

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
OF TRANSCANADA KEYSTONE)
PIPELINE, LP FOR ROUTE APPROVAL OF)
THE KEYSTONE XL PIPELINE PROJECT)
PURSUANT TO THE MAJOR OIL)
PIPELINE SITING ACT)
_____)

APPLICATION NO. OP-0003

**TRANSCANADA KEYSTONE
PIPELINE, LP'S MOTION TO DENY
AND OBJECTIONS TO PETITIONS
OF INTERVENTION**

TransCanada Keystone Pipeline, LP, (“Keystone”) objects to, and moves the Nebraska Public Service Commission (“Commission”) to deny, the petitions of intervention submitted by the individuals and entities listed in the attached Exhibit “A” (hereinafter the “Non-Interested Petitioners”). Keystone objects to the petitions for intervention of the Non-Interested Petitioners on the following grounds:

1. The Non-Interested Petitioners have not demonstrated the facts necessary to show they are interested parties entitled to formally intervene under Neb. Rev. Stat. § 84-912.02 and Neb. Admin. Code Title 291, Ch. 1 § 015.01. Under Neb. Rev. Stat. § 84-912.02 the Non-Interested Petitions must demonstrate they have legal rights, duties, privileges, immunities or other legal interests which may be *substantially* affected by the proceeding. *Id.* (emphasis added). Keystone objects because the interests identified by the Non-Interested Petitioners are not capable of being affected (substantially or otherwise) through the narrow scope of this proceeding.

2. This proceeding is pursuant to, and limited by, the Major Oil Pipeline Siting Act (“MOPSA”), which is legislation authorizing the Commission to evaluate a pipeline carrier’s proposed major oil pipeline route. This proceeding is not a forum to litigate questions regarding the safety of the design, installation, inspection, emergency plans and procedures, testing construction, extension operation, replacement or maintenance of major oil pipelines and

pipeline facilities. Title 291 N.A.C. Ch. 9, § 23.01. It is also not a forum to litigate whether construction of Keystone XL or any other major oil pipeline is in the State’s interest because that question has been affirmatively answered by the Legislature. See, Neb. Rev. Stat. § 57-1403(3) (“construction of major oil pipelines in Nebraska is in the public interest of Nebraska”). Instead, the scope of this proceeding is narrowly limited to whether the Preferred Route identified in Keystone’s application is in the public interest.

3. In light of the narrow scope of this proceeding, the Non-Interested Petitioners have not stated sufficient interests, which may be substantially affected by this proceeding. Indeed, aside from owners of real estate along the route, there are few, if any, interests which can be impacted, at all, by this proceeding.

4. The Commission must follow the statutory and regulatory limitations on intervention because this proceeding is on a statutorily-limited time frame and may not extend beyond November 23, 2017. On March 23, 2017, the Department of State of the United States of America issued a Presidential Permit authorizing the construction, connection, operation and maintenance of pipeline facilities at the United States/Canada international border at Morgan, Montana. Pursuant to Neb. Rev. Stat. § 57-1408(2), the issuance of that Presidential Permit requires the Commission to issue an order on the application no more than eight months from the issuance of the Presidential Permit. This mandatory time constraint puts extra importance on the obligation that the petitions for intervention not impair the “orderly and prompt” conduct of the proceedings. See, Neb. Rev. Stat. § 84-912.02(1)(c).

5. The Non-Interested Petitioners frequently used pre-prepared forms or similar form pleading documents. There are common themes throughout the filings, and the following is an explanation of the deficiencies within those themes:

- a. Some Non-Interested Petitioners are special interest advocacy groups that hope to address global climate change issues, safety issues, and other concerns which are beyond the scope of this proceeding. The special interest petitioners (e.g. Nebraska Sierra Club, 350.org, or the Bold Alliance) seek to unduly broaden the scope of the proceeding such that those petitions likely do not even qualify for informal intervention status, much less formal intervention. See, e.g. Neb. Rev. Stat. § 84-912.02(1)(b)(c) (not only must the petitioners' legitimate interests be substantially affected by the proceeding, the orderly and prompt conduct of the proceedings may not be impaired by allowing the intervention) and 291 N.A.C. Ch. 1, § 15.025 (informal intervenors must not unduly broaden the scope of the proceeding). At most, special interest advocacy should be limited to providing statements to the Commission pursuant to 291 N.A.C. Ch. 1 § 15.03, which are subject to the Commission's authority to exclude improper or irrelevant statements.
- b. A group of the Non-Interested Petitioners have attempted to manufacture a significant legal interest based on donations or buying fractional "interests" in personal property or vegetation allegedly near the proposed route. Placing personal property or growing vegetation near the Preferred Route or in the Preferred Route cannot be sufficient to confer a substantial legal interest to protest the exact location of the Preferred Route.
- c. Almost all of the Non-Interested Petitioners state that their purpose in seeking formal intervention relates to the concern over the possibility of leaks or spills from the pipeline. These concerns, as a matter of law, are irrelevant to the

proceeding and cannot serve as a basis for formal intervention. See, Neb. Rev. Stat. § 57-1407(4) (the risk of spills and leaks may not be evaluated). Each and every person seeking to intervene on the basis of the prevention or consequences of theoretical spills or leaks must be prevented from formal intervention.

- d. Another of the subset of Non-Interested Petitioners raise issues regarding payment terms under eminent domain law, the duration of easements, or raise questions relating to common carriage. These are legislative issues, because the authority of eminent domain and the rights of condemnees are set forth in Neb. Rev. Stat. §§ 57-1101 and 76-701 et seq. Nothing in this proceeding will change those laws, which govern both condemners and condemnees. As such, the discussion of these types of issues is beyond the scope of the proceeding and would impair the orderly and prompt administration of this matter. These petitioners must be denied status as formal intervenors.
- e. A small number of Non-Interested Petitioners claim that they are taxpayers. That status does not give them the ability to intervene in this matter. The question in this matter is not to address the expenditure of taxpayer dollars, rather it is whether the Preferred Route is in the public interest. Moreover, Keystone is bound by Nebraska law and its written promise to pay for all state expenses reasonably attributed to the investigation and hearing, so taxpayer funds are not at issue. Neb. Rev. Stat. § 57-1406. Mere taxpayers may not formally intervene.
- f. Most Non-Interested Petitioners seek to litigate whether the construction of the pipeline is, in and of itself, in the public interest, but that issue has also been legislatively determined, and it is improper to litigate that question in conjunction

with this application. Within MOPSA, the legislature expressly codified the following:

(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;

Neb. Rev. Stat. § 57-1403(3) (emphasis added). The Commission is not tasked with, nor is it allowed to preside over administrative litigation on the question of whether construction of major oil pipelines is in the public interest. That is a legislative decision, and the Legislature has decided affirmatively. Again, the sole issue in this matter is whether the Preferred Route is in the public interest. Deviations from that purpose violate Neb. Rev. Stat. § 84-912.02(1)(c). Within that context, the Non-Interested Petitioners have failed to demonstrate interests, which will be substantially affected by this proceeding, and they may not be granted status as formal intervenors.

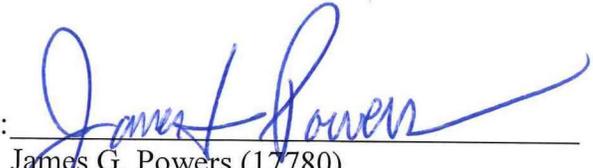
- g. The Yankton Sioux Tribe and the Ponca Tribe of Nebraska each filed a petition for intervention. Both petitions fail to identify an interest which may be substantially affected by this proceeding. The standard to determine whether an interest is sufficient to intervene is set forth in In re Applications 15145, 15146, 15147, and 15148 of the Little Blue Natural Resources District, 219 Neb. 372, 376, 363 N.W.2d 500, 503 (1985). There, the Nebraska Supreme Court stated that the interest must be such a direct and immediate interest that the intervenor will either “lose or gain by the direct operation and legal effect of the judgment . . .” Id. An indirect, remote or conjectural interest is not sufficient to permit intervention. Here, both the Yankton Sioux Tribe and the Ponca Tribe of

Nebraska make much of the fact that the land along the route is either crossing the “ancestral territory of the Yankton Sioux Tribe” or cross the 15-county service area of the Ponca Tribe. But, importantly, neither tribe articulates how those extraordinarily broad statements of alleged interest will be affected by the judgment. The interests claimed and described by both tribes are so broad that they lack sufficient detail to find the interests can be substantially affected by this proceeding. The Yankton Sioux and the Ponca Tribes should not be allowed to formally intervene.

6. The Non-Interested Petitioners may instead be entitled to intervene informally under Neb. Admin. Code Title 291, Ch. 1 § 015.02B. However, that regulation states that leave to intervene informally shall only be granted if the petitioner “does not unduly broaden the scope of the proceeding.” To the extent the Non-Interested Petitioners are seeking to advocate special interest issues relating to global climate change, spills or leaks, and the safety of the construction, operation, and maintenance of the pipeline, then even informal intervention must be circumscribed because none of those interests are within scope of MOPSA.

WHEREFORE, TransCanada Keystone Pipeline, LP hereby respectfully requests the Commission grant its motion and deny the identified petitions for formal intervention.

TRANSCANADA KEYSTONE PIPELINE,
LP

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Exhibit "A"

The following list of persons and entities are non-interested petitioners and their petitions to intervene should be properly denied:

Jayne N. Antony	Crystal Miller	Elizabeth L. Troshynski
Wrexie Bardaglio	Janece Mollhoff	Julie Walker
Mia Bergman	Greg Nelson	Susan C. Watson
Kimberly E. Craven	Julie Nichols	Susan J. Weber
Kimberlee A. Frauendorfer	James Douglas Osborn	Douglas Whitmore
Randall L. Frauendorger	Jana Osborn	Sandy Zdan
Troy R. Frauendorfer	Dave Polson	Sarah Zuekerman
Cathie (Kathryn) Genung	Donna Roller	Kenneth C. Winston – On behalf of Bold Alliance
Louis (Tom) Genung	Cecilia Rossiter	Cavanaugh Law Firm, PC LLO, James P. Cavanaugh – On behalf of Nebraska Sierra Club
Andy Grier	Corey Runmann	
Christy J. Hargesheimer	Lois Schreur	
Richard S. Hargesheimer	Tristan Scorpio	Brad S. Jolly & Associates, Brad S. Jolly – On behalf of the Ponca Tribe of Nebraska
Becky Hohnstein	Julie Shaffer	
Marvin E. Hughes	Sandra Slaymaker	
John Jarecki	Susan Soriente	Fredericks Peebles and Morgan LLP, Jennifer S. Baker – On behalf of the Yankton Sioux Tribe
Karen Jarecki	Lorne Stockman c/o Oil Change Int'l	
Taylor Keen	Susan Straka-Heyden	
Judy King	Kimberly L. Stuhr	
Michele C. LaMere	Paul Theobald	
Paul M. Latenser	Jonathan H. Thomas	
Pamela Luger	Julie Thomas	
350.org (Kendall Maxey)	Christine Troshynski	
Elizabeth (Liz) Mensinger		

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2017 that a copy of the foregoing motion was served by United States mail to the individuals and entities listed below:

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A handwritten signature in blue ink, appearing to read "J. Jolly", is written over a solid horizontal line.