

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) Application No. OP-0003
TransCanada Keystone Pipeline, LP, for)
route approval of the Keystone XL Pipeline)
Project pursuant to the Major Oil Pipeline)
Siting Act

OBJECTIONS

Bold Alliance (Bold) and Sierra Club, Nebraska Chapter (Sierra Club), the Yankton Sioux Tribe (“Yankton”), and the Ponca Tribe of Nebraska (“Ponca”) (collectively, “Objecting Parties”), by and through their attorneys of record, hereby jointly set forth the following objections:

1. Participation in this proceeding, including submission of evidence and cross-examination of witnesses is subject to continuing objections on limitations on the scope and nature of evidence and number of witnesses previously filed by Bold and the Sierra Club, the Yankton Sioux Tribe, and the Ponca Tribe of Nebraska in this matter. Participation in this proceeding does not waive these objections, nor any other objections or procedural motions before the Commission nor any other objections or motions which may be made or filed during this proceeding.
2. Objecting Parties object to the limitations imposed on the scope of Objecting Parties’ participation in this proceeding. As parties with interests in the proceeding who have been granted intervenor status, Objecting Parties are entitled to fully participate in the presentation of evidence on the impact of the proposed pipeline on the public interest, regardless of the nature of that impact. Such limitations violate the parties’ due process and equal protection rights. With respect to Yankton and Ponca, these limitations are particularly egregious, as the Hearing Officer has essentially ruled that because Yankton

and Ponca are Indian tribes, their interests are restricted to addressing social and cultural issues. Indian tribes have a multitude of interests beyond social and cultural issues, and their status as tribes should not relegate them to minimized participation in the stereotypically “Indian” issues. In particular, the Ponca Tribe specifically asserted its governmental and jurisdictional interests since the proposed routes cross its congressionally-designated Service Areas where it is recognized by the United States as having governmental jurisdiction, but the Commission violated the Ponca Tribe’s governmental rights by refusing to allow it to participate with respect to those issues. Bold and Sierra Club also have much broader interests, set forth in their petitions for intervention, than permitted under the orders of the Commission.

3. Objecting Parties object to the limitations placed on time for cross examination imposed on parties with shared limited scopes, particularly requiring multiple parties to share the amount of time allocated to one party for cross-examination. Tribes cannot be lumped into one category as having the same rights and interests. The two tribes involved have unique interests and histories with respect to the proposed pipeline, and should each receive an opportunity to its own cross examination of witnesses for the length of time necessary to adequately address the issues. Again, the equal protection rights of the tribes have been infringed upon by treatment of the tribes as essentially a single party due to the fact that they are tribes.
4. Objecting Parties object to the limitations placed on Objecting Parties as to number of witnesses. The tribes are especially harmed by these limitations, as the nature of each tribe’s interests is vast and those interests cannot be wholly and competently addressed by a singular witness while complying with evidentiary standards.

5. Objecting Parties object to the form of the proceeding chosen by the Commission as arbitrary and capricious, not supported by the legislation creating this process found at section 57-1401 et seq., nor the legislative history. Requiring submission of written testimony and preventing direct oral testimony violates the due process rights of intervenors and the intent of MOPSA to protect the interests of the people of Nebraska.
6. Objecting Parties object to the condensed schedule adopted by the Commission as arbitrary and capricious, violating the due process rights of intervenors and unfairly biased in favor of the Applicant.
7. Objecting Parties object to permitting the Applicant to present rebuttal testimony, while providing no opportunity for intervenors to respond to such testimony, in violation of the rights to due process and equal protection of intervenors.
8. Objecting Parties object to the status granted informal intervenors, permitting them to have one witness per intervenor with no limitations on scope of testimony, granting them special status in violation of the due process and equal protection rights of formal intervenors deemed as “natural resources” and “cultural” intervenors who were limited in both the number of witnesses and scope of testimony.
9. Objecting Parties object to the receipt of testimony from informal intervenors, since it is not subject to cross-examination, in violation of the due process and equal protection rights of formal intervenors.
10. Objecting Parties object to permitting late intervention of informal intervenors who were not required to meet the schedule required of formal intervenors in violation of the due process and equal protection rights of formal intervenors.

11. Objecting Parties object to the ruling of the hearing officer prohibiting consideration of need, which is fundamental to the issue of public interest. Any presumption in statutory intent language is subject to rebuttal by relevant evidence.
12. Objecting Parties object to the ruling of the hearing officer prohibiting consideration of impacts of spills in relation to impacts on natural resources and cultural resources.

CERTIFICATE OF SERVICE

Pursuant to 291 Neb. Admin Code § 015.0 (b), and the hearing officer's ruling on service, the above Objections were served upon all parties or their respective attorneys of record using the service list provided by the Commission electronically on this 4th August 2017.

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