

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. OP-003
of TransCanada Keystone Pipeline,)	Rebuttal to In Limine Motion
L.P., Calgary, Alberta seeking)	Wrexie Lainson Bardaglio
approval for Route Approval of the)	
Keystone XL Pipeline Project)	Entered: July 30, 2017
Pursuant to the Major Oil Pipeline)	
Siting Act.)	

TransCanada objects to several portions of my pre-filed testimony. I do not object to TransCanada's motion to strike the stated portions with one exception, which is the following: "...regarding the process by which oil is mined in Canada. Such operations are not relevant to this Commission's decision regarding the route of the Keystone XL pipeline through Nebraska."

In defending the inclusion of the study of the Athabasca River which TransCanada wants to strike, because they say it is not relevant in terms of a route through Nebraska, I argue it is relevant for the following reasons:

Virtually the entire state of Nebraska sits atop the Ogallala Aquifer.

If there isn't sufficient water in Alberta the question is fair: Where will the water come from to make it possible for TransCanada to even have a route thru Nebraska? This is a reasonable consideration for the Public Service Commission because TransCanada has to have to water to process the product to send it

through Nebraska.

From the Public Service Commission website:

Today the Commission regulates telecommunications carriers, natural gas jurisdictional utilities, major oil pipelines, railroad safety, household goods movers and passenger carriers, grain warehouses and dealers, construction of manufactured and modular homes and recreational vehicles, high voltage electric transmission lines, and **private water company rates**. (*Emphasis added*)

<http://www.psc.nebraska.gov/admin/history.html>

In other words, one of the responsibilities of the Commission is to oversee the rates charged to the private water companies in Nebraska. If the overriding consideration is whether or not the Keystone XL Pipeline is in the best interest of the State of Nebraska, any evidence that a shortage of water elsewhere could possibly have a negative impact on the rates charged to private water companies in Nebraska should be assessed.

TransCanada has real property in Nebraska and it has easements. I do not know the specific rights that accompany TransCanada's real property in Nebraska. I do know that generally-speaking, real property rights extend to the center of the earth. I do not know what rights TransCanada's easements carry either, and

whether those easements include the same rights as real property or rights to surface water.

Studies show—and there are numerous juried studies available on the Internet, not just the study I referenced in my testimony and attached to it— that there is not enough water for tar sands mining in Alberta to be sustainable. One obvious source to address the water shortage is the Ogallala Aquifer, the largest fresh water aquifer in North America, which underlies virtually the entire state of Nebraska, and is where the proposed Keystone XL Pipeline would go through.

Nebraska **27-401. Rule 401. Relevant evidence, defined.**

Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

That portion of the Code continues:

Because the exercise of judicial discretion is implicit in determinations of relevancy and admissibility under this section, the trial court's decision will not be reversed absent an abuse of discretion. **For evidence to be relevant under this section, all that must be established is a rational,**

probative connection, however slight, between the offered evidence and a fact of consequence. Snyder v. Contemporary Obstetrics & Gyn., P.C., 258 Neb. 643, 605 N.W.2d 782 (2000). (*Emphasis added*)

In light of the above passages, I respectfully request Honorable Judge Flowers to allow me to retain the following paragraphs:

Beginning with "It is no secret..." the last paragraph on p. 15, through the first paragraph on p. 17 ending with "...which began in 1967."

It is no secret that desertification is increasing. From the US west, desertification is creeping east through Colorado and into Nebraska and Kansas. Desertification and drought are closely related, and closely studied. The southern part of the Ogallala Aquifer, in Texas, has been seriously depleted by fracking. California has recently been affected by a 500-year drought. In Alberta, the heart of the tar sands operations, the demands on water associated with extraction of the tar sands has had a deleterious impact on the Athabasca River, the principal source of water for those operations.

According to a 2015 study entitled *Long-term reliability of the Athabasca River (Alberta, Canada) as the water source for oil sands mining*, co-authored by David J. Sauchyna, Jeannine-Marie St-Jacques, and Brian H. Luckman and published by the Prairie Adaptation Research Collaborative, University of Regina, Regina,

SK, Canada and the Department of Geography, University of Western Ontario, London, ON, Canada, and edited by Daniel L. Peters, Environment Canada, Water and Climate Impacts Research Centre, University of Victoria, Victoria, British Columbia, Canada,

...current and projected surface water allocations from the Athabasca River, Alberta, Canada, for the exploitation of the Alberta oil sands are based upon an untenable assumption of the representativeness of the short instrumental gauge record. Our trend analysis of the instrumental data shows declining regional flows. Our tree-ring reconstruction shows periods of severe and prolonged low flows not captured by the instrumental record.

In other words, the Athabasca River cannot sustain the demands put upon it by the tar sands industry.

The authors write that

Over the past several decades, the province of Alberta has had Canada's fastest growing economy, driven largely by the production of fossil fuels. Climatic change, periodic drought, and expanding human activities impact the province's water resources, creating the potential for an impending water crisis. The Athabasca River is the only major river in Alberta with completely unregulated flows. It is the source of surface water for the exploitation of the Alberta oil sands, the world's third-largest proven crude

oil reserve at roughly 168 billion barrels. The oil and gas industry accounted for 74.5% of total surface water allocations in the Athabasca River Basin (ARB) in 2010. An almost doubling of ARB water allocations since 2000, or 13 times the provincial average, is attributable to expanding oil sands production, which began in 1967.

And finally the last paragraph on p.18 beginning with "And so I ask..." and concluding in the first paragraph at the top of p. 19 with "...and the river is degraded."

And so I ask: where is the water for the tar sands operation going to come from? Not the Athabasca, that we understand. There simply isn't enough, and the river is degraded.

Respectfully submitted,

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