

BEFORE THE PUBLIC SERVICE COMMISSION

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

INTERVENOR YANKTON SIOUX TRIBE'S

POST-HEARING BRIEF

Jennifer S. Baker, *Pro Hac Vice*
Conly J. Schulte, NE Bar No. 20158
1900 Plaza Drive
Louisville, CO 80027
Telephone: (303) 673-9600
Facsimile: (303) 673-9155
Email: jbaker@ndnlaw.com
Email: cschulte@ndnlaw.com

FREDERICKS PEBBLES AND MORGAN LLP
FOR THE YANKTON SIOUX TRIBE

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The Yankton Sioux Tribe (“YST” or the “Tribe”) submits this Post-Hearing Brief in accordance with the Nebraska Public Service Commission’s (“Commission” or “PSC”) Order Setting Briefing Schedule entered August 25, 2017.

I. PROPOSITIONS OF LAW

- When setting limitations upon formal and informal intervenors in proceedings before the Nebraska Public Service Commission, the Commission is required to follow its own rules of procedure and to conform to those rules, as they are binding on the Commission.

Neb. Rev. Stat. § 75-110(1). *Douglas County Welfare Admin. v. Parks*, 204 Neb. 570, 572, 284 N.W.2d 10, 11-12 (Neb. 1979). *Jantzen v. Diller Telephone Co.*, 245 Neb. 81, 100, 511 N.W.2d 504, 517 (Neb. 1994).

- Although the Major Oil Pipeline Siting Act prohibits the Commission from evaluating safety considerations regarding spills or leaks from pipelines, the Commission is not prohibited from considering other impacts that result from pipeline spills or leaks, including social and cultural impacts.

Neb. Rev. Stat. § 57-1407(4)(b) and (d).

II. ARGUMENT

A. The PSC Lacks Sufficient Information to Make a Public Interest Determination Due to the Unlawful Limitations Imposed on YST as a Tribe and Intervening Party.

The limitations placed on the Tribe as a formal intervenor are illegal, are contrary to the PSC’s own rules, and impede the Tribe’s ability to fully participate as a formal intervenor in this proceeding. In the order granting the Tribe formal intervenor status, the presiding hearing officer

identified YST and the Ponca Tribe of Nebraska (“Ponca Tribe”) as “Petitioners asserting social and cultural interests” and unlawfully restricted the two tribes in the following ways:

1. Both tribes together may only offer the testimony of one witness, such testimony being limited to social and cultural issues.
2. Both tribes may only conduct discovery for the purpose of exploring social and cultural issues.
3. Both tribes must collaborate to cross-examine witnesses during the Public Hearing, with the combined cross-examination not to exceed one hour.
4. Both tribes must submit one joint brief.

Order on Formal Intervention Petitions, Nebraska Public Service Commission entered March 31, 2017, at 6. The hearing officer did subsequently modify these restrictions, but only to permit the testimony of two witnesses (one per tribe) at the Public Hearing. Order Granting Motion to Withdraw, and Modifying Case Management Plan and Intervention Order entered May 10, 2017, at 2. This amendment to the order still fell drastically short of restoring the Tribe’s due process and equal protection rights.

In imposing these limitations on the Tribe, the PSC relied on rules under the Administrative Procedure Act (“APA”), Neb. Rev. Stat. § 84-912.02, rather than the Commission’s own rules of procedure. This is especially significant because much broader participation rights are afforded under the PSC’s rules of procedure as compared to those rights under the APA. The PSC rule regarding participation of a formal intervenor in proceedings, 291 Neb. Admin. Code 1 § 015.01C, reads: “A formal intervenor shall be entitled to participate in the proceeding to the extent of his/her express interest in the matter. Such participation shall include, *without limitation, presentation of evidence and argument, cross-examination of witnesses* and submission of rebuttal evidence”

(emphasis added). On the other hand, the APA allows agencies to “impose conditions upon the intervenor’s participation in the proceedings,” including “[l]imiting the intervenor’s participation to designated issues” and “[r]equiring two or more intervenors to combine their presentation of evidence and argument.” Neb. Rev. Stat. § 84-912.02.

The PSC is required to follow its own agency rules and does not have discretion to substitute the APA rules for its own rules in these proceedings. Neb. Rev. Stat. § 75-110(1) required the Commission to adopt and promulgate rules of procedure, and also required that “[t]he commission shall not take any action affecting persons subject to the commission's jurisdiction unless such action is taken pursuant to a rule, regulation or statute.” The Nebraska Supreme Court has also spoken on the issue and ruled that an agency must follow its own rules.

In the case of *Douglas County Welfare Admin. v. Parks*, the Nebraska Supreme Court noted that:

[g]enerally, rules and regulations of an administrative agency governing proceedings before it, duly adopted and within the authority of the agency, are as binding as if they were statutes enacted by the Legislature. Likewise, procedural rules are binding upon the agency which enacts them as well as upon the public, and the agency does not, as a general rule, have the discretion to waive, suspend, or disregard, in a particular case, a validly adopted rule so long as such rule remains in force ... To be valid, the action of the agency must conform to its rules which are in effect at the time the action is taken, particularly those designed to provide procedural safeguards for fundamental rights.

204 Neb. 570, 572, 284 N.W.2d 10, 11-12 (Neb. 1979).

The Nebraska Supreme Court again voiced its opinion on the binding nature of the PSC’s rules in *Jantzen v. Diller Telephone Co.* When discussing the PSC’s rules regarding the procedure of intervention, the Court wrote,

In summary, the rules set forth who may be a party, how a party may intervene, and what rights the parties may have based on the type of intervention. These rules and regulations are binding on the Commission in the same manner as if they were statutes. The Commission is required to conform to these rules.

245 Neb. 81, 100, 511 N.W.2d 504, 517 (Neb. 1994).

Even if the APA rules did apply to this proceeding, the manner in which those rules are being implemented in this case is unlawful as it violates the Tribe's due process and equal protection rights. Both the U.S. and the Nebraska Constitutions prohibit the State of Nebraska from depriving any person of life, liberty, or property, without due process of law. U.S. Const. amend. XIV, § 1; Neb. Const. art. I, § 3. By restricting the Tribe's ability to participate in the proceedings to the full extent of its interest in the matter, including limiting the Tribe's presentation of evidence and argument, the PSC has violated the Tribe's due process rights to participate in the proceedings, as provided for in the PSC's Rules of Procedure. Furthermore, the basis for the hearing officer's decisions to unlawfully restrict YST's participation is the fact that YST is an Indian tribe. This plainly violates the Equal Protection Clause of the Nebraska Constitution and of the U.S. Constitution. Neb. Const. art. I, § 3; U.S. Const. amend. XIV, § 1.

The Tribe's interests in this proceeding are unique. As the hearing officer noted, the social and cultural issues cited by both tribes inevitably encompass other issues as well, including historical and anthropological ones. Order on Formal Intervention Petitions, Nebraska Public Service Commission entered March 31, 2017, at 6. The tribes do not share a common history, their historical migrations and areas of ancestral lands are different, their spiritual practices and sacred sites are unique, and their anthropological backgrounds are distinct. Yankton Sioux Tribe's Motion for Reconsideration of the Commission's Order on Formal Intervention Petitions filed April 10, 2017, at 3. Put simply, the Ponca Tribe and YST have separate and distinct interests and it is therefore unreasonable and unconstitutional for the PSC to mandate collaboration between the Ponca Tribe and YST rather than permitting them to present their own respective cases.

The PSC also refused YST the opportunity to cross-examine the Ponca Tribe's witness during the Public Hearing, further inhibiting YST's ability to comprehensively delineate all of its relevant concerns about the proposed Keystone XL Pipeline. As the Tribe's counsel explained at the Public Hearing, the Tribe is not requesting "two bites of the one apple for one party;" the Tribe merely seeks the opportunity to present its own case. (T1061). Furthermore, nothing in the Order on Formal Intervention Petitions, Nebraska Public Service Commission entered March 31, 2017 or the order amending it expressly prohibits the Tribe from cross-examining the witness for the Ponca Tribe. The order merely states that the two tribes are "*entitled*" to collaborate to cross-examine witnesses. This means that they *may* collaborate, but collaboration is not required. Furthermore, collaboration does not mean that one tribe is prohibited from cross-examining the witness for the other tribe. This restriction is not contained in any order entered in this proceeding, yet the Tribe was restricted in this manner during the hearing. (T1060-68).

Additionally, YST has a deep, spiritual relationship with the land and environment. Much of the social damage that will be sustained by the Tribe will be a result of the degradation that this pipeline causes to the natural resources and environments along its proposed route. Environmental harm directly results in social and cultural harm, including spiritual harm, to the Tribe. This is just one example of how countless issues may not be classified as social or cultural, but nonetheless impact social and cultural issues, thereby demanding unhindered discussion.

Perhaps most egregiously, the hearing officer limited the Tribe to one solitary witness at the public hearing. Because the Tribe was limited to one witness, the Tribe choose to have Jason Cooke, an elected Tribal Councilman, testify on behalf of the Tribe. If the Tribe had been allowed to fully present its case, however, the Tribe would have also called an expert to testify regarding the impacts the Pipeline would have on places, plants, and animals of cultural and spiritual

significance to the Tribe, as well as an expert to testify regarding the social impacts of man camps. The Tribe would have called its Tribal Historic Preservation Officer, Kip Spotted Eagle, who has unique insight and expertise in the Tribe's culture and spiritual practices, to testify regarding the Pipeline's potential effects on the Tribe's cultural and spiritual resources along the Pipeline route. Mr. Spotted Eagle, a member of the Tribe, is a graduate of Haskell Indian Nation University with a Bachelor's Degree in American Indian Studies with an emphasis on cultural preservation. He also has been trained as a Tribal Cultural Property Specialist, has obtained a Para Archeology certificate, and has worked as a Tribal Cultural Property Specialist for over ten years. Mr. Spotted Eagle would therefore have provided detailed, expert testimony on the Pipeline's potential effects on the Tribe's cultural resources. The Tribe would have also called an expert just to testify as to the social effects of the proposed O'Neil Nebraska man camp, which will be located less than an hour from the Tribe's Reservation. KXL-15 at 2.

While Mr. Cooke is a duly elected representative authorized to speak on behalf of the Tribe, he does not possess the specific expertise the Tribal Historic Preservation Officer and an expert on man camps have in their respective fields. Even if the Tribe had elected to present one of these experts to testify as its sole witness, the Tribe would have been unable to adequately present its full position and concerns about the Pipeline because neither expert has expertise in the other's field, and because neither expert is qualified to testify as to the governmental concerns including jurisdictional issues that were presented by Mr. Cooke. Because the Tribe was limited to one witness, the Tribe was not able to call on separate experts to comprehensively present information regarding social and cultural issues and it was prohibited from fully participating as a formal intervenor. Without the testimony the Tribe's experts, the Commission lacks sufficient information to make an informed decision on the application for route approval.

Without receiving complete evidence from the Ponca Tribe and YST, it is impossible for the PSC to make a determination that the Keystone XL Pipeline is in the public interest because the PSC could not have fully evaluated what the public interest is without taking into account all relevant evidence and arguments.

B. The Proposed Route of the Keystone XL Pipeline is Not in the Public Interest.

- i. Construction of the Keystone XL Pipeline will irreparably harm cultural resources, Native American tribes, and Nebraska residents.

Approval of the proposed route of the Keystone XL Pipeline will not serve the public interest because it presents a significant risk of irreparably damaging the cultural resources and harming the social well-being of Native American tribes. The proposed route runs directly through the Tribe's ancestral lands. CUL-25 at 2; CUL-25, attach. 1. Vast cultural resources lay on and within these lands, and these priceless resources will be significantly disturbed by the digging required to lay the pipeline as well the spills and leaks from the pipeline that will occur during the construction process. CUL-25 at 2. Furthermore, the pipeline poses the risk of damaging the sacred relationship that the *Ihanktonwan* (Yankton) tribal members have to their ancestral lands and waters. *Id.*

The pipeline is also routed near the Nemaha Reserve, a historical reserve that was established for "half-breed" members of YST, among other tribes, to live and reside. CUL-25 at 3; CUL-25, attach. 3. The Tribe still has usufructuary rights to the lands within the Nemaha reserve, including the rights to hunt, fish, gather, and use the waters of the Missouri River. CUL-25 at 4. The Nemaha Reserve lands lay very near to the Missouri River, downstream from where the Keystone XL Pipeline will cross the South Platte River, which in turn runs into the Missouri River. *Id.* Any damage to the South Platte River, by spill, leak, or otherwise, including such incidents that will occur during the construction process, will eventually lead to the degradation of

the Missouri River and the Tribe's Nemaha Reserve lands and the rights attached thereto. All these rights stand to be irreparably harmed or significantly diminished if the application for the Keystone XL Pipeline route is approved.

Beyond the Tribe's usufructuary rights to the Nemaha Reserve lands, countless *Ihanktonwan* (Yankton) ancestors and ancestors of other tribes have lived and died on the Nemaha Reserve lands and surrounding areas. CUL-25 at 3; CUL-25, attach. 3. This means that the Nemaha Reserve lands and the surrounding areas are likely rich with tribal cultural resources, including burials. The Nemaha Reserve is believed to contain cultural resources such as burial grounds, sacred sites, alters, geoglyphs, stone features, ceremonial use areas, historical trails and trade routes, and gathering areas for medicine and food. CUL-25 at 4.

As the testimony revealed at the Public Hearing, the archaeological studies conducted along the proposed route are incomplete and inadequate. For example, no underground surveys of the five anticipated horizontal directional drilling paths on the Pipeline's route have been completed. (T257). Additionally, roughly 58 miles of the Pipeline's centerline route still have not been surveyed. (T1122). Further, the planned locations for the man camps have not been fully surveyed. (T1125). If cultural resource surveys are eventually completed and cultural resources are found near or within these man camps, it will be very difficult, if not impossible, for those resources to be adequately protected from the workers residing in the man camps. The Pipeline route can also still be realigned. (T431). Thus, the Pipeline could possibly be rerouted onto lands that have not yet been surveyed. TransCanada has also failed to take any measures to identify plants and animals which are of spiritual significance to tribes and that may be affected by the Pipeline. (T606). Finally, the Tribe has not been involved in every cultural resource survey conducted along the Nebraska Pipeline route. (T1116). As even TransCanada's witness on

cultural resources admitted, tribal members possess unique knowledge that aids in the identification of cultural resources. (T1116). Without the participation of tribal members in cultural resource surveys, a key element to the identification process is missing and such surveys are flawed and likely to overlook important cultural resources that need to be protected. Because many of the surveys are incomplete, it is unclear at this time the extent to which the construction of the Pipeline will impact Tribal cultural resources and artifacts.

Cultural resources and artifacts of significance to the Tribe stand to be irreparably damaged or even destroyed by the construction of the Keystone XL Pipeline. If that occurs, a part of the Tribe's culture and history would be permanently lost and severe, irreparable damage would be inflicted on the tribal connection to these cultural resources and sites. Destruction of sacred sites and burial grounds causes psychological damage in Native peoples, just as psychological harm occurs when the grave of a non-Native person is dug up and removed.

Any damage experienced by the Tribe is likely to also be experienced by other tribes within Nebraska due to the shared lineage and intermarriages between many YST tribal members and members of Nebraska tribes, such as the Ponca Tribe and Santee Sioux Tribe of Nebraska. CUL-25 at 5-6. Because of this shared lineage and intermarriage, many YST members reside in Nebraska with the Ponca or Santee Sioux. Therefore, any harm that affects the Ponca Tribe, Santee Sioux Tribe of Nebraska, or other Nebraska tribe runs the risk of harming YST members, and vice-versa.

Furthermore, the damage the proposed pipeline would cause to cultural resources along the route harms not only Native Americans, but the Nebraska general public as well. Native American culture is valued and respected by Nebraskans as part of the state's history and culture. (T757). For example, the history of the Ponca Trail of Tears is taught as part of the fourth grade Nebraska

history curriculum. (T757). As Witness Arthur Tanderup explained, “our Native American relatives all across Nebraska, they were here long before we were. Their history is important and should be important to our state.” (T754). Six non-Native witnesses at the Public Hearing testified that it is important to them, as Nebraskans, that tribal cultural resources in Nebraska be protected. (T754; T780; T817; T875-76; T891; T931). Tribal culture is intertwined with Nebraska’s history, as demonstrated by the facts that, “[a]fter all, Nebraska is a native word” (T817), and Keya Paha County is named after the Lakota word for “turtle hill” (T886). Because of the importance tribal cultural resources hold to Nebraskans and the inevitable damage that would be caused to such resources by construction of the pipeline, approval of the pipeline route is clearly not in the public interest.

- ii. Construction of the Keystone XL Pipeline carries the risk of harming the greater Nebraska population, especially women, due to the inevitable population influx at man camps.

Man camps are an inevitability with major pipeline projects such as the Keystone XL Pipeline. According to the Final Supplemental Environmental Impact Statement prepared on behalf of the Department of State, TransCanada anticipates establishing one of the man camps at an undetermined location in Holt County, Nebraska. KXL-019 at 343. TransCanada’s witness Rick Perkins testified that a man camp will likely be located approximately 10 miles northwest of O’Neill, Nebraska. KXL-15 at 2. Had the Tribe been permitted multiple witnesses as due process requires, the Tribe would have been able to show during the Public Hearing that man camps bring violence, crime, drug and alcohol abuse, and sex trafficking into the regions in which they are located. If the pipeline is built, the Tribe will be affected by these man camps due to the close proximity of its reservation to the proposed pipeline route. CUL-25 at 9. The proposed route is only 40 miles away from the Tribe’s reservation at the route’s closest point in South Dakota, and

only 46 miles away from the Tribe's reservation at the route's closest point in Nebraska. *Id.* Due to the general remoteness of the proposed route, those pipeline workers residing in the man camps will likely frequent the Tribe's Reservation because it offers entertainment that is easily accessible, such as a large casino, restaurants, a hotel, and other amenities that man camps cannot offer. *Id.*

Due to the proximity of the Tribe's casino to the pipeline route, as well as due to its vulnerable population, the Tribe's members are particularly at risk of the devastating consequences of the dangerous activities and behaviors that accompany man camps. However, these dangerous activities at and near man camps also present a problem for all Nebraskans living in rural areas nearby and accessible from those man camps. Again, had the Tribe been permitted to fully participate in this proceeding, it would have presented expert testimony showing that such camps place Nebraskan women at a much higher risk of being involved in sex trafficking. Increased drug and alcohol abuse in any community creates dangers to that community. Furthermore, there are major law enforcement gaps in these rural areas that allow the illegal drug and sex activities to continue unhindered in some cases. This is particularly true on the Tribe's reservation due to the jurisdictional complexities of crimes committed by non-Indians in Indian country. CUL-25 at 10.

TransCanada does not conduct any background checks on the residents of its man camps, nor does it inquire into the sex offender status of pipeline workers living in the camps, and it is unclear whether TransCanada's contractors do either. (T1118; T1189). This means that the massive population influx of workers may well include convicted sex offenders, and even the camp operators would not be aware that sex offenders are living there. Increasing the number of sexual predators in rural Nebraska communities is blatantly contrary to the public interest. TransCanada has presented no evidence demonstrating that any precautions have been taken to prevent sex

offenders from residing in man camps and working in communities where the pipeline would be constructed.

With all the dangers that man camps associated with the Keystone XL Pipeline present, it is obvious that approval of the Keystone XL Pipeline route is not in the public interest.

C. TransCanada Failed to Meet its Burden of Proof.

The Commission must deny TransCanada's application for route approval because TransCanada failed to meet its burden of proof to establish that the proposed pipeline route would serve the public interest. Neb. Rev. Stat. § 57-1407(4) delineates eight categories of evidence and issues that the Commission must evaluate in making a public interest determination pursuant to MOPSA. TransCanada bears the burden of proving that the proposed route would serve the public interest with respect to each of these categories of evidence and issues. As the lack of evidence demonstrates, TransCanada has failed to meet this burden.

TransCanada's witnesses repeatedly played "hide the ball" over the course of the Public Hearing, referring countless questions to other witnesses while they were testifying. *See, e.g.*, (T197; T378; T380-81; T385; T413-15; T418; T432). For example, when asked about sections 4.4 (regarding grading), 4.7 (regarding erosion control), and 4.11.8 (regarding right-of-way and pipeline markers) of the Construction Mitigation and Reclamation Plan ("CMRP"), TransCanada's witness John Beaver testified that he could not respond fully to the questions and that TransCanada's witness Meera Kothari would be the appropriate witness to address those issues. (T414-15; T418). Ms. Kothari, however, subsequently testified that she was unable to speak to those issues and that her expertise and testimony were limited to sections 2.1.1-2.1.3, 3.0, and 20 of the application, which do not include the CMRP. (T631). These questions, therefore, went unanswered. More importantly, this means that TransCanada failed to proffer necessary evidence

regarding methods to minimize or mitigate the potential impacts of the pipeline to natural resources, which is one of the categories of evidence the Commission is required to consider pursuant to Neb. Rev. Stat. § 57-1407(4)(c). This is just one of the many instances in which TransCanada failed to meet its burden of proof.

TransCanada also failed to meet its burden of proof with respect to the social impacts of the Keystone XL pipeline. Neb. Rev. Stat. § 57-1407(4)(d) requires the Commission to evaluate “[e]vidence regarding the economic and *social impacts* of the major oil pipeline” (emphasis added). However, TransCanada failed to present testimony or any other evidence regarding the pipeline’s social impacts. The only witnesses who testified at all regarding social and/or cultural issues on behalf of TransCanada were its rebuttal witnesses Erin Salisbury and Rick Perkins. (T1105-82; T1186-93; KXL-014; KXL-015). Rather than offering evidence of what the social and cultural impacts of the pipeline would be, these witnesses merely attempted to rebut the testimony of the Tribe’s witness. The only evidence of actual social and cultural impacts presented at the hearing came from YST’s and the Ponca Tribe’s witnesses, who provided ample evidence that approval of the pipeline route would have not just negative but extremely damaging social and cultural impacts. (T974-84; T1050-85; CUL-25; CUL-19).

TransCanada failed to meet its burden of proof with respect to minimization or mitigation of impacts to natural resources and impacts on social and cultural resources. Likewise, TransCanada has failed to provide evidence demonstrating compliance with all applicable state statutes, rules, and regulations and local ordinances as required by Neb. Rev. Stat. § 57-1407(4)(a). Because TransCanada failed to meet its burden of proof to establish that approval of the proposed route is in the public interest, the Commission must deny the application for route approval.

D. The PSC's Incorrect Interpretation of MOPSA Resulted in the Unlawful Exclusion of Evidence Relevant and Necessary to the Public Interest Determination.

The PSC has wrongly interpreted Nebraska's Major Oil Pipeline Siting Act ("MOPSA"), Neb. Rev. Stat. §§ 57-1401 to 57-1413, to mean that, because the PSC is prohibited from evaluating *safety* considerations in approving or denying MOPSA applications, it is also prohibited from evaluating *cultural and social* impacts from spills. The PSC has misunderstood MOPSA and its requirements. The same statute that prohibits the PSC from evaluating safety considerations allows the PSC to consider, among other things, the impact of a proposed pipeline on natural resources, as well as economic and social impacts. Neb. Rev. Stat. § 57-1407(4)(b) and (d).

Simply because MOPSA prohibits the evaluation of safety considerations, even in relation to the risk or impact of spills or leaks from the pipeline, does not prohibit the PSC from considering other problems such as social and cultural impacts related to pipeline spills or leaks. It is highly likely that spills or leaks will result in some of the social, cultural, and economic impacts of the proposed pipeline. In this regard, the PSC's interpretation of MOPSA severely limits YST and other intervenors from fully conveying their concerns about social, cultural, and economic impacts that can be expected as a result of the proposed Keystone Pipeline if approved. Because the Commission incorrectly interpreted MOPSA, it excluded relevant evidence that is necessary to the Commission's determination regarding the public interest and there is therefore an insufficient basis for the Commission to make that determination.

E. MOPSA is Unconstitutional to the Extent that it Prohibits the Consideration of Safety Risks.

The provision of MOPSA forbidding the consideration of safety risks associated with pipeline spills and other hazards is unconstitutional. The standard for approval of a pipeline application under MOPSA is whether the proposed pipeline route is "in the public interest." Neb.

Rev. Stat. § 57-1407(4) (“An application under the Major Oil Pipeline Siting Act shall be approved if the proposed route of the major oil pipeline is determined by the Public Service Commission to be in the public interest.”). It is impossible for the PSC to approve a proposed pipeline route on the basis that said pipeline route is in the public interest without first considering and evaluating safety aspects of the pipeline proposal. The safety of Nebraskans should be of paramount concern to the PSC. Anything that puts that safety at risk, such as a 36-inch-diameter tar sands pipeline carrying toxic material across Nebraska’s land and water, surely cannot be considered “in the public interest.”

Pursuant to Article IV, Section 20 of the Nebraska Constitution, the PSC is bestowed with the power and duty to generally control common carriers, including pipelines. The Constitution does provide that the Legislature shall be able to enact specific regulations governing the PSC, but “the Legislature would not have proposed, and the people would not have knowingly approved, an addition to the Constitution creating a commission with power only to regulate and control common carriers to the extent and for the time provided or permitted by the Legislature.” *State ex rel. State Railway Comm. V. Ramsey*, 151 Neb. 333, 343, 37 N.W.2d 502, 508 (Neb. 1949). Thus, the Legislature was not intended to be able to shield fundamental and vital concerns such as the safety of Nebraska residents from the consideration of the PSC. By completely eliminating the ability of the PSC to even consider safety implications when reviewing and approving a proposed pipeline route, Nebraska Revised Statute § 57-1407(4) is unconstitutional because it strips away the authority given to the PSC by the Constitution.

III. CONCLUSION

For the foregoing reasons, the PSC must deny TransCanada’s application for approval of the proposed route for the Keystone XL Pipeline.

Dated this 15th day of September, 2017.

FREDERICKS PEEBLES AND MORGAN LLP
FOR THE YANKTON SIOUX TRIBE

By: 
Jennifer S. Baker, *Pro Hac Vice*
Conly J. Schulte, NE Bar No. 20158
1900 Plaza Drive
Louisville, CO 80027
Telephone: (303) 673-9600
Facsimile: (303) 673-9155
Email: jbaker@ndnlaw.com
Email: cschulte@ndnlaw.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing *Post-Hearing Brief of the Yankton Sioux Tribe* was filed with the Nebraska Public Service Commission at psc.kxfilings@nebraska.gov and served by email transmission on this 15th day of September, 2017, upon the following:

Jeff Pursley
Nebraska Public Service Commission
1200 N Street, Suite 300
Lincoln, NE 68509-4927
Jeff.pursley@nebraska.gov

Copies were electronically served to those on the attached Service List and sent by United States mail to those not having an email address.



SERVICE LIST: DOCKET NO. OP-0003

<p>James G. Powers Patrick D. Pepper MCGRATH NORTH MULLIN & KRATZ, PC LLO First National Tower, Suite 3700 1601 Dodge Street Omaha, NE 68102 jpowers@mcgrathnorth.com ppepper@mcgrathnorth.com <i>Attorneys for TransCanada Keystone Pipeline, L.P.</i></p>	<p>O'Connor Law Firm Robert O'Connor, Jr. P.O. Box 45116 Omaha, NE 68145 reolaw@aol.com</p> <p>James P Cavanaugh Cavanaugh Law Firm, PC LLO 6035 Binney Street Ste 100 Omaha, NE 68104 cavanaughlawfirm@aol.com</p>
<p>Michael E Amash 753 State avenue Ste 475 Kansas City, KS 66101 mea@blake-uhlig.com</p>	<p>Kimberly E Craven 33 King Canyon Road Chadron, NE 69337 kimecraven@aol.com</p>
<p>Jennifer S Baker Fredericks Peebles and Morgan LLP 1900 Plaza Drive Louisville, CO 80027 jbaker@ndnlaw.com</p>	<p>Cathie (Kathryn) Genung 902 East 7th St Hastings, NE 68901 tg64152@windstream.net</p>
<p>Wrexie Bardaglio 9748 Arden Road Trumansburg, NY 14886 wrexie.bardaglio@gmail.com</p>	<p>Louis (Tom) Genung 902 East 7th St Hastings, NE 68901 tg64152@windstream.net</p>
<p>Mia Bergman 86424 514 Ave. Orchard, NE 68764 mbergman85@hotmail.com</p>	<p>Andy Grier 916 S. 181st St. Elkhorn, NE 68022 griea01@cox.net</p>
<p>Ellen O Boardman O'Donoghue & O'Donoghue LLP 4748 Wisconsin Avenue, NW Washington, DC 20016 eboardman@odonoghuelaw.com</p>	<p>Christy J Hargesheimer 620 S 30th St Lincoln, NE 68510 chrispaz@neb.rr.com</p>
<p>Robert J Henry Blake & Uhlig, PA 753 State Avenue Ste 475 Kansas City, KS 66101 rjh@blake-uhlig.com</p>	<p>Richard S Hargesheimer 620 S 30th St Lincoln, NE 68510 rshargy@gmail.com</p>

SERVICE LIST: DOCKET NO. OP-0003

Michael E Stapp Blake & Uhlig, PA 753 State Avenue Ste 475 Kansas City, KS 66101 mjs@blake-uhlig.com	Dave Domina Domina Law Group PC LLO 2425 S 144th Street Omaha, NE 68144-3267 ddomina@dominalaw.com
Becky Hohnstein PO Box 272 Minatare, NE 69356 Jimhohnstein@gmail.com	Taylor RM Keen 5022 Hamilton St Omaha, NE 68132-1448 taylorkeen7@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
Dara Illowsky Sierra Club 1650 38 th Street, Ste 102W Omaha, NE 68104 Dara.illowsky@sierraclub.org	Kendall Maxey 350.org 20 Jay Street Brooklyn, NY 11201 kendall@350.org
John Jarecki 6112 Bedford Ave Omaha, NE 68104 Johnjareckil10@gmail.com	Pamela Luger 8732 Granville Pkwy LaVista, NE 68128 Pam1181@yahoo.com
Karen Jarecki 6112 Bedford Ave Omaha, NE 68104 tenbuckstwo@yahoo.com	Elizabeth (Liz) Mensinger 6509 Wirt St. Omaha, NE 68104 lizmensingerg@gmail.com
Brad S Jolly Brad S Jolly & Associates 15355 Gadsen Dr Brighton, CO 80603 bsj@bsjlawfirm.com	Brian F Jorde Domina Law Group PC LLO 2425 S 144th Street Omaha, NE 68144-3267 bjorde@dominalaw.com
Joseph Pomponio 551B Sand Creek Rd Albany, NY 12205 lukaz@msn.com	Collin A Rees 4721 Heather Lane Kearney, NE 68845 collin@priceofoil.org
Cindy Myers PO Box 104 Stuart, NE 68780 csmyers77@hotmail.com	Donna Roller 2000 Twin Ridge Rd. Lincoln, NE 68506 rollerski@gmail.com

SERVICE LIST: DOCKET NO. OP-0003

Crystal Miller 7794 Greenleaf Drive LaVista, NE 68128 neccmiller@juno.com	Cecilia Rossiter 949 N 30th St Lincoln, NE 68503 punion@gmail.com
Janece Mollhoff 2354 Euclid Street Ashland, NE 68003 wjmollhoff@windstream.net	Corey Runmann 2718 S. 12th St. Lincoln, NE 68502 rumannc@gmail.com
Greg Nelson 3700 Sumner St Lincoln, NE 68506 gnelson@inetnebr.com	Lois Schreur 2544 N. 61st Street PO Box 4376 Omaha, NE 68104 leschreur@centurylink.net
Julie Nichols 1995 Park Ave Lincoln, NE 68502 Willpower2@earthlink.net	Julie Shaffer 5405 Northern Hills Dr Omaha, NE 68152 ksjaffer59@gmail.com
Jana Osborn 1112 Meadowlark Alliance, NE 69301 janajearyb@gmail.com	Sandra Slaymaker 102 E 3rd St #2 Atkinson, NE 68713 sandyslaymaker@gmail.com
James Douglas Osborn 43110 879th Rd Ainsworth, NE 69210 jdosborn30@yahoo.com	Christine Troshynski 101 S. 1st St. Emmet, NE 68734 ctroshynski@gmail.com
Christine Polson 4923 Valley St Omaha, NE 68106 snpolson@cox.net	Julie Walker 2570 West Luther St. Martell, NE 68404 jw9095@yahoo.com
Dave Polson 4923 Valley Street Omaha, NE 68106 honk@cox.net	Susan C Watson 2035 N 28th St., Apt 213 Lincoln, NE 68503 scwatson1965@gmail.com
Susan Soriente 1110 Rockhurst Drive Lincoln, NE 68510 ssoriente@gmail.com	Susan J Weber 2425 Folkways Blvd Apt 329 Lincoln, NE 68521 susanjweber4@yahoo.com

SERVICE LIST: DOCKET NO. OP-0003

Lorne Stockman Oil Change International 714 G St., SE Suite 202 Washington, DC 20003 lorne@priceofoil.org	Douglas Whitmore 8856 N 83rd Ave Omaha, NE 68122 douglas@whitmore4congress.com
Susan Straka-Heyden 46581 875th Rd Stuart, NE 68780 suzie_sl@hotmail.com	Kenneth C Winston 1327 H St., Ste 300 Lincoln, NE 68508 kwinston@inebraska.com
Kimberly L Stuhr 19303 Buffalo Rd Springfield, NE 68059 kimberlystuhr13@yahoo.com	Sandy Zdan 4817 Douglas Omaha, NE 68132 sandywz@cox.net
Jacques Tallichet 2821 S. 79th St Lincoln, NE 68506 jacques.tallichet@gmail.com	Sarah Zuekerman 1729 K St#7 Lincoln, NE 68508 Sarahj1182@gmail.com
Paul Theobald 85718 544 th Avenue Foster, NE 68765 pthobald36@gmail.com	Elizabeth L Troshynski 87769 484th Ave Atkinson, NE 68713 btroshyn@hotmail.com
Jonathan H Thomas 960 S Cotner Blvd Lincoln, NE 68510 thewild_things@yahoo.com	