

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION ) APPLICATION NO. OP-0003  
OF TRANSCANADA KEYSTONE )  
PIPELINE, LP FOR ROUTE APPROVAL OF )  
THE KEYSTONE XL PIPELINE PROJECT )  
PURSUANT TO THE MAJOR OIL )  
PIPELINE SITING ACT )  
\_\_\_\_\_)

**APPLICANT'S POST-HEARING REPLY BRIEF**

Prepared and Submitted by:

James G. Powers (#17780)  
Patrick D. Pepper (#23228)  
McGrath North Mullin & Kratz, PC LLO  
First National Tower, Suite 3700  
1601 Dodge Street  
Omaha, NE 68102  
(402) 341-3070  
(402) 341-0216 fax  
jpowers@mcgrathnorth.com  
ppepper@mcgrathnorth.com

*Attorneys for Applicant TransCanada Keystone Pipeline, LP*

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In reply to the briefs of the Landowner Intervenor, the Natural Resources Intervenor, and the Cultural Resources Intervenor (“Opposing Intervenor”), Keystone states as follows:

**ARGUMENT**

**I. THE ISSUE IN THIS CASE IS THE ROUTE FOR A MAJOR OIL PIPELINE BUT THE OPPOSING INTERVENORS HAVE FOCUSED ON IRRELEVANT ISSUES.**

**A. The Opposing Intervenor’s Only Effort To Discuss Actual Route Selection Issues Is Limited To Bald Legal Conclusions, Which Do Not Change The Evidence Or The Facts.**

Each Opposing Intervenor, in one form or another, asserted in its brief the bare bones conclusion that Keystone had not met its burden of proof. This conclusion is false and no matter how many times it is repeated, it will remain false. Keystone submitted pages upon pages of evidence reflecting the merits of the Preferred Route. The evidence showed that Keystone considered many alternative routes, including existing utility corridors. (KXL-1, §§ 2, 3, 20) Keystone then selected the Preferred Route because it is in the public interest. (Id.) The evidence showed that Keystone has or will follow all applicable laws, regulations, rules or ordinances. (KXL-2, p. 4:66-70) The evidence showed that the Preferred Route (specifically including the impact on natural resources) is environmentally sound (KXL-1; PSC-4, p. 2), that Keystone has detailed plans in place to mitigate impacts from construction and to reclaim all land following construction (KXL-1, pp. 22-30, 89-252), that cultural resources will be preserved and protected (KXL-1, p. 105; KXL-23), that land use will remain consistent along the Preferred Route before and after construction (KXL-1, pp. 69-70; KXL-20, p. 277), that government agencies and local governing bodies overwhelmingly approve of the Preferred Route (PSC-4), and that the

socioeconomic impact, including employment and tax revenue, will be a significant positive for the State and the Counties along the Preferred Route. (KXL-1, pp. 334-372; § II *infra*) In short, according to the *evidence*, the Preferred Route is in the public interest according to the Major Oil Pipeline Siting Act (“MOPSA”).

**B. The Opposing Intervenors Arguments Are Directed At The Existence Of The Pipeline, Not The Preferred Route.**

The arguments of the Opposing Intervenors reflect a consistent theme. The Opposing Intervenors’ arguments are more concerned about the mere existence of the Keystone XL Pipeline (including pipeline safety) than the actual route. These arguments miss the mark.

For example, in Nebraska, the Preferred Route was first reviewed by the Nebraska Department of Environmental Quality pursuant to the Nebraska Revised Statute §57-1501, et seq. Upon the completion of that intensive review, then Governor Heineman approved the route pursuant to Nebraska law. At least one of the current Intervenors (Ms. Dunavan) and her current attorneys challenged that statutory approval as unconstitutional. *See, Thompson v. Heineman*, 289 Neb. 798 (2015). In that case, they insisted that for the Preferred Route to be approved, it must be approved by this Public Service Commission. Now, the same Intervenor and her attorneys are attacking the Commission’s authority under MOPSA as unconstitutional. The changing tactics are a reflection of the simple fact that the Opposing Intervenors are opposed to the Keystone XL Pipeline itself; their current route objections are merely a means to an end. This theme is also illustrated by the red-herring accusation that Keystone may someday transfer the pipeline to an enemy of the United States.

When it comes to the *route* selection criteria (i.e. the sole purpose for this hearing), the Opposing Intervenors’ argument and evidence falls flat. MOPSA gives the Commission clear

guidance. Oil pipelines are in the public interest, and this case is about whether the Preferred Route is in the public interest. The fact that Opposing Intervenors resorted to hyperbolic accusations of possible terrorism, mischaracterizations of the evidence, bald unsupported legal conclusions, and personal character attacks on witnesses tells the Commission all it needs to know. None of those tactics have a place in this hearing. More importantly, when those tactics are stripped away from the arguments of the Opposing Intervenors, what is left is obvious. The evidence clearly shows Preferred Route is in the public's interest. In fact, the evidence shows the Preferred Route is the best route for the Keystone XL Pipeline in Nebraska. And, the Preferred Route deserves the Commission's approval.

## **II. THE EVIDENCE OF POSITIVE IMPACTS ON EMPLOYMENT AND TAX REVENUE IN NEBRASKA IS CLEAR.**

The Landowner Intervenors have argued (unbelievably) that the evidence reflected a projected negative economic impact to the State of Nebraska as a result of the Keystone XL Pipeline along the Preferred Route. That view of the evidence is, at best, mistaken. Five different analyses related to the economic impact of the Keystone XL pipeline along the Preferred Route are in evidence. Four of the five overwhelmingly support positive economic projections. First, Dr. Goss projected more than \$200 million in property taxes to the counties along the Preferred Route. (KXL-1, p. 358) He also projected an employment impact of an annual average of 727.6 jobs derived from economic impact of the construction and operation during 2018-34; those jobs include the direct employment, the indirect employment, and the induced employment. (KXL-1, p. 351) Dr. Goss also projected more than \$60 million in additional tax revenue from the project. (KXL-1, p. 357) As he noted, Dr. Goss used the Keystone Mainline as a data point to corroborate and construct his analysis. (KXL-1, p. 345)

Second, the NDEQ in its Final Evaluation Report concluded positive economic output and tax revenue would occur. The NDEQ found that the counties along the Preferred Route would be expected to receive benefits from the Keystone XL Pipeline in the form of increased economic output, employment, and income. (KXL-20, p. 299) Construction spending and labor income will cause a “multiplier effect” from the additional cycles of consumption, employment and income. (Id.) The NDEQ also estimated that in the first year of full valuation, Keystone would pay counties along the Preferred Route between 11.13 and 12.97 million dollars in property taxes. (KXL-20, p. 305) The NDEQ, like Dr. Goss, used the Keystone Mainline as a proxy in making these projections. (KXL-20, p. 304)

In its projections for construction and operation, the NDEQ projected substantial economic benefit to the State. During construction, the “Total Net Economic Impact” in Nebraska is \$418.1 million, with employee compensation of \$154.8 million. (KXL-20, p. 301) During operation, NDEQ projected the output figure to be \$18.8 million, with employee compensation of \$6.8 million. (KXL-20, p. 303) Not only did the NDEQ not attribute any diminution in value to the real estate along the Preferred Route, it made the affirmative finding that land uses will revert to prior use following construction. (KXL-20, p. 277) Since ninety-five percent of the land impacted by the pipeline is agricultural in nature (KXL-20, p. 261), it is only logical that a return of the full productivity of that land will not cause any diminution in value.

The third analysis is provided in the Department of State’s 2014 FSEIS. That analysis is also favorable to the Preferred Route. The Department of State concluded, unequivocally, that the operation of the Project is not expected to have an impact on residential or agricultural values. (TR 835:2-8) The Department of State also concluded that during operation there would

be negligible impacts on population, housing and public services along the Preferred Route. (TR 835:9-14) The Department of State projected that 42,000 jobs and approximately \$2 billion in earnings would be supported by or created as a result of the pipeline. (TR 835:15-836:1)

In the fourth analysis, Dr. Michael O'Hara concluded a negative economic impact would occur. He is the only person to do so. His analysis was based upon two false assumptions. He incorrectly assumed that Keystone would avoid paying taxes through use of the Nebraska Advantage Act. In a stark admission, however, Dr. O'Hara acknowledged not bothering to research whether Keystone received even a single dollar of incentives for its Keystone Mainline. (TR 839:4-10) To avoid any doubt on the question, Mr. Palmer confirmed during the hearing that Keystone would not take any Advantage Act incentives. (TR 155:6-16) Dr. O'Hara's first assumption was, therefore, eliminated.

Dr. O'Hara also falsely assumed that land values would decrease by 15% due to the mere presence of a pipeline. However, Dr. O'Hara failed to reference a single parcel of Nebraska land which has seen any reduction in land value due to the presence of an oil pipeline, let alone the drastic 15% reduction, which Dr. O'Hara apparently picked out of thin air. In contrast to Dr. O'Hara, Dr. Goss testified that he did not attribute a loss in residential or agricultural values. (TR 319:16-320:1) The Department of State concurs with Dr. Goss, and it disagrees with Dr. O'Hara. (TR 835:2-8) The PSC Consultants also agree with Dr. Goss and the Department of State on this point. On page 66 of PSC-6, the consultants explained that they thoroughly searched for evidence of diminution in value in Nebraska, and they were unable to find anything to support the notion that the existence of a pipeline causes diminution in value. (PSC-6, p. 66) Dr. O'Hara obviously either failed to find such evidence or, as he did with his the tax incentive



speculation, failed to research it. Regardless, the second premise of Dr. O'Hara's testimony is – like the first premise - demonstrably false.

Dr. O'Hara read the FSEIS (TR 834:12-836:10), and yet he never criticized the Department of State, which concluded the exact opposite of him. (TR 836:2-5) Dr. O'Hara also failed to acknowledge or criticize the NDEQ's economic conclusions. (TR 836:6-10)

The only relevant projections in the limited portion of Dr. O'Hara's admissible report were his admissions that:

- There will be 13,508.7 jobs created through the first 20 years of the Project. (TR 836:25-837:6);
- There will be \$1,528,700,640 in income to Nebraskans in resulting from construction and operation of the pipeline (TR 837:22-25); and
- There will be income tax revenue to the State of Nebraska in the amount of \$33,136,965 (TR 838:1-4).

The fifth analysis was completed by the Commission's consultants. This is perhaps the most damning analysis to Dr. O'Hara because the Commission's consultants had the benefit of his testimony and they directly rebut his assumed premise of diminution in real estate value. The consultants analyzed whether land values would decrease due to the presence of a pipeline. They actually researched Nebraska land values where a pipeline currently sits (unlike Dr. O'Hara's report) and concluded on multiple occasions that there is zero diminution in value from crude oil pipelines. (PSC-6, p. 12, 30, 66) This analysis is consistent with Dr. Goss, the Department of State and the NDEQ and it completely eliminates the basis for Dr. O'Hara's testimony.

### **III. THE OPPOSING INTERVENORS' ARGUMENT FOR THE I-90 CONCEPT IGNORES THE EVIDENCE.**

Certain Intervenor have continued to argue for the I-90 Corridor despite the wealth of evidence proving it is less desirable from an environmental standpoint and that it conflicts with other route approvals. As mentioned at the outset of this brief, many of the Opposing Intervenor's concerns are directed at the pipeline itself, not the specific *route*. The fact that Intervenor are advancing a pipeline alternative that is environmentally inferior to the Preferred Route is, like the ever-changing constitutional challenges, illustrative of their motive.

As explained in Keystone's opening brief, the Preferred Route is environmentally superior because it is considerably shorter, thereby impacting less land during construction. (KXL-19, p. 36) It requires fewer above ground facilities. (KXL-20, p. 36) It has fewer perennial water body crossings. (KXL-20, p. 36) The Preferred Route also impacts less developed land than the I-90 Corridor. (KXL-20, p. 1982) The I-90 Corridor water body crossings are greater. (KXL-20, p. 1970) It should be noted that the I-90 Corridor impacts a significantly greater population due to crossing more populated counties. (KXL-20, p. 1985) Moreover, any assumed benefits of "co-location" are overstated. Dr. Schmidt explained that true co-location opportunities are significantly reduced due to requisite deviations for routing considerations already in place with the Preferred Route. (KXL-13, p. 7:129-10:204) Plus co-location does not mean the same easement. (TR 241:18-242:3) Contrary to the Landowner Intervenor's arguments, Keystone may not simply place the Keystone XL Pipeline in the same easement as the Keystone Mainline.

The merits of the Preferred Route's beneficial characteristics to the I-90 Corridor are best reflected in the fact that the Department of State granted a Presidential Permit based upon the

Preferred Route, not the I-90 Corridor. The Department of State's decision was unbiased, appropriate, and a reflection of the Nation's best interest. Keystone respectfully requests the Commission employ the same sound judgment and approve the environmentally superior Preferred Route.

In addition to the environmental benefits of the Preferred Route and the fact that the Department of State has already issued a Presidential Permit based upon the Preferred Route, there is a third consideration. The South Dakota Public Utilities Commission has granted Keystone a permit to construct the Keystone XL Pipeline in South Dakota. But, that permit has an important limitation on where the pipeline may be built. In paragraph 6 of Exhibit A to the Permit, the South Dakota Public Utilities Commission made it crystal clear that material changes to the location of the Project are subject to review and approval of that Commission. (LO-235, p. 26) Moving the route 100 miles to the east would obviously require reopening that Commission's approval. Given the absence of any environmental benefit, it seems apparent that such a delay strategy lies behind the Opposing Intervenor's support for this route.

Rather than endeavor to understand the geographical limitations of the South Dakota Public Utilities Commission's permit, the Opposing Intervenor instead chose to allege that Keystone was misleading the Commission. Clearly, Keystone's fixed entry point into Nebraska is validly based upon the South Dakota Public Utilities Commission's Condition No. 6. Opposing Intervenor's failure to substantively address that fact shows there is no genuine attack on the "fixed entry point." A baseless character attack does not change the facts.

The Commission's consultants recognized the reality of this fixed entry point. They wrote:

[b]asically, the South Dakota Public Utilities Commission issued a permit for a route in South Dakota that resulted in the one exit point. Given that constraint, any route in Nebraska not using that entry point is not likely viable without a change in permitting in South Dakota.

(PSC-6, p. 6) Their analysis is correct, and the fixed entry point makes the I-90 Corridor or “twinning” the existing Keystone Mainline from Cedar County to Saline County not viable.

The evidence shows the Preferred Route is environmentally superior to the I-90 Corridor (or any alternative for that matter) and that the I-90 Corridor is not viable. Each fact is sufficient on its own to approve the Preferred Route and in conjunction they are conclusive.

#### **IV. THE LANDOWNER INTERVENORS’ REQUEST FOR CONDITIONS ON THE PERMIT IS INAPPROPRIATE.**

In the Landowner Intervenor’s brief, they argue a number of conditions should be placed upon Keystone’s permit. These requests are nothing more than an attempt to reintroduce issues which have been previously excluded from this proceeding. It is undisputed that pipeline safety is not a relevant consideration for the Commission’s decision on the route approval. This is clear by Nebraska law (Neb. Rev. Stat. §57-1407) and by Order of the Commission. (*See*, Order on Motions in Limine.) Landowner Intervenor’s have tried a variety of different avenues to introduce evidence and argument on pipeline safety. The request for specific conditions addressing pipeline safety is their latest attempt. It should be rejected.

The Landowner Intervenor’s cite to general propositions of law suggesting that the Commission has unfettered authority. This discussion ignores critical statutory limitations. In Neb. Rev. Stat. §75-109.01, the Legislature made clear that while the Public Service

Commission has jurisdiction over pipeline carriers, that jurisdiction may not be inconsistent with MOPSA. As has been extensively briefed, MOPSA is an act to determine the *route or site* of a major oil pipeline. Neb. Rev. Stat. §57-1407(4) Moreover, the Legislature has found, as part of MOPSA, that pipelines are in the public interest. Neb. Rev. Stat. §57-1403(3) In light of the scope of the Commission's decision (i.e. route approval) and the express exclusion of safety considerations, the Landowners' request for limitations or conditions upon the permit is clearly inappropriate.

An example of an inappropriate request is discussed at length in the Landowner Intervenor's brief. They continuously urge imposition of an easement term to require full removal of the pipe at the end of the operation of the Keystone XL Pipeline. This is an attempt to push the Commission to regulate pipeline safety and to impose easement terms. Both are inappropriate. Pipeline removal is a matter for the Pipeline and Hazardous Material Safety Administration. See 49 C.F.R. §195.59 ("Abandonment or deactivation of facilities.") The Commission specifically excluded easement terms from this process. (Order on Motion in Limine)

Landowners further raise the hyperbolic notion that the Keystone XL pipeline would lead to a terrorist event or the sale of the pipeline to an enemy of the State. The Landowners' assertion has nothing to do with route approval. It is clearly a distraction tactic and has no support under existing federal law. The United States Department of Treasury, through the Committee on Foreign Investment in the United States, has the authority to review transactions that could result in control of the United States business by a foreign person. The review is to determine the effect of such transactions on the national security of the United States. This Committee operates pursuant to Section 721 of the Defense Production Act of 1950, as amended

by the Foreign Investment National Security Act. *See*, 50 U.S.C.A. §4565 (“Authority to review certain mergers, acquisitions, and takeovers”) The laws are implemented by Executive Order 11858, as amended, and federal regulations at 31 C.F.R. Part 800. The Landowners’ argument is not only inapplicable to the Commissions’ route decision pursuant to MOPSA, it is clearly incorrect as a matter of law.

**V. KEYSTONE COMPLIED WITH ALL REQUIREMENTS OF MOPSA.**

The Opposing Intervenors make multiple incorrect assertions regarding Keystone’s compliance with MOPSA. The first is that Keystone did not adequately explain its MSDS forms. This argument fails to understand the purpose of the administrative regulation requiring the information and the nature of a pipeline carrier’s business.

The regulation at issue is as follows:

A description of the product or material to be transported through the major oil pipeline including identification of the product or material; and for informational purposes only hazard(s) identification; composition/information on ingredients; first-aid measures; fire-fighting measures; accidental release measures; handling and storage; exposure controls/personal protection; physical and chemical properties; stability and reactivity; toxicological information; ecological information; disposal considerations; transport information; regulatory information. The requirement can be satisfied through the filing of a representative Safety Data Sheet.

291 N.A.C. §023.02A5 (emphasis added). Keystone, in fact, filed two representative Safety Data Sheets. (KXL-1, p. 80-88) As a matter of law, this satisfied the regulation.

Moreover, Keystone is a carrier, not a shipper. The shippers own the product, and the product must meet a basic quality level before being put into the pipe. (TR 207:20-208:10) Keystone very clearly explained that it will transport a range of crude oils, the specific the composition of which is governed by Keystone's tariff, which is subject to approval by the Federal Energy Regulatory Commission. Keystone provided the MSDS Sheets reflecting the range of that composition. (KXL-1, p. 21)

The Landowner Intervenors have also suggested the evidence showed that "zoning" laws would be ignored. That is not a true characterization of the evidence. Tony Palmer testified that legal requirements (without limitation) will be complied with. (KXL-2, p. 4) Dr. O'Hara attempted to say that "covenants" were excluded by Keystone. (TR 841:17-23) In light of Tony Palmer's unqualified testimony regarding legal requirements, Dr. O'Hara's concern is a distinction without a difference.

The Landowner Intervenors have also made the argument that the required State Agencies have not filed reports. That is obviously incorrect. The PSC exhibit number 4 contains those reports, and they are all supportive of the Preferred Route.

The Natural Resources Intervenors assert Keystone failed to provide legal descriptions of the Preferred Route, and, therefore, the Application must be denied. The Natural Resources Intervenors are wrong. The Commission's regulations require a "map" of the proposed route, not legal descriptions. 291 N.A.C. §023.02A2. Keystone provided maps of the Preferred Route throughout the Application and Appendices. (*See*, e.g., KXL-1, figures 2.2-1, 2.2-2, 3.0-1, 20.0-1, Appendix G 289-307). If there were any doubt, the obvious fact that landowners along the

Preferred Route were granted the right to intervene should serve as evidence that the location of the Preferred Route is known. Moreover, the Commission has sought and obtained GIS data of the Preferred Route from Keystone and it has made that data available on its website. *See*, [http://www.psc.nebraska.gov/natgas/Keystone/KXL\\_Pipelines\\_February2017%20-%20Map.pdf](http://www.psc.nebraska.gov/natgas/Keystone/KXL_Pipelines_February2017%20-%20Map.pdf).

## **VI. THE BRIEFS OF THE CULTURAL RESOURCE INTERVENORS IGNORE THE EVIDENCE.**

Like other Opposing Intervenors, The Ponca Tribe and The Yankton Sioux have asserted legal conclusions without evidentiary support, and their arguments should be rejected. Keystone has made considerable efforts to protect and preserve cultural resources and will continue to do so through the life of the Project. Protecting cultural resources is an ongoing process and it will continue through the construction and operation of the Keystone XL Pipeline.

The Ponca Tribe incorrectly argues that there was no evidence presented at the hearing on the impact of cultural resources. This is simply not true. The Construction Mitigation and Reclamation Plan, Section 2.19, contains an explanation of the legal requirements and company imposed requirements to protect cultural resources. (KXL-1, p. 105) That section references the Programmatic Agreement, as amended, between various consulting parties, the Department of State, and Keystone. The Programmatic Agreement is in evidence and it contains the Unanticipated Discovery Plan, which ensures that future discoveries are protected. (KXL-23) In fact, the evidence shows that considerable effort has been made through literature searches and on-the-ground surveys of the real estate along the Preferred Route (where access has been allowed) to determine whether eligible cultural resources exist. (KXL-14, 4:65-77) Additionally, as Mr. Wright admitted on the stand, The Ponca Tribe has been invited to coordinate and consult by both the Department of State and Keystone for the protection of



cultural resources. (TR 1057:2-6) Mr. Wright admitted that as long as the cultural resource surveys are conducted correctly in accordance with the Amended Programmatic Agreement (KXL-23), his concerns are alleviated. (TR 1054:23-1055:3) Given the state of the Project, The Ponca Tribe's claim that its rights have not been adequately protected ring hollow because those rights will be protected if the Programmatic Agreement is followed. Not only have Keystone and the Department of State endeavored to identify The Ponca Tribe's resources, they have invited the The Ponca Tribe to assist them in locating those resources. (TR 1057:2-6) There is no evidence whatsoever that Keystone will not follow the Programmatic Agreement, and any arguments to the contrary are simply unsupported.

The Yankton Sioux's argument is, in essence, an allegation that because the work force camps will have many men, there will be an increased criminal element that could potentially impact The Yankton Sioux. This argument is totally unsupported by any admissible evidence and is based entirely on speculation. Rick Perkins from TransCanada testified that the work force camps are monitored and that the abuse of drugs, alcohol or firearms is prohibited. (KXL-15). This testimony is undisputed. But, regardless, it is not the Commission's role to judge an entire class of hard-working individuals as likely criminals and, therefore, punish a project during a *route* approval proceeding. This allegation by The Yankton Sioux, like many others in the Opposing Intervenors' briefs, is an unsupported distraction from *route* considerations. It should be ignored.

## **VII. PERSONAL ATTACKS DIRECTED TOWARDS WITNESSES REFLECT THE ABSENCE OF SUBSTANTIVE CRITIQUES.**

The Natural Resources Intervenors attack Dr. Schmidt suggesting that his corrections to the Application were dishonest. The Natural Resources Intervenors had the opportunity, but

chose not, to examine Dr. Schmidt on his corrections. The simple fact is there were two instances in the Application that required clarification and correction in response to criticism from witnesses presented by the Natural Resource Intervenors' witnesses. Dr. Schmidt did so. Those corrections support the conclusions that Keystone made in its Application and its routing decision. Rather than attempt to understand the accurate nature of the information presented, the Natural Resources Intervenors resorted to an attack on Dr. Schmidt's integrity. It is a baseless attack and has no place in the hearing. Moreover, if they felt so strongly about that position, they had the opportunity to test and impeach Dr. Schmidt on cross-examination. Of course, their decision not to cross-examine Dr. Schmidt or to substantively address the accurate data, suggests that they know the data was, in fact, accurately corrected.

Similarly, the Landowner Intervenors objected to Dr. Goss for the quality of Dr. Goss's footnotes in his report. However, the Landowner Intervenors did not actually attack the projections or the mathematics that led to those projections based upon the Implan Model in Dr. Goss's report. For example, Landowner Intervenors spent an extraordinarily long amount of time on a footnote to a newspaper article reflecting a 15-year depreciation schedule. However, Landowner Intervenors do not dispute that a 15-year depreciation schedule is actually the correct depreciation period. The attacks on Dr. Goss are pure misdirection. Four out of five analyses of the economic projections are in accord that employment and tax revenue will benefit from Keystone XL along the Preferred Route. The Opposing Intervenors have not and cannot overcome that fact.

It should be noted that each of the Natural Resources Intervenors' pre-filed written testimony contained errors. Dr. Johnsgard corrected his testimony similar to Dr. Schmidt. (*See* NR-2) Dr. Hayes and Mr. Trungale also candidly acknowledged there were corrections that

needed to be made to their pre-filed testimonies, and admitted that mistakes, including typos, can happen. (KXL-61, 16:22-18:22; 65:8-21) (KXL-62, 17:10-18:14) Nobody has attacked the integrity of those witnesses.

**VIII. PREFERRED ROUTE IS ABSOLUTELY THE BEST CHOICE AND IS IN THE PUBLIC INTEREST.**

With no substantive argument or evidence to rebut Keystone's showing that the Preferred Route is the correct choice, the Natural Resources Intervenors accuse Keystone of acting in bad faith by including the Sandhills Route in its Application. The fact is the Preferred Route is the result of years of analysis and studies, and in order to explain why it is the route that is in the public interest, Keystone had to explain the various alternatives, which were studied and analyzed as part of this decade-long routing process. This, of course, must include a review of the Sandhills route which was initially proposed and approved in an Environmental Impact Statement in 2011. This is an important fact, which is a part of the analysis that ultimately led to the selection of the Preferred Route. It certainly is appropriate to explain to the Commission why the alternative Sandhills Route, although approved by the federal government, is ultimately not the Route that Keystone believes is in the public interest of the State.

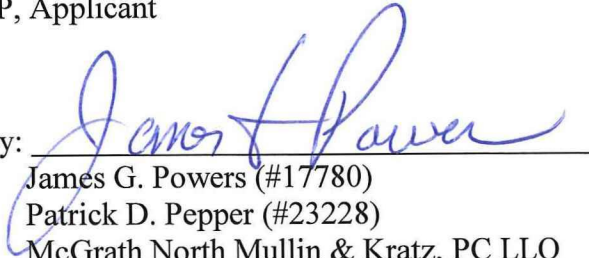
**CONCLUSION**

The Commission's decision should be based upon the evidence of the merits of the Preferred Route. If the focus is on the *routing* question, where it should be, then the Commission has overwhelming evidence that the Preferred Route is in the public interest. The litany of Opposing Intervenors' distracting arguments is not relevant to the routing question in front of the Commission. Keystone respectfully requests that the Commission focus on Neb. Rev. Stat. §57-1407(4) and approve Keystone's Application.

Dated this 25th day of September, 2017.

TRANSCANADA KEYSTONE PIPELINE,  
LP, Applicant

By:



James G. Powers (#17780)

Patrick D. Pepper (#23228)

McGrath North Mullin & Kratz, PC LLO

First National Tower, Suite 3700

1601 Dodge Street

Omaha, Nebraska 68102

(402) 341-3070

(402) 341-0216 fax

James G. Powers -

jpowers@mcgrathnorth.com

Patrick D. Pepper -

ppepper@mcgrathnorth.com

## CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2017, a copy of the foregoing was served by email to the individuals and entities listed below:

Jayne Antony  
16064 Spring Street  
Omaha, NE 68130  
[jaynevan@yahoo.com](mailto:jaynevan@yahoo.com)

Fredericks Peebles and Morgan LLP  
Jennifer S Baker  
1900 Plaza Drive  
Louisville, CO 80027  
[jbaker@ndnlaw.com](mailto:jbaker@ndnlaw.com)

Wrexie Bardaglio  
9748 Arden Road  
Trumansburg, NY 14886  
[Wrexie.bardaglio@gmail.com](mailto:Wrexie.bardaglio@gmail.com)

Leverne A. Barrett  
1909 Co Rd E  
Ceresco, NE 68017  
[vernbarrett@fureuretk.com](mailto:vernbarrett@fureuretk.com)

O'Donoghue & O'Donoghue LLP  
Ellen O Boardman  
4748 Wisconsin Avenue, NW  
Washington, DC 20016  
[eboardman@odonoghuelaw.com](mailto:eboardman@odonoghuelaw.com)

James P. Cavanaugh  
Cavanaugh Law Firm, PC LLO  
6035 Binney St Ste 100  
Omaha, NE 68104  
[cavanaughlawfirm@aol.com](mailto:cavanaughlawfirm@aol.com)

O'Donoghue & O'Donoghue LLP  
Anna Friedlander  
4748 Wisconsin Avenue, NW  
Washington, DC 20016  
[afriedlander@odonoghuelaw.com](mailto:afriedlander@odonoghuelaw.com)

O'Connor Law Firm  
Robert O'Connor, Jr  
PO Box 45116  
Omaha, NE 68145  
[reolaw@aol.com](mailto:reolaw@aol.com)

Sierra Club  
Dara Illowsky  
1650 38th Street Ste 102W  
Boulder, CO 80301  
[Dara.illowsky@sierraclub.org](mailto:Dara.illowsky@sierraclub.org)

Kimberly E Craven  
33 King Canyon Road  
Chadron, NE 69337  
[kimecraven@gmail.com](mailto:kimecraven@gmail.com)

Cathie (Kathryn) Genung  
902 East 7th St  
Hastings, NE 68901  
[Tg64152@windstream.net](mailto:Tg64152@windstream.net)

Louis (Tom) Genung  
902 East 7th St  
Hastings, NE 68901  
[Tg64152@windstream.net](mailto:Tg64152@windstream.net)

Andy Grier  
916 S. 181st St.  
Elkhorn, NE 68022  
[Griea01@cox.net](mailto:Griea01@cox.net)

Christy J Hargesheimer  
620 S 30th St  
Lincoln, NE 68510  
[chrispaz@neb.rr.com](mailto:chrispaz@neb.rr.com)

Richard S Hargesheimer  
620 South 30th St  
Lincoln, NE 68510  
[rshargy@gmail.com](mailto:rshargy@gmail.com)

Blake & Uhlig, PA  
Robert J Henry  
753 State Avenue Ste 475  
Kansas City, KS 66101  
[rjh@blake-uhlig.com](mailto:rjh@blake-uhlig.com)

Blake & Uhlig, PA  
Michael J Stapp  
753 State Avenue Ste 475  
Kansas City, KS 66101  
[mjs@blake-uhlig.com](mailto:mjs@blake-uhlig.com)

Blake & Uhlig, PA  
Michael E Amash  
753 State Avenue Ste 475  
Kansas City, KS 66101  
[mea@blake-uhlig.com](mailto:mea@blake-uhlig.com)

Becky Hohnstein  
PO Box 272  
Minatare, NE 69356  
[jimhohnstein@gmail.com](mailto:jimhohnstein@gmail.com)

Marvin E Hughes  
714 W 5th St Ste 120  
Hastings, NE 68901  
[bhughes@gtmc.net](mailto:bhughes@gtmc.net)

John Jarecki  
6112 Bedford Ave  
Omaha, NE 68104  
[Johnjarecki110@gmail.com](mailto:Johnjarecki110@gmail.com)

Karen Jarecki  
6112 Bedford Ave  
Omaha, NE 68104  
[tenbuckstwo@yahoo.com](mailto:tenbuckstwo@yahoo.com)

Brad S Jolly & Associates  
Brad S Jolly  
15355 Gadsen Dr  
Brighton, CO 80603  
[bsj@bsjlawfirm.com](mailto:bsj@bsjlawfirm.com)

Domina Law Group PC LLO  
Brian F Jorde  
2425 S 144th Street  
Omaha, NE 68144  
[bjorde@dominalaw.com](mailto:bjorde@dominalaw.com)

Domina Law Group PC LLO  
Dave Domina  
2425 S 144th Street  
Omaha, NE 68144  
[d domina@dominalaw.com](mailto:d domina@dominalaw.com)

Michelle C. LaMere  
PO Box 514  
Winnebago, NE 68071  
[lamere@rocketmail.com](mailto:lamere@rocketmail.com)

Elizabeth (Liz) Mensinger  
6509 Wirt St.  
Omaha, NE 68104  
[lizmensinger@gmail.com](mailto:lizmensinger@gmail.com)

Janece Mollhoff  
2354 Euclid Street  
Ashland, NE 68003  
[wjmollhoff@windstream.net](mailto:wjmollhoff@windstream.net)

Jana Osborn  
1112 Meadowlark  
Alliance, NE 69301  
[janajearyb@gmail.com](mailto:janajearyb@gmail.com)

Christine Polson  
4923 Valley Street  
Omaha, NE 68106  
[cnpolson@cox.net](mailto:cnpolson@cox.net)

Donna Roller  
2000 Twin Ridge Rd.  
Lincoln, NE 68506  
[rollerski@gmail.com](mailto:rollerski@gmail.com)

Lois Schreur  
2544 N. 61st Street  
PO Box 4376  
Omaha, NE 68104  
[leschreur@centruylink.net](mailto:leschreur@centruylink.net)

Sandra Slaymaker  
102 E 3rd St #2  
Atkinson, NE 68713  
[sandyslaymaker@gmail.com](mailto:sandyslaymaker@gmail.com)

Taylor R M Keen  
5022 Hamilton St  
Omaha, NE 68132  
[Taylorkeen7@gmail.com](mailto:Taylorkeen7@gmail.com)

Pamela Luger  
8732 Granville Pkwy  
LaVista, NE 68128  
[Pam1181@yahoo.com](mailto:Pam1181@yahoo.com)

Cindy Myers  
PO Box 104  
Stuart, NE 68780  
[Csmyers77@hotmail.com](mailto:Csmyers77@hotmail.com)

Greg Nelson  
3700 Sumner St  
Lincoln, NE 68506  
[gnelson@inetnebr.com](mailto:gnelson@inetnebr.com)

James Douglas Osborn  
43110 879th Rd  
Ainsworth, NE 69210  
[Jdosborn3@yahoo.com](mailto:Jdosborn3@yahoo.com)

Joseph Pomponio  
551B Sand Creek Rd  
Albany, NY 12205  
[lukaz@msn.com](mailto:lukaz@msn.com)

Cecilia Rossiter  
949 N 30th St  
Lincoln, NE 68503  
[punion@gmail.com](mailto:punion@gmail.com)

Tristan Scorpio  
208 S Burlington Ave Ste 103  
Box 325  
Hasting, NE 68901  
[tom@boldnebraska.org](mailto:tom@boldnebraska.org)

Susan Soriente  
1110 Rockhurst Drive  
Lincoln, NE 68510  
[ssoriente@gmail.com](mailto:ssoriente@gmail.com)

Judy King  
1261 Fall Creek Rd  
Lincoln, NE 68510  
[kingjud@gmail.com](mailto:kingjud@gmail.com)

350.org  
Kendall Maxey  
20 Jay Street  
Brooklyn, NY 11201  
[kendall@350.org](mailto:kendall@350.org)

Crystal Miller  
7794 Greenleaf Drive  
LaVista, NE 68128  
[neccmiller@juno.com](mailto:neccmiller@juno.com)

Julie Nichols  
1995 Park Ave  
Lincoln, NE 68502  
[Willpower2@earthlink.net](mailto:Willpower2@earthlink.net)

Dave Polson  
4923 Valley Street  
Omaha, NE 68106  
[honk@cox.net](mailto:honk@cox.net)

Collin A Rees  
4721 Heather Lane  
Kearney, NE 68845  
[collin@priceofoil.org](mailto:collin@priceofoil.org)

Corey Runmann  
2718 S. 12th St.  
Lincoln, NE 68502  
[rumannc@gmail.com](mailto:rumannc@gmail.com)

Julie Shaffer  
5405 Northern Hills Dr  
Omaha, NE 68152  
[Jshaffer59@gmail.com](mailto:Jshaffer59@gmail.com)

Oil Change International  
Lorne Stockman  
714 G St., SE Suite 202  
Washington, DC 20003  
[lorne@priceofoil.org](mailto:lorne@priceofoil.org)

Susan Straka-Heyden  
46581 875th Rd  
Stuart, NE 68780  
[Suzie\\_sl@hotmail.com](mailto:Suzie_sl@hotmail.com)

Kimberly L Stuhr  
19303 Buffalo Rd  
Springfield, NE 68059  
[Kimberlystuhr13@yahoo.com](mailto:Kimberlystuhr13@yahoo.com)

Jacques Tallichet  
2821 S. 79th St  
Lincoln, NE 68506  
[Jacques.tallichet@gmail.com](mailto:Jacques.tallichet@gmail.com)

Paul Theobald  
85718 544th Avenue  
Foster, NE 68765  
[Ptheobald36@gmail.com](mailto:Ptheobald36@gmail.com)

Jonathan H Thomas  
960 S Cotner Blvd  
Lincoln, NE 68510  
[Thewild\\_things@yahoo.com](mailto:Thewild_things@yahoo.com)

Elizabeth L Troshynski  
87769 484th Ave  
Atkinson, NE 68713  
[btroshyn@hotmail.com](mailto:btroshyn@hotmail.com)

Christine Troshynski  
101 S. 1st St.  
Emmet, NE 68734  
[ctroshynski@gmail.com](mailto:ctroshynski@gmail.com)

Julie Walker  
2570 West Luther St.  
Martell, NE 68404  
[Jw9095@yahoo.com](mailto:Jw9095@yahoo.com)

Susan C Watson  
2035 N 28th St Apt 213  
Lincoln, NE 68503  
[Scwatson1965@gmail.com](mailto:Scwatson1965@gmail.com)

Susan J Weber  
2425 Folkways Blvd Apt 329  
Lincoln, NE 68521  
[Susanjweber4@yahoo.com](mailto:Susanjweber4@yahoo.com)

Douglas Whitmore  
8856 N 83rd Ave  
Omaha, NE 68122  
[douglas@whitmore4congress.com](mailto:douglas@whitmore4congress.com)

Kenneth C Winston  
1327 H St Ste 300  
Lincoln, NE 68508  
[kwinston@inebraska.com](mailto:kwinston@inebraska.com)

Sandy Zdan  
4817 Douglas  
Omaha, NE 68132  
[sandywz@cox.net](mailto:sandywz@cox.net)

Sarah Zuekerman  
1729 K St #7  
Lincoln, NE 68508  
[Sarahj1182@gmail.com](mailto:Sarahj1182@gmail.com)

Lisa May  
1008 13th Avenue  
Kearney, NE 68845  
[doodlesanddollies@hotmail.com](mailto:doodlesanddollies@hotmail.com)

Michael Whatley  
1666 K Street NW, Ste 500  
Washington, DC 20006  
[ehaggstrom@consumerenergyalliance.org](mailto:ehaggstrom@consumerenergyalliance.org)

Michael Reeves  
5101 N MLK #395  
Lubbock, TX 79403  
[michael.reeves@portstoplains.com](mailto:michael.reeves@portstoplains.com)

Adam Martin  
PO Box 3224  
Rapid City, SD 57709  
[Adam.martin@sdoil.org](mailto:Adam.martin@sdoil.org)

Steven M. Kramer  
900 17th Street, NW, Ste 600  
Washington, DC 20006  
[skramer@aopl.org](mailto:skramer@aopl.org)

Ronald J. Sedlacek  
PO Box 95128  
Lincoln, NE 68509  
[rsedlacek@nechamber.com](mailto:rsedlacek@nechamber.com)

Judith Thorman  
216 West Jackson Blvd, Ste 9  
Chicago, IL 60606  
[thormanj@api.org](mailto:thormanj@api.org)

Ross Eisenberg  
733 10th Street, NW, Ste 700  
Washington, DC 20001  
[Ross.e.eisenberg@nam.org](mailto:Ross.e.eisenberg@nam.org)

[Matt.effken@nebraska.gov](mailto:Matt.effken@nebraska.gov)

[Nichole.mulcahy@nebraska.gov](mailto:Nichole.mulcahy@nebraska.gov)

[Mike.Hybl@nebraska.gov](mailto:Mike.Hybl@nebraska.gov)



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