

Nebraska Public Service Commission

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EXECUTIVE DIRECTOR:
MICHAEL G. HYBL

July 26, 2017

CERTIFICATION

To Whom It May Concern:

I, Michael G. Hybl, 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 26th day of July 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 26th day of July 2017.

Sincerely,

A handwritten signature in cursive script that reads "Michael G. Hybl".

Michael G. Hybl
Executive Director

MGH:da

Enclosure

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



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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) ORDER GRANTING MOTIONS FOR
approval for Route Approval of the) INFORMAL INTERVENTION AND
Keystone XL Pipeline Project) DENYING MOTION TO STRIKE
Pursuant to the Major Oil Pipeline)
Siting Act.) Entered: July 26, 2017

BY THE HEARING OFFICER:

On February 16, 2017, TransCanada Keystone Pipeline, L.P., of Calgary, Alberta, 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").

On March 31 and April 5, 2017, the Hearing Officer entered orders granting petitions for formal intervention and two (2) petitions seeking informal intervention.

Commission rules require that petitions for informal intervention be filed no later than fifteen (15) days before the hearing in the proceeding commences.¹ In the above-captioned proceeding, petitions for informal intervention were due to the Commission by the close of business on July 24, 2017.

Petitions for informal intervention were timely received from the following groups: the Consumer Energy Alliance ("CEA"), the Port to Plains Alliance ("Port to Plains"), the South Dakota Oil & Gas Association ("SDOGA"), the Association of Oil Pipe Lines ("AOPL"), the Nebraska Chamber of Commerce & Industry ("State Chamber"), the American Petroleum Institute ("API"), and the National Association of Manufacturers ("NAM"). A petition of informal intervention was also timely filed by Ms. Lisa May. Ms. May initially requested formal intervention, but upon conversation with Commission legal staff indicated her intention was for informal not formal and filed a statement for informal intervention.

On July 24, 2017, The Domina Law Group PC LLO ("Domina Group"), who represents 95 landowner formal intervenors, filed a Motion to Strike and Disallow Late Petitions for Intervention, seeking to strike the petitions for informal intervention. The Motion refers to the March 22, 2017 deadline for formal intervention petitions and requests the informal intervention petitions be struck or in the alternative the evidentiary

¹ 291 NAC 1 § 015.02A (May 4, 1992).

hearing be continued to allow the Domina Group an opportunity to conduct discovery.

Pursuant to Commission rules, informal intervenors do not become parties to the proceeding, are not subject to discovery, and are not permitted to cross examine other witnesses. As informal intervenors are not parties, they are also not eligible to appeal the final decision of the Commission.²

Informal intervenors are allowed under the rules to present at the hearing the pre-filed statement of a single witness together with exhibits of that witness. Such pre-filed statement and exhibits must be attached to the petition for informal intervention and filed on all parties in the proceeding.³

If a petition for informal intervention does not include a pre-filed statement of a witness, informal intervenors will be added to the official service list of the proceeding and will be permitted to file post-hearing briefs consistent with the deadlines and requirements ordered by the Hearing Officer.

I find the Domina Group's Motion to Strike should be denied as the informal intervenor petitioners were not late. Further, the request to continue the evidentiary hearing to conduct discovery is denied as informal intervenors are not subject to discovery in any event. Finally, any pre-filed statement by an informal intervenor offered at the hearing will be subject to the same rules of evidence and possible objection by any party to the proceeding.

I find the petitions for informal intervention shall be granted. API, NAM, and Ms. May, which included with their petitions the pre-filed statement of one individual, will be given opportunity to offer the pre-filed statement into the record at the evidentiary hearing. CEA, Port to Plains, SDOGA, AOPL, and the State Chamber will have no direct participation the evidentiary hearing. All the informal intervenor contact information shall be added to the official service list for the above-captioned proceeding and all will be permitted to file briefs in accordance with order of the hearing officer.

Finally, I find that as the deadline to file pre-filed statements with informal intervention petitions was the same as the deadline to file pre-hearing motions, parties shall have until the close of business, **August 2, 2017**, to file any objections to the pre-filed statements of any new informal intervenor added pursuant to this order.

² 291 NAC 1 § 015.02C (May 4, 1992).

³ 291 NAC 1 § 015.02A & C (May 4, 1992).

O R D E R

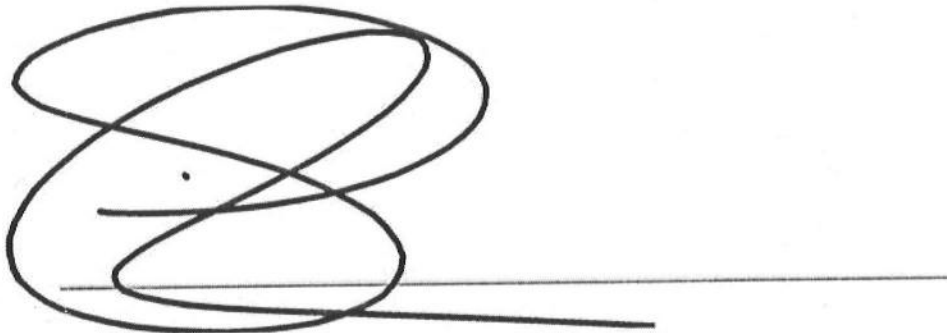
IT IS THEREFORE ORDERED by the Hearing Officer that the Petitions for Informal Intervention are hereby granted.

IT IS FURTHER ORDERED that the Domina Groups' Motion to Strike and Disallow Late Petitions for Intervention is hereby denied.

IT IS FURTHER ORDERED parties shall have until the close of business, **August 2, 2017**, to file any objections to the pre-filed statements of any new informal intervenor added pursuant to this order.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 26th day of July, 2017.

BY:

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Judge Karen B. Flowers (ret.)
HEARING OFFICER

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
