each party may serve not more than twenty (20) requests for production of documents/inspections on the other party.
17. Each party may serve not more than twenty (20) requests for admission on the other party.
18. The parties may schedule depositions to begin on or after April 5, 2017. All depositions shall be completed by July 7, 2017.

### **Discovery Disputes**

19. Written. In the event that timely responses to written interrogatories or document requests are not forthcoming, the proponent of the discovery should promptly file a motion to compel, which shall set forth the date the discovery was served, the due date for the responses, together with an averment of the default, limited to 300 words. Upon receipt of such a motion, the Hearing Officer, without waiting for a response, may enter an order directing the discovery to be provided by a certain date. Failure to so comply with such order may result in sanctions or other actions against the Party

including dismissal of the non-compliant Party from the proceeding.

20. In the event of a discovery dispute (in contrast to a default) arising by reason of the respondent's objections or concerning the adequacy of responses, the Parties shall promptly and in good faith exert every reasonable effort to resolve their differences. Where objections are made, the objecting Party shall provide all other discovery that such Party does not consider to be objectionable. As a last resort, any unresolved dispute shall be submitted to the Hearing Officer as follows:
  - a. The Party seeking resolution of a dispute will send an email to the Commission Legal Counsel, attaching a copy of the pertinent discovery request and response or objection. The email may also contain a short summary statement of each Party's position, drafted or approved by that Party, and not to exceed 75 words each. The Hearing Officer will then schedule a telephone conference with counsel. The Hearing Officer will issue a written order resolving the dispute after the telephone conference.
21. Deposition. Except as expressly provided in paragraph 22 below, discovery disputes that arise during a deposition shall be resolved by submission to the Hearing Officer according to the same procedure set forth in paragraph 20.
22. When a dispute arises at a deposition and a Party believes an immediate resolution is necessary to avoid the re-scheduling of the deposition or significant disruption of the discovery schedule, the Hearing Officer shall be telephoned.
  - a. If the Hearing Officer is available and a telephone conference is held, the ruling of the Hearing Officer shall be recorded in the deposition. The deposition shall then proceed according to such ruling or direction.
  - b. If the Hearing Officer is not available by telephone during the deposition, the dispute shall be noted for the record and the deposition shall proceed with respect to all other issues. Thereafter the dispute shall be presented to the Hearing Officer as provided for in paragraph 20(a).

**Exhibits and Witnesses**

23. Parties must submit written pre-filed testimony of any witness they intend to testify at the hearing, pursuant to the deadlines contained in Appendix A attached to this order. No witness will be allowed to testify without filing written pre-filed testimony. All 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.
24. Parties shall prepare and file with the Hearing Officer, an exhibit list with all exhibits appropriately marked and numbered, on July 31, 2017. This shall include all Party demonstrative exhibits or other demonstrative tools and all documents to which a Party will seek administrative notice.
25. All documents produced by the Parties shall bear a distinctive number as assigned by the Hearing Officer. The Parties will ensure that all documents produced by non-parties are appropriately marked and numbered.
26. Privilege Log. If a Party withholds any written information (in hard copy or electronic form) on the ground of privilege, it shall provide a privilege log to opposing counsel. These privilege logs shall set forth the following information: (a) author's name, place of employment and job title; (b) addressee's name, place of employment and job title; (c) general subject matter of the document; (d) location of the document; and (e) nature of the privilege claimed. Thereafter, any privilege log shall be supplemented to include any additional documents subject to privilege.

**Deadlines**

27. Deadlines for various events are set forth in Appendix A, attached to this Order.

**Stipulations and Settlement**

28. Parties are encouraged to cooperate and engage in negotiations to enter into stipulations to shorten the duration of the hearing. Parties are further encouraged to cooperate and engage in negotiations to reach settlement. Engaging in negotiations does not relieve

the Parties of their obligations to meet all deadlines set forth in this CMP.

**Hearing Accommodations**

29. If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Commission at (402) 471-0213 (TDD) or the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven days is needed when requesting an interpreter.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Case Management Plan and deadlines established in this order and attached hereto in Appendix A are hereby adopted.

IT IS FURTHER ORDERED that a telephonic planning conference shall be held in the above-captioned docket on **April 10, 2017, from 11:00 a.m. to Noon CDT** via telephone bridge as limited above. The bridge may be accessed at **(888) 820-1398, code 4207969#**.

IT IS FURTHER ORDERED that hearing on this matter will commence on **Monday, August 7, 2017, at 9:00 a.m. CDT and continuing through Friday, August 11, 2017**, at the Lincoln Marriott Cornhusker Hotel, 333 South 13<sup>th</sup> Street, Lincoln, Nebraska.

IT IS FURTHER ORDERED that the Petition for Informal Intervention of Cindy Myers, be and is hereby, granted in accordance with the terms of my March 31, 2017 Order.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 5<sup>th</sup> day of April, 2017.

BY:

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Tim Schram  
HEARING OFFICER

## APPENDIX A

**PROCEDURAL SCHEDULE**

|                         |   |
|-------------------------|---|
| February 16, 2017       | Application Filed   |
| March 22                | Intervention Deadline   |
| April 5 -<br>May 5      | Discovery Requests by Formal Intervenors filed on Applicant   |
| May 15                  | Deadline for Applicant to file Discovery Responses on Formal Intervenors  |
| May 19                  | Deadline for Formal Intervenors to file Motions to Compel Responses by Applicant                                      |
| May 26                  | Testimony, exhibits, workpapers, and witness lists of Formal Intervenors Filed  |
| May 15 -<br>June 16     | Discovery Requests by Applicant filed on Formal Intervenors   |
| June 26                 | Deadline for Formal Intervenors to file Discovery Responses on Formal Intervenors                                     |
| July 3                  | Deadline for Applicant to file Motions to Compel Responses by Formal Intervenors                                      |
| July 7                  | Deadline to conduct Depositions   |
| July 14                 | Rebuttal Testimony and exhibits of Applicant filed  |
| July 24                 | Deadline to filed written objections/Pre-hearing Motions  |
| July 31                 | Pre-hearing Conference, Oral Arguments on Objections/Motions, Filing of Consolidated Hearing Exhibit List/Settlements |
| August 7 -<br>August 11 | Hearing beginning at 9 a.m. on August 7 and continuing through Friday, August 11                                      |
| August 18               | Deadline for receiving expedited Transcript   |
| August 28               | Post-Hearing Briefs Due   |
| September 4             | Post-Hearing Reply Briefs Due   |