

Before the Nebraska Public Service Commission

In the Matter of the Application

of

**TransCanada Keystone Pipeline LP
For Route Approval of Keystone XL
Pipeline Project, Pursuant to *MOPSA***

Intervenors:

**Susan Dunavan and William Dunavan,
Bartels Farms, Inc.
Johnnie Bialas and Maxine Bialas,
Bonnie Brauer,
James Carlson and Christine Carlson,
Timothy Choat, Gary Choat Farms LLC,
and Shirley Choat Farms, LLC,
CRC, Inc.,
Daniel A. Graves and Joyce K. Graves,
Patricia A. Grosserode a/k/a Patricia A.
Knust,
Terri Harrington,
Donald C. Loseke and Wanda G. Loseke,
Arla Naber and Bryce Naber,
Mary Jane Nyberg,
Kenneth Prosocki and Karen Prosocki,
Edythe Sayer,
Dan Shotkoski and Clifford Shotkoski,
Leonard Skoglund and Joyce Skoglund,
John F. Small and Ginette M. Small,
Deborah Ann Stieren and Mary Lou
Robak,
Jim Tarnick,
Terry J. Van Housen and Rebecca Lynn
Van Housen,
Donald D. Widga,**

**Byron Terry “Stix” Steskal and Diana
Steskal,
Allpress Brothers, LLC,
Germaine G. Berry,
Karen G. Berry,**

**Application No: OP-003
(Filed by Applicant on 2/16/17)**

**Request that Commission
Be Bound
By The Nebraska
Rules of Evidence
Pursuant to
Neb Rev Stat
§ 27-1101(4)(d)**

**Cheri G. Blocher and Michael J. Blocher,
L.A. Breiner and Sandra K. Breiner,
Jerry Carpenter and Charlayne Carpenter,
CHP 4 Farms, LLC,
Larry D. Cleary,
Jeanne Crumly and Ronald C. Crumly,
Ken Dittrich,
Lloyd Z. Hipke and Vencille M. Hipke.
R. Wynn Hipke and Jill Hipke,
Richard Kilmurry and Bonnie Kilmurry,
Rosemary Kilmurry,
Beverly Krutz and Robert Krutz,
LJM Farm, LLC,
Carol Manganaro,
Frankie Maughan and Sandra Maughan,
Beverly Miller and Earl Miller,
Edna Miller and Glen Miller,
Milliron Ranch, LLC,
Frank C. Morrison and Lynn H. Morrison,
Larry D. Mudloff, J.D. Mudloff, and Lori
Mudloff,
Constance Myers a/k/a Constance Ramold,
Nicholas Family Limited Partnership,
Ann A. Pongratz and Richard J. Pongratz,
Donald Rech,
Schultz Brothers Farms, Inc.,
Connie Smith and Verdon Smith,
Joshua R. Stelling,
Richard Stelling and Darlene Stelling,
Todd Stelling and Lisa Stelling,
Arthur R. Tanderup and Helen J.
Tanderup,
TMAG Ranch, LLC,
Tree Corners Farm, LLC,
Dave Troester and Sharyn Troester,
and
Gregory Walmer and Joanne Walmer,**

Intervenors,

1. Susan Dunavan et al., Intervenors represented by Domina Law Group p.c., respectfully invoke the provisions of *Neb Rev Stat* §27-1101(4)(c) by requesting and demanding enforcement and application of the *Rules of Evidence* in Chapter 27 of the Nebraska statutes to the contested proceeding before the Nebraska Public Service Commission (“PSC”) scheduled to commence August 7, 2017 (“August proceeding”).

2. The August proceeding is a case proceeding under the Nebraska *Administrative Procedures Act*, *Neb Rev Stat* §84-901 et seq. (“APA”). The PSC has recognized this fact in this case in connection with prior rulings in this case. The *Nebraska Rules of Evidence* are applicable to such proceedings upon request by a party.

3. This request supplants the rules of the PSC, but is consistent with those rules. The PSC has adopted 291 *Neb Admin C* § 1-016.01 which requires that evidence be admissible under the Revised Statutes of Nebraska. Only evidence that withstands the tests for admissibility set forth in the *Nebraska Rules of Evidence* governing relevancy, competence, experts, hearsay, and judicial notice constitutes the kind of evidence that is relied on by a reasonable person in the conduct of affairs involving adjudication of facts and application of law to facts, or other important judgments in life. The PSC is required to undertake these duties, and to make a record for judicial review, in the August proceeding.

4. Further, the August proceeding does not constitute “initial proceedings” within the meaning of 291 *Neb Admin C* § 1-003.01 as there is no application before the PCS which has been filed under the authority of *Neb Const* Art IV Sec 20, or Chapters 74, 75 or 88 of the Nebraska statutes. Therefore, a) The Evidence Rules of the PSC are not applicable to the August proceeding by their own terms and b) the August proceeding will not occur under 291 *Neb Admin C* Ch 1, *Commission Procedures*. Instead, it is a proceeding under the *APA*. The August proceeding is a “contested case” before the PSC under the *APA* and governed by the *Nebraska Rules of Evidence* when invoked. Intervenors hereby invoke the *Nebraska Rules of Evidence* as they are authorized to do by *Neb Rev Stat* §27-1101(4).

5. The Intervenors note that 291 *Neb Admin C* § 1-021 expressly provides that proceedings on appeal are governed by the *APA*.

July 2, 2017.

Susan Dunavan, et al., Intervenors,



By: _____

David A. Domina, #11043

Brian E. Jorde, #23613

Domina Law Group pc llo

2425 S. 144th Street

Omaha, NE 68144

(402) 493-4100

ddomina@dominalaw.com

bjorde@dominalaw.com

Certificate of Service

Pursuant to 291 *Neb Admin Code* § 015.01(b), a copy of the foregoing is served upon all Intervenor of record to this proceeding or their attorneys of record as follows:

Jacques	Tallichet	2821 S. 79th St	Lincoln	NE	68506	jacques.tallichet@gmail.com
Leverne A	Barrett	1909 Co Rd E	Ceresco	NE	68017	Vernbarrett@fureuretk.com
Becky	Hohnstein	PO Box 272	Minatare	NE	69356	jim.hohnstein@gmail.com
Taylor R M	Keen	5022 Hamilton St	Omaha	NE	68132	taylorkeen7@gmail.com
John	Jarecki	6112 Bedford Ave	Omaha	NE	68104	johnjarecki110@gmail.com
Karen	Jarecki	6112 Bedford Ave	Omaha	NE	68104	tenbuckstwo@yahoo.com
Julie	Shaffer	5405 Northern Hills Dr	Omaha	NE	68152	ksjaffer59@gmail.com
Michelle C	LaMere	PO Box 514	Winnebago	NE	68071	iamere@rocketmail.com
Jonathan H	Thomas	960 S Cotner Blvd	Lincoln	NE	68510	thewild_things@yahoo.com
Jayne	Antony	16064 Sprint St	Omaha	NE	68130	jayneevan@yahoo.com
Joseph	Pomponio	551B Sand Creek Rd	Albany	NY	12205	lukaz@msn.com
Christine	Polson	4923 Valley St	Omaha	NE	68106	snpolson@cox.net
Wrexie	Bardaglio	9748 Arden Road	Trumansburg	NY	14886	wrexie.bardaglio@gmail.com
Mia	Bergman	86424 514 Ave.	Orchard	NE	68764	mbergman85@hotmail.com
Kimberly E	Craven	33 King Canyon Road	Chadron	NE	69337	kimecraven@gmail.com
Kimberlee A	Frauendorfer	50092 - 520 Ave	Newman Grove	NE	68758	
Randall L	Frauendorfer	50092-520 Ave	Newman Grove	NE	68758	
Troy R	Frauendorfer	Box 493	Newman Grove	NE	68758	
Cathie (Kathryn)	Genung	902 East 7th St	Hastings	NE	68901	tg64152@windstream.net
Louis (Tom)	Genung	902 East 7th St	Hastings	NE	68901	tg64152@windstream.net
Andy	Grier	916 S. 181st St.	Elkhorn	NE	68022	griec01@cox.net
Christy J	Hargesheimer	620 S 30th St	Lincoln	NE	68510	chrispaz@neb.rr.com
Richard S	Hargesheimer	620 South 30th St	Lincoln	NE	68510	rshargy@gmail.com
Marvin E	Hughes	714 W 5th St Ste 120	Hastings	NE	68901	bhughes@gtmc.net
Judy	King	1261 Fall Creek Rd	Lincoln	NE	68510	kingjud@gmail.com
Paul M	Latenser	2271 S 135 Circle	Omaha	NE	68144	pmlatenser@cox.net
Pamela	Luger	8732 Granville Pkwy	LaVista	NE	68128	pam1181@yahoo.com
350.org	Kendall Maxey	20 Jay Street	Brooklyn	NY	11201	kendall@350.org
Elizabeth (Liz)	Mensing	6509 Wirt St.	Omaha	NE	68104	lizmensinger@gmail.com
Janece	Mollhoff	2354 Euclid Street	Ashland	NE	68003	wjmollhoff@windstream.net
Crystal	Miller	7794 Greenleaf Drive	LaVista	NE	68128	neccmiller@juno.com
Greg	Nelson	3700 Sumner St	Lincoln	NE	68506	gnelson@inetnebr.com
Julie	Nichols	1995 Park Ave	Lincoln	NE	68502	willpower2@earthlink.net
James Douglas	Osborn	43110 879th Rd	Ainsworth	NE	69210	jdosborn30@yahoo.com
Jana	Osborn	1112 Meadowlark	Alliance	NE	69301	janajaryb@gmail.com
Dave	Polson	4923 Valley Street	Omaha	NE	68106	honk@cox.net
Collin A	Rees	4721 Heather Lane	Kearney	NE	68845	collin@priceofoil.org
Donna	Roller	2000 Twin Ridge Rd.	Lincoln	NE	68506	rollerski@gmail.com
Corey	Runmann	2718 S. 12th St.	Lincoln	NE	68502	rumannc@gmail.com
Cecilia	Rossiter	949 N 30th St	Lincoln	NE	68503	punion@gmail.com
Sandra	Slaymaker	102 E 3rd St., #2	Atkinson	NE	68713	sandyslaymaker@gmail.com

Lois	Schreur	2544 N. 61st Street PO Box 4376	Omaha	NE	68104	leschreur@centurylink.net
Susan	Soriente	1110 Rockhurst Drive	Lincoln	NE	68510	ssoriente@gmail.com
Susan	Straka-Heyden	46581 875th Rd	Stuart	NE	68780	suzie_sl@hotmail.com
Oil Change International		714 G St., SE Suite 202	Washington	DC		lorne@priceofoil.org
Tristan	Lorne Stockman Scorpio	208 S Burlington Ave Ste 103 Box 325	Hasting	NE	20003 68901	linda@boldnebraska.org
Kimberly L	Stuhr	19303 Buffalo Rd	Springfield	NE	68059	kimberlystuhr13@yahoo.com
Paul	Theobald	85718 544th Avenue	Foster	NE	68765	pthobald36@gmail.com
Christine	Troshynski	101 S. 1st St.	Emmet	NE	68734	ctroshynski@gmail.com
Elizabeth L	Troshynski	87769 484th Ave	Atkinson	NE	68713	btroshyn@hotmail.com
Julie	Walker	2570 West Luther St.	Martell	NE	68404	jw9095@yahoo.com
Susan C	Watson	2035 N 28th St Apt 213	Lincoln	NE	68503	scwatson1965@gmail.com
Susan J	Weber	2425 Folkways Blvd Apt 329	Lincoln	NE	68521	susanjweber4@yahoo.com
Douglas	Whitmore	8856 N 83rd Ave	Omaha	NE	68122	douglas@whitmore4congress.com
Sandy	Zdan	4817 Douglas	Omaha	NE	68132	sandywz@cox.net
Sarah	Zuekerman	1729 K St #7	Lincoln	NE	68508	sarahj1182@gmail.com
Blake & Uhlig,PA	Robert J Henry Michael E Stapp	753 State Avenue Ste 475	Kansas City	KS	66101	rjh@blake-uhlig.com
Blake & Uhlig,PA		753 State Avenue Ste 475	Kansas City	KS	66101	rjh@blake-uhlig.com
O'Donoghue & O'Donoghue LLP	Robert J Henry Nuchael E Amash Ellen O. Boardman	4748 Wisconsin Avenue, NW	Washington	DC	20016	boardman@odonoghuelaw.com
Robert	O'Connor, Jr.	PO Box 45116	Omaha	NE	68154	reolaw@aol.com
Kenneth C	Winston	1327 H St Ste 300	Lincoln	NE	68508	kwinston@inebraska.com
Cavanaugh Law Firm, PC LLO	James P Cavanaugh	6035 Binney Street Ste 100	Omaha	NE	68104	cavanaughlawfirm@aol.com
Brad S Jolly & Associates	Brad S Jolly	15355 Gadsen Dr	Brighton	CO	80603	bsj@bsjlawfirm.com
Fredericks Peebles and Morgan LLP	Jennifer S Baker	1900 Plaza Drive	Louisville	CO	80027	jbaker@ndnlaw.com
McGrath North Mullin & Kratz, PC LLO	James G. Powers Patrick D. Pepper	First National Tower Ste 3700 1601 Dodge Street	Omaha	NE	68102	jpowers@mcgrathnorth.com ppepper@mcgrathnorth.com

Brian E. Jorde