

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 Prososki and Karen Prososki,
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)

Landowner Intervenors’
First Amended
Motions to Compel
Responses to Their:

1st Set of Interrogatories;
1st Set of Requests for Production;
2nd Set of Interrogatories;
2nd Set of Requests for Production;
1st Set of Requests for Admissions;
3rd Set of Interrogatories;
3rd Set of Requests for Production;
4th Set of Interrogatories;
4th Set of Requests for Production; and
2nd Set of Requests for Admissions;

**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,

For their Motions to Compel Landowner Intervenor state as follows:

1. On May 15, 2017, TransCanada responded to Landowner Intervenor's 1st Set of Interrogatories, 1st Set of Requests for Production, 2nd Set of Interrogatories, 2nd Set of Requests for Production; and 1st Set of Requests for Admission predominately with objections, partial responses, or with responses that failed to directly answer or respond to the discovery posed. The parties subsequently have come to an agreement as to some of the discovery disputes but the majority will need adjudication as noted below and throughout.

2. Here as Attachment #1 is a true and accurate copy of TransCanada's Responses to Landowner Intervenor's 1st Set of Interrogatories and 1st Set of Requests for Production.

3. Here as Attachment #2 is a true and accurate copy of TransCanada's Responses to Landowner Intervenor's 2nd Set of Interrogatories and 2nd Set of Requests for Production;

4. Here as Attachment #3 is a true and accurate copy of TransCanada's Responses to Landowner Intervenor's 1st Set of Requests for Admission.

5. The Commission has broad discretion and authority in these proceedings to consider numerous factors, including but not limited to the following, when analyzing whether or not any proposed route is in the "public interest" and the Commission does not have to approve any route whatsoever:

5.1. (a) Whether the pipeline carrier has demonstrated compliance with all applicable state statutes, rules, and regulations and local ordinances;

5.2. (b) Evidence of the impact due to intrusion upon natural resources and not due to safety of the proposed route of the major oil pipeline to the natural resources of Nebraska, including evidence regarding the irreversible and irretrievable commitments of land areas and connected natural resources and the depletion of beneficial uses of the natural resources;

- 5.3. (c) Evidence of methods to minimize or mitigate the potential impacts of the major oil pipeline to natural resources;
 - 5.4. (d) Evidence regarding the economic and social impacts of the major oil pipeline;
 - 5.5. (e) Whether any other utility corridor exists that could feasibly and beneficially be used for the route of the major oil pipeline;
 - 5.6. (f) The impact of the major oil pipeline on the orderly development of the area around the proposed route of the major oil pipeline;
 - 5.7. (g) The reports of the agencies filed, [only if requested by the PSC] from:
 - 5.7.1. the Department of Environmental Quality,
 - 5.7.2. the Department of Natural Resources,
 - 5.7.3. the Department of Revenue,
 - 5.7.4. the Department of Roads,
 - 5.7.5. the Game and Parks Commission,
 - 5.7.6. the Nebraska Oil and Gas Conservation Commission,
 - 5.7.7. the Nebraska State Historical Society,
 - 5.7.8. the State Fire Marshal, and
 - 5.7.9. the Board of Educational Lands and Funds; and
 - 5.8. (h) The views of the governing bodies of the counties and municipalities in the area around the proposed route of the major oil pipeline.
6. Purpose of MOPSA¹:
 - 6.1. Ensure the welfare of Nebraskans, including protection of property rights, aesthetic values, and economic interests;

¹ <http://nebraskalegislature.gov/laws/statutes.php?statute=57-1402> (1)

- 6.2. Consider the lawful protection of Nebraska's natural resources in determining the location of routes of major oil pipelines within Nebraska; and
- 6.3. Ensure that the location of routes for major oil pipelines is in compliance with Nebraska law.

7. Given the foregoing and the wide range of potential considerations and the incredibly high bar Applicant has for satisfying each and every of the foregoing, discovery in this matter is by its very nature wide-ranging and encompasses many areas. The discovery objected to by TransCanada is reasonably calculated to at least lead to the discovery of some admissible evidence on one or more of the above factors and all requests to compel below should be granted.

8. Landowner Intervenors move the Commission to compel and order TransCanada to fully and completely respond to the following Interrogatories No.'s in Attachment #1:

- 8.1. “interested witnesses” - 29, 30, 31, 32
 - 8.1.1. Bias is a key question in this matter and all Applicant employee witnesses should be fully transparent with all of their past, current, and future likelihood of economic gain for their favorable testimony at the Hearing. They are each personally vested in the outcome of the party with the burden of proof and are therefore open to question about said economic and other bias that may affect their testimony.
- 8.2. “economic impact” “general welfare” “economic interest” - 33, 34, 35, 36, 37, 38
 - 8.2.1. Applicant claims its proposed KXL pipeline will have various economic benefits to Nebraska and the few counties were it is proposed to be located, therefore Applicant has opened the door for any inquiry into the actual dollars it has spent and is likely to spend in Nebraska related to its pipeline. This

information is also necessary to show bias as to any rebuttal witness Applicant may proffer at the time of the Hearing who may have directly or indirectly benefited from “gifts” or “donations” such as equipment or vehicles etc. that TransCanada either made directly or indirectly.

8.2.2. Trans Canada has agreed to provide Nebraska state lobbying expenses from 1/1/15 forward; and a summary of dollars spent to purchase advertising for the Keystone XL pipeline project via television, radio, print media, or digital. However, this is too limiting and Landowners request all spending regarding the KXL project within Nebraska from January 1, 2010 to present time.

8.3. “your definition” “your belief” “your understanding” - 40, 42, 43, 44, 46, 47, 48, 50, 100, 105

8.3.1. These Interrogatories seek to uncover Applicants definition, belief, and or understanding of certain facts or elements. Discovering what Applicant believe is likely to lead to the discovery of relevant information. What Applicant believes no doubt formed the basis of its entire Application submission and will form the basis of any relevant testimony by it at the time of the Hearing. These Interrogatories do not seek a legal interpretation or to “invade the province of the Public Services Commission” Landowner Intervenors did not ask – what TransCanada thinks the law means we simply want to know what TransCanada itself, the Applicant, believes. Further see TransCanada’s response to No. 49 – they respond as to Keystone I because they know such inquiry is likely to lead to the discovery of admissible evidence but fail to respond to KXL which is the subject of the Application – see

No. 48. See also No. 57 where TransCanada responds to what it believes is an inaccurate statement of law rather than hiding fully behind a frivolous objection.

~~8.4. “relevant facts” – 41~~

8.4.1. ~~Withdrawn. TransCanada will supplement.~~

~~8.5. “I 90 Corridor” – 53, 54~~

8.5.1. ~~Withdrawn. TransCanada will supplement based upon agreement of the parties.~~

~~8.6. “Relevant Comparisons to Keystone I” – 55, 56~~

8.6.1. ~~Withdrawn. TransCanada will supplement based upon agreement of the parties.~~

8.7. “State Statutes” – 58, 59, 62, 63

8.7.1. This is a specific requirement of MOPSA and relevant inquiry for this commission. If Applicant is unwilling or unable to specifically list the laws which it must follow then it has failed to meet its burden of proof and its application must be denied.

8.8. “Rules” – 66, 67, 70, 71

8.8.1. This is a specific requirement of MOPSA and relevant inquiry for this commission. If Applicant is unwilling or unable to specifically list the laws which it must follow then it has failed to meet its burden of proof and its application must be denied.

8.9. “Regulations” – 74, 75, 78, 79, 80, 81

8.9.1. This is a specific requirement of MOPSA and relevant inquiry for this commission. If Applicant is unwilling or unable to specifically list the laws which it must follow then it has failed to meet its burden of proof and its application must be denied.

8.10. “Local Ordinances” – 82, 83, 86, 87, 88, 89

8.10.1. This is a specific requirement of MOPSA and relevant inquiry for this commission. If Applicant is unwilling or unable to specifically list the laws which it must follow then it has failed to meet its burden of proof and its application must be denied.

8.11. “Spill or Leak” – 90 through 99 inclusive

8.11.1. TransCanada’s Application for its proposed KXL pipeline extensively discusses spills and leaks. If this was not a relevant inquiry for the Commission to make then why did Applicant send so much time in its Application discussing foreseeable spills and leaks. Applicant clearly acknowledges the relevance of this inquiry and anticipated it in its Application. TransCanada’s Application is 403 pages long. The following pages of the Application discuss “spill” or “leak” in the context of construction, maintenance, and or operation of the proposed KXL as they seek to have it routed in Nebraska: 30, 31, 34, 35, 46, 57, 84 aka Appendix C5, 95 aka Appendix D7, 97 aka Appendix D9, 105 aka Appendix D17, 106 aka Appendix D18, 107 aka Appendix D19, 108 aka Appendix D20, 109 aka Appendix D21, 110 aka Appendix D22, 111 aka Appendix D23. Further, Federal Law does not preempt the PSC from reviewing, on behalf of Nebraska’s citizens and stakeholders, the risks and impacts of potential spills and leaks when determining the most prudent and intelligent location, if any, of such a major oil pipeline across Nebraska. Any law of this state purportedly restricting the PSC in such a manner unconstitutionally limits the power of the very constitutional body that is charged with the

responsibility on behalf of the entire State of Nebraska to site major oil pipelines. If the PSC is prohibited from considering the risk and impact of foreseeable and predictable spills and leaks of tar sands crude oil and other dangerous chemicals, who exactly is looking out for Nebraska's general welfare, property rights and the economic interests in this regard? Regardless of whether or not this may ultimately be offered and received at the time of the Hearing, that does not preclude discovery as to this topic at this time.

8.12. "TransCanada Spends Money in Nebraska" – 121

8.12.1. The Commission must evaluate the economic interests and impacts of any proposed route of the KXL pipeline as well as consider the general welfare of Nebraska and Nebraskans. TransCanada's argument in favor of its KXL pipeline is primarily centered around jobs and increase in tax revenue and general increase in "economic activity." Given Applicant's claims and arguments and that they state additional work would need to be done if they were to twin Keystone XL with Keystone I, this inquiry is relevant to determine exactly what type of money has been spend and "economic activity" generated through past and current efforts of Applicant to obtain route approval so that we can discovery the relative increase in economic activity that would occur relative non-construction related employment and spending that Applicant would likely engage in should a route for location in an alternative utility corridor be the outcome of the PSC Hearing. We are entitled to have the full picture of economic benefit and monies spent directly into the Nebraska economy by way of employment associated with

the KXL to present alternative testimony and evidence to Applicant and its expert Mr. Goss.

8.13. “KXL Necessity” – 122, 123, 124, 125, and 126-147 inclusive

8.13.1. It is difficult to image how a proposed route on, under, through, and across Nebraska of the proposed KXL pipeline is in the “public interest” if the route itself is not needed. TransCanada seems to suggest Nebraska “take one for the team” but fails to realize this is the Nebraska Public Service Commission which is review the Application in terms of Nebraska and has no duty to consider the interests, if any, of others in regards to what is the best for Nebraska and what is in Nebraska’s “public interest” therefore, we must have inquire into the lack of necessity and need of such a route within Nebraska or the Commission will be prevented from fully evaluating the Application and Applicant in reference to the numerous and broad factors of MOPSA.

8.14. “Keystone I necessity” – 148-158 inclusive

8.14.1. Landowner Intervenor incorporate the response above and by way of analogy of the current relevant Nebraska case study – Keystone I as it compares and can provide important parallels to the proposed Keystone XL.

9. Landowner Intervenor move the Commission to compel and order TransCanada to fully and completely respond to the following 1st Set of Requests for Production of Documents No.’s in Attachment #1:

9.1. Request No. 1 – seeks documents that formed the basis to TransCanada’s responses to Interrogatories 1-147. This is clearly relevant and the objections should be stricken and Application should be require to fully produce all such documents. Further no privilege log was included to furnish the required information under

Nebraska law for a party claiming a privilege and simply throwing out a privilege without substantiation via a privilege log is a waiver in and of itself. Full production of all documents should be compelled. As included in Landowner Intervenors' discovery requests: "If you claim any document is privileged, please identify the privilege claimed, and disclose sufficient information about the document to allow it to be identified, located, and to identify the privilege claimed, and the circumstances supporting your claim of privilege. Please furnish a privilege log or responses sufficient to make a *prima facie* claim that any privilege applies, identify the privilege asserted, and set forth information sufficient to ascertain its applicability, as required by *Greenwalt v. Wal-Mart Stores Inc.*, 253 Neb 32, 567 NW2d 560 (1997). If you object, please be informed that the procedure you use must comply with the requirements of *Schropp Industries, Inc., v. Washington County Atty's Office*, 281 Neb 152, 794 NW2d 685 (2011)." Further, TransCanada states in its response to No. 1 that "Keystone will produce any documents it **expressly** referenced in its answers." The request was not to only produce those documents TransCanada expressly referenced or choose to strategically mention – we want and are entitled to any and all documents Applicant relied upon or reviewed, etc, in any way to form their answers to No's 1-147. **TransCanada has agreed to produce non-privilege documents from 1/1/15 forward but this is too limited in time. Landowners Intervenors request documents from 1/1/10 to present.**

- 9.2. Request No. 2 & 3 – TransCanada objects because a timeframe is not limited, therefore, to speed this along, Landowner Intervenors request the Commission compel production of documents pursuant to its Request No. 2 & 3 for the time period of January 1, 2010 to

present time in any way related to TransCanada's proposed KXL pipeline.

- 9.3. Request No. 4 – Property Rights and Economic Interests are two of the key aspects the Commission will evaluate when reviewing whether or not the proposed KXL route(s) within Nebraska are in the public interest. Production of the value of the land in question, which will be found in the land and property Appraisals TransCanada has in its possession which can be easily placed on a CD or DVD and produced is paramount to and the cornerstone of relevant analysis concerning protection of property rights, economic interests, and tax revenue and impact.
- 9.4. Request No. 5 – Documents evidencing a commitment to ship product on the proposed KXL through Nebraska. There can be no more threshold question as to whether any proposed KXL route through, under, and across Nebraska is in the “public interest” than the question of whether or not any of the proposed routes are needed. It is impossible to serve the “public interest” if there is no interest in the proposed route for the proposed KXL pipeline. In fact, if TransCanada does not and cannot prove full commitment for the size and capacity of its proposed KXL through Nebraska, then it is impossible for such a route to be in the “public interest.” Further and more to the point, the discovery process is an incredibly flexible and wide reaching process that only need to be reasonably calculated to lead to the discovery of admissible evidence. Such discovery here regarding commitments for the KXL may lead to discovery that reaches all of the many broad factors the Commission can consider. Further, TransCanada waived any objection as to privilege or confidential or trade secret etc. in its response and all documents should be produced outright. Alternatively, the Landowner

Intervenors agree to maintain the confidentiality of such agreements, if any exist, subject to only use in these proceedings.

- 9.5. Request No. 5 (No. 6) – TransCanada communications regarding KXL. This request is highly relevant to all the many broad factors that the Commission can consider. Since there is no objection as to privilege that has been waived and Landowner Intervenors will agree to limit such request from January 1, 2010 to present time and where the communication was as to the proposed KXL within, on, under, through or across Nebraska. **TransCanada has agreed to produce non-privilege documents from 1/1/15 forward but this is too limited in time. Landowners Intervenors request documents from 1/1/10 to present.**

10. Landowner Intervenors move the Commission to compel and order TransCanada to fully and completely respond to the following 2nd Set of Interrogatories No.'s in Attachment #2:

- 10.1. ~~No. 162~~ – **Withdrawn pending agreement that TransCanada will more specifically reference the applicable portions of the Application.**
- 10.2. ~~No. 163~~ – **Withdrawn pending agreement that TransCanada will more specifically reference the applicable portions of the Application.**
- 10.3. No. 164 – Spill Detection. See Response to 8.11.1 above.

11. Landowner Intervenors move the Commission to compel and order TransCanada to fully and completely respond to the following 2nd Set of Requests for Production of Documents No.'s in Attachment #2:

- 11.1. No. 7 - See Response in paragraph 10.1 above.
- 11.2. No. 8 - See Response to paragraph 10.1 above.

12. Landowner Intervenors move the Commission to compel and order TransCanada to fully and completely respond to the following 1st Set of Requests for Admissions No.'s in Attachment #3:

12.1. "Spill or leak" No's. 22-26, inclusive; and 29-49, inclusive. See Response to 8.11.1 above.

~~12.2. "I-90 Corridor Route within Nebraska" No. 53-56 inclusive; 59-60, inclusive; and 79-86, inclusive~~

12.2.1. **Withdrawn per agreement of the parties, TransCanada will supplement.**

~~12.3. No's. 95-112 Responses as to what specific paragraphs of the Application apply to each answer should be provided. (See also related argument in paragraph 10.1 above.)~~

12.3.1. **Withdrawn pending agreement that TransCanada will more specifically reference the applicable portions of the Application.**

13. On Friday May 19, 2017 TransCanada responded to Landowner Intervenors' 3rd Set of Interrogatories, 3rd Set of Requests for Production, 4th Set of Interrogatories, 4th Set of Requests for Production; and 2nd Set of Requests for Admission predominately with objections, partial responses, or with responses that failed to directly answer or respond to the discovery posed.

14. Here as Attachment #4 is a true and accurate copy of TransCanada's Responses to Landowner Intervenors' 3rd Set of Interrogatories, 3rd Set of Requests for Production.

15. Here as Attachment #5 is a true and accurate copy of TransCanada's Responses to Landowner Intervenors' 4th Set of Interrogatories, 4th Set of Requests for Production.

16. Here as Attachment #6 is a true and accurate copy of TransCanada's Responses to Landowner Intervenors' 2nd Set of Requests for Admission.

17. Landowner Intervenors move the Commission to compel TransCanada to fully and completely respond to the following Interrogatories No.'s in Attachment #4:

17.1. "Your Understanding" - No's 165-166

17.1.1. See paragraph 8.3.1 above

17.2. "Energy Needs" – No's 167-173 inclusive

17.2.1. TransCanada continually references Neb Rev Stat § 57-1403

(3) "The construction of major oil pipelines in Nebraska is in the public interest of Nebraska and the nation to meet the increasing need for energy." It is important to note this portion of MOPSA has a qualifier and that is "to meet the increasing need for energy." Therefore, unless it is proven there is such a need within Nebraska, a State without a specific increase in energy need that will be satisfied by the proposed route(s) of the proposed KXL pipeline would not be in the "public interest." Responses therefore to these Interrogatories must be supplemented.

~~17.3. "Property Rights" "Economic Interests, Purposes, Impacts" – No. 215~~

~~17.3.1. **Withdrawn. TransCanada agrees to supplement.**~~

~~17.4. "I 90 Corridor Alternative A, B, and Twinning Keystone I" – No's 181-190 inclusive; 201-203 inclusive~~

~~17.4.1. **Withdrawn. TransCanada will supplement based on agreement of the parties.**~~

17.5. "Finite Purpose" – No's 217-218

17.5.1. See paragraphs 8.13.1 and 8.14.1. There is no route in the public interest and in the general welfare of Nebraska nor that protects the property rights of Nebraska or Nebraskans that requires landowners give up perpetual rights for a pipeline route that is for the shipment of a finite, non-perpetual,

product like tar sands. These Interrogatories must be compelled.

17.6. “Landowner Treatment” – No’s 221-222

17.6.1. There is no route in the public interest and in the general welfare of Nebraska nor that protects the property rights of Nebraska or Nebraskans that is or has or will be obtained by the poor treatment of Nebraskans or through misrepresentation or deceit of any kind. Such behavior or Applicant is relevant to the factors to be considered by the Commission.

17.7. “Terrorist Attack” – No. 223

17.7.1. Placing Nebraska and Nebraskans at greater potential negative risk or impact from potential Terrorist Attacks is not in the interest of the general welfare of Nebraska nor is it positive to social impacts. Intervenor Landowners and the Commission have the right to know whether or not and to what degree at all such impacts have or have not been considered by Applicant.

17.8. “Relevant Impacts” No’s 229-235 inclusive

17.8.1. These Interrogatories directly incorporate the exact factors to be considered by the Commission and Landowner Intervenor request Applicant be compelled to specifically identify what paragraphs of its Application apply to No. 229-235 inclusive rather than simply vaguely and over broadly referencing “Keystone incorporates the application...”

18. Landowner Intervenor move the Commission to compel TransCanada to fully and completely respond to the following Request for Production of Documents No.’s in Attachment #4:

18.1. No. 9 – See paragraph 9.1 above.

18.1.1. **TransCanada has agreed to produce non-privilege documents from 1/1/15 forward but this is too limited in time. Landowners Intervenors request documents from 1/1/10 to present.**

18.2. No. 11 – See paragraph 17.6.1 above. This is likely to lead to the discovery of admissible evidence that will impact factors related to the general welfare, property rights, and economic interests.

19. Landowner Intervenors move the Commission to compel TransCanada to fully and completely respond to the following Interrogatories No.'s in Attachment #5:

19.1. No.'s 237 and 238 - See paragraphs 9.1 and 10.1 above.

19.2. “Energy Security” – No. 240 and 241

19.2.1. Applicant contents it proposed route(s) would improve energy security. No. 240 and 241 request how Nebraska is currently deficient or energy insecure. If Nebraska is not energy insecure any claim by Applicant its proposed KXL pipeline would improve energy security is irrelevant for consideration.

~~19.3. “Alternative Corridors” – No.'s 246, 247, 251, 252, 253, 254, and 255~~

19.3.1. **Withdrawn. The Parties have agreed that TransCanada will supplement as to subpart e) only.**

19.4. “Contracts to Ship on KXL” – No. 250

19.4.1. See argument at paragraph 9.4 above.

~~19.5. “Alternative Corridor and Application” – No.'s 256-264 inclusive~~

19.5.1. **Withdrawn. The Parties have agreed that TransCanada will supplement as to subpart e) only.**

19.6. “Money paid for Easement Acquisition” – No. 271

19.6.1. Given the Commission must consider how and whether the proposed route(s) of KXL will ensure the welfare of Nebraskans, including protection of property rights and

economic interests, it is critical to know the compensation being paid for such acquisition of property rights. This also is relevant to Applicant's claims and the Goss Report regarding economic benefits and multiplier affects.

19.7. "Protection of Property Rights & General Welfare via Easement Terms and Language" – No.'s 272, 273, 274, 275

19.7.1. See paragraph 17.3.1 above. The Easement is the only document that spells out the rights, responsibilities, and restrictions related to the land in question on the proposed route(s) and these inquiries are reasonably calculated to lead to the discovery of admissible evidence concerning Property Rights and Economic Interests relevant to the Commission's review of the Application.

19.8. "Ownership of Applicant" – No.'s 285 – 290, inclusive

19.8.1. Ownership of Applicant is relevant to the broad factors to be considered by the Commission including ensuring the Welfare of Nebraskans, protection of property rights and economic interests. We must know who is behind the curtain.

19.9. "Financial Stability of Applicant" – No.'s 291 and 292

19.9.1. The Financial Stability of Applicant is relevant to the broad factors to be considered by the Commission including ensuring the Welfare of Nebraskans, protection of property rights and economic interests. These interests cannot be protected unless as a State we are certain Applicant has the financial ability and balance sheet capable of protecting property rights, paying for crop damage and other potential damages or impacts to the property, to natural resources, to land, water, soil, and the environment. Financial Stability is a

key question for approval of a route that is proposed to exist in Nebraska perpetually and forever.

20. Landowner Intervenor move the Commission to compel TransCanada to fully and completely respond to the following Request for Production of Documents No.'s in Attachment #5:

20.1. No. 12 – See paragraph 9.1 above.

20.1.1. **TransCanada has agreed to produce non-privilege documents from 1/1/15 forward but this is too limited in time. Landowners Intervenor request documents from 1/1/10 to present.**

20.2. No. 14 and 15 – See paragraphs 8.13.1 and 9.4 above.

20.3. No. 19 – See paragraph 9.1 above.

20.3.1. **TransCanada has agreed to produce non-privilege documents from 1/1/15 forward but this is too limited in time. Landowners Intervenor request documents from 1/1/10 to present.**

20.4. “Financial Information” - No.'s 20 through 28

20.4.1. Any proposed route can only be in the “public interest” if the broad and wide-ranging factors found throughout MOPSA are satisfied by applicant. These requests are reasonably calculated to lead to the discovery of admissible evidence in at least the areas of protection of property rights, economic interests and the general welfare.

~~20.5. “Privilege Log for all documents withheld” - No. 30~~

~~20.5.1. **Withdrawn. TransCanada has agreed to provide a comprehensive Privilege Log.**~~

20.6. “Prior Depositions by Applicant” - No. 31

20.6.1. Given the broad and wide-ranging factors found throughout MOPSA that must be satisfied by applicant, it is likely and

reasonably calculated that prior sworn statements by Applicant may lead to the discovery of admissible evidence and as such this request should be compelled.

21. Landowner Intervenors move the Commission to compel TransCanada to fully and completely respond to the following Requests for Admissions No.'s in Attachment #6:

21.1. "Agreements to use KXL" - No.'s 146-161 inclusive

21.1.1. TransCanada forgets that no route for the KXL within, on, under, or through the State of Nebraska is in its public interest when weighed against the numerous broad factors for consideration under MOPSA if said route is to contain infrastructure that has no use and no purpose or a limited use or a limited purpose. The Commission does not have to approve any route for the proposed KXL. Need and necessity are critical inquiries to analyze when balancing the economic interests, property right protection, and general welfare, among other factors, of Nebraska and Nebraskans. No route is in the public interest for a private for-profit proposed project that will not be used at all or will be minimally used. Additionally such information may lead to the discovery of admissible evidence. The Rules and reach of Discovery are extremely broad.

~~21.2. No.'s 169-172 inclusive~~

21.2.1. **Withdrawn. TransCanada has agreed to supplement.**

~~21.3. No.'s 175-183 inclusive; 185 and 186~~

21.3.1. **Withdrawn. TransCanada has agreed to supplement.**

21.4. "Utility Corridor" - No. 218

21.4.1. Please see argument in paragraphs 5.5, 8.5.1, 8.6.1., and 17.4.1 above.

22. For all of the reasons and arguments above and because discovery is broad and Landowner Intervenors have the right to discovery certain information that may or may not ultimately become evidence at the time of the hearing so long as there is some nexus to leading to the discovery of admissible evidence all of the foregoing requests should be sustained and Applicant should be ordered to supplement responses to each and every discovery request identified above. Landowner Intervenors also request any further relief the Commission deems reasonable and just under the circumstances.

May 30, 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) and CMP 20(a), a copy of the foregoing is served upon Commission Legal Counsel and Lawyers of Record for Applicant as follows:

Nichole A. Mulcahy nichole.mulcahy@nebraska.gov

James G. Powers jpowers@mcgrathnorth.com

Patrick G Pepper ppepper@mcgrathnorth.com

s/ Brian E. Jorde
Brian E. Jorde