

Nebraska Public Service Commission

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JEFFREY L. PURSLEY

April 13, 2017

CERTIFICATION

To Whom It May Concern:

I, Jeffrey L. Pursley, Executive Director of the Nebraska Public Service Commission, hereby certify that the enclosed is a true and correct copy of the original order made and entered in the proceeding docketed OP-0003 on the 13th day of April 2017. The original order is filed and recorded in the official records of the Commission.

Please direct any questions concerning this order to Nichole Mulcahy, Natural Gas Deputy Director, at 402-471-3101.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the Nebraska Public Service Commission, Lincoln, Nebraska, this 13th day of April 2017.

Sincerely,

A handwritten signature in cursive script that reads "Jeffrey L. Pursley".

Jeffrey L. Pursley
Executive Director



JLP:rp

Enclosure

cc: Service Lists: U.S. Mail and Email

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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) MOTIONS FOR
approval for Route Approval of the) RECONSIDERATION DENIED
Keystone XL Pipeline Project)
Pursuant to the Major Oil Pipeline)
Siting Act.) Entered: April 13, 2017

BY THE HEARING OFFICER:

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").

Pursuant to Commission rules, petitions for formal intervention were due to the Commission by March 22, 2017.¹ Petitions for Intervention were received from various parties on or before that date.

TransCanada filed objections to certain of the Petitions for Intervention, and urged the Hearing Officer to reject all of the petitions of non-landowners, including those of the Parties filing the motions for reconsideration. The Hearing Officer did not find TransCanada's arguments persuasive and on March 31, 2017, issued an Order, over the objections of TransCanada, granting intervention to the vast majority of those who had made timely application ("Intervention Order").

On April 5, 2017, the Hearing Officer entered an order adopting a case management plan, scheduling a planning conference for April 10, 2017, and giving notice of the public hearing in the above-captioned docket.

Shortly before the time scheduled for commencement of the planning conference on April 10, 2017, Motions to Continue the Planning Conference and for Reconsideration of the Intervention Order were received from Bold Alliance and The Sierra Club, Nebraska Chapter.

The Hearing Officer denied the request of Bold Alliance and the Sierra Club, Nebraska Chapter to delay the planning conference, which proceeded as scheduled. The Hearing Officer took the remaining portion of the motions, which requested reconsideration of the Intervention Order, under advisement.

¹ 291 NAC 1 § 015.01B (May 4, 1992).

On April 11, 2017, Motions to Reconsider the Intervention Order were filed with the Commission by the Yankton Sioux Tribe and Kimberly Craven. On April 12, 2017, The Ponca Tribe of Nebraska filed a Motion to Reconsider Order on Formal Intervention Petitions and Support for Other Parties' Motions to Reconsider.

The Commission is an agency² as defined by the Administrative Procedure Act³("APA") and is subject to the provisions of the APA. Both the APA and Commission rules give clear authority to a hearing officer to take action in the interest of the orderly and prompt conduct of a proceeding. Parties are once again reminded of the aggressive timeline imposed by the Siting Act on this proceeding.⁴ The APA specifically provides:

[T]he hearing officer . . . may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.⁵

Neb. Rev. Stat. § 75-110 gives the Commission authority to promulgate rules and regulations, however, any agency rules and regulations must be based upon an underlying authorizing statute or constitutional provision. In the instance of the Commission's Rules of Procedure, the authorizing statute is the APA.⁶

Section 75-110 also gives the Commission authority to take action affecting persons under its jurisdiction, "pursuant to a

² *Neb. Rev. Stat.* § 84-901(1) (Reissue of 2014).

³ *Neb. Rev. Stat.* § 84-901 - § 84-920 (Reissue of 2014).

⁴ *Neb. Rev. Stat.* § 57-1408(2) (2016 Cum. Supp.).

⁵ *Neb. Rev. Stat.* § 84-912.02(3) (Reissue of 2014).

⁶ *Neb. Rev. Stat.* § 84-909 (Reissue of 2014).

rule, regulation or statute.”⁷ The action taken by the Hearing Officer in the Intervention Order was taken pursuant to statutory authority under the APA, and is not inconsistent or conflicting with Commission Rules of Procedure. Additionally, the Hearing Officer has the discretion and authority to modify any grant of intervention at any time during a proceeding.⁸

Based on the foregoing, Hearing Officer finds that the Motions for Reconsideration should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Motions for Reconsideration filed by Bold Alliance, The Sierra Club, Nebraska Chapter, the Yankton Sioux Tribe, Kimberly Craven and The Ponca Tribe of Nebraska, be, and are hereby, denied.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 13th day of April, 2017.

BY:



Tim Schram
HEARING OFFICER

⁷ Neb. Rev. Stat. § 75-110 (Reissue of 2009).

⁸ Neb. Rev. Stat. § 84-912.02(4) (Reissue of 2014).

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