

Nebraska Public Service Commission

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

In the Matter of the Application

of

TransCanada Keystone Pipeline LP

For the Keystone XL Pipeline Project, Pursuant to *MOPSA*

Applicant,

and

**Susan Dunavan and William Dunavan, et, al. Nebraska Landowners on Route,
("Domina Group" and "Landowners"), et al.,**

Intervenors

**Landowner Intervenors'
Closing Argument**

David A. Domina, #11043
Brian E. Jorde, #23613
Domina Law Group pc llo
2425 S. 144th St.
Omaha, NE 68144
(402) 493-4100
ddomina@dominalaw.com
bjorde@dominalaw.com

Landowners' Lawyers

Table of Contents

I.	Overview	1
II.	Jurisdiction	1
III.	Statement of the Case	3
IV.	Statement of Issues / Specific Failures of Required Matters	5
V.	Propositions of Law—General Applicable Rules	7
VI.	Statement of Facts (“SOF”)	9
	A. TransCanada’s Application and Evidence are Insufficient to Sustain It’s Burden.....	9
	B. Alleged Economic Impacts Regarding Jobs & Taxes Are Overstated	11
	C. TransCanada’s Proposed Preferred Route’s Detrimental Environmental Impacts	13
	D. There is No “Fixed Starting Point” in Nebraska for the Preferred Route	16
	E. A Less Detrimental Alternative Route(s) and Corridor Is Available.....	16
VII.	Argument.....	20
	A. Very Special Concern.....	20
	B. TransCanada’s Application and Evidence is Insufficient to Sustain It’s Burden	21
	C. Alleged Economic Impacts Regarding Jobs & Taxes Are Exaggerated & False	21
	D. TransCanada’s Preferred Route Is Inferior to the Mainline Alternative	25
	E. TransCanada’s Preferred Route Has Detrimental Cultural Impacts.....	27
	F. There is No “Fixed Starting or Entry Point” For the Preferred Pipeline Route.....	28
	G. Abandonment Should Not Be Allowed To Saddle Future Nebraskans With Liability.	29
	H. The Existing Mainline Avoids Problems & Is Superior to What is Handy for KXL ...	31
VIII.	Constitutional Issues Raised; Brief Argument & Preservation.....	31
IX.	Conclusion	34

Table of Authorities

Cases Cited

<i>Appeal of Levos</i> , 214 Neb 507 (1983).....	1, 8
<i>Application of Canada</i> , 154 Neb 256 (1951)	2
<i>Application of Greyhound Corp</i> , 178 Neb 9 (1964).....	2
<i>Application of Nebraska PPD.</i> , 215 Neb 8, 15 (1983).....	9
<i>Application of Simmermann</i> , 179 Neb 481 (1965).....	5, 7
<i>Big John’s Billiards v. State</i> , 288 Neb 938 (2014).....	31, 32
<i>Blakely v. Lancaster County</i> , 284 Neb 659 (2012)	8
<i>City of Mitchell v. Western Public Svc Co.</i> , 124 Neb 248 (1933).....	34
<i>Estermann v. Bose</i> , 296 Neb 228 (2017).....	33
<i>Gary’s Implement, Inc. v. Bridgeport Tractor Parts, Inc.</i> , 281 Neb 281 (2011)	25
<i>In Re Applic A-16642</i> , 236 Neb 671 (1990).....	8
<i>In Re Applic of Jantzen</i> , 245 Neb 81 (1994)	8
<i>In Re Applic of Overland Armored Exp.</i> , 229 Neb 524 (1988).....	1
<i>Le v. Lautrup</i> , 271 Neb 931 (2006).....	31, 32
<i>May v. City of Kearney</i> , 145 Neb 475 (1945)	33
<i>Pointer v. Texas</i> , 380 U.S. 400 (1965)	22
<i>Smithberger v. Banning</i> , 129 Neb 651 (1935)	34
<i>State v. Bouwens</i> , 167 Neb 244 (1958)	8
<i>State v. Chicago & NW Ry. Co.</i> , 147 Neb 970 (1947)	2
<i>State v. Junkin</i> , 85 Neb 1 (1909)	34
<i>Thompson v. Heineman</i> , 289 Neb 798 (2015).....	32, 33, 34
<i>Wagner v. City of Omaha</i> , 236 Neb 843 (1991).....	8
<i>Webster County v. Nebraska, TERC</i> , 296 Neb 751 (2017).....	8

Statutes Cited

12 USC § 1817(j)	20
<i>Neb Const Art II §1</i>	33
<i>Neb Const Art I § 3</i>	32
<i>Neb Const Art I § 6</i>	33, 34
<i>Neb Const Art I § 13</i>	34
<i>Neb Const Art I § 16</i>	31
<i>Neb Const Art I § 18</i>	31
<i>Neb Const Art I § 20</i>	34
<i>Neb Const Art I § 21</i>	34
<i>Neb Const Art IV § 20</i>	1, 32, 33
<i>Neb Rev Stat § 27-401</i>	8
<i>Neb Rev Stat § 27-402</i>	5
<i>Neb Rev Stat § 27-801-803</i>	8
<i>Neb Rev Stat § 57-1401</i>	1
<i>Neb Rev Stat § 57-1402(1)(a-b)</i>	7
<i>Neb Rev Stat § 57-1403(3)</i>	32

<i>Neb Rev Stat</i> § 57-1404(3)	9
<i>Neb Rev Stat</i> § 57-1407(4)	2, 5, 7
<i>Neb Rev Stat</i> § 57-1407(4)(a)	6
<i>Neb Rev Stat</i> § 57-1407(4)(b)	6
<i>Neb Rev Stat</i> § 57-1407(4)(c)	6
<i>Neb Rev Stat</i> § 57-1407(4)(d)	6
<i>Neb Rev Stat</i> § 57-1407(4)(e)	6, 8
<i>Neb Rev Stat</i> § 57-1407(4)(a-h)	8
<i>Neb Rev Stat</i> § 57-1407(4)(f)	7
<i>Neb Rev Stat</i> § 57-1501(1)	7
<i>Neb Rev Stat</i> § 57-1501(4)	8
<i>Neb Rev Stat</i> § 75-109	2
<i>Neb Rev Stat</i> § 75-109.01	2
<i>US Const</i> Amend XIV	32

Regulations Cited

7 CFR § 51.52	20
26 CFR Pt 478	20
31 CFR § 538.523	20
32 CFR § 538.536	20
291 <i>Neb Admin Code</i> § 015.01(b)	36
291 <i>Neb Admin C</i> , § 1-0.16.01	8
291 <i>Neb Admin C</i> , § 9-023.07	5, 7, 21

Other Authorities Cited

1 <i>Jones on Evidence</i> § 3.5 (West Law 7 th Ed, Dec 2016)	1
2 <i>Handbook of Fed Evid</i> § 301.3 (7th Ed 2016)	5
<i>Neb Jury Inst</i> 2d Civil 1.42	25
John Wigmore, <i>A Treatise on the System of Evidence</i> 2:1697-98 (1904)	22
Stan & Jan Bernstein, <i>The Bernstein Bears & the Messy Room</i> (Penguin 1983)	29, 30
Wm. Shakespeare, <i>The Rape of Leccrece</i> , Stz 135	1

I. Overview

1. Massive gaps in TransCanada's evidence confirm its failure to carry the burden of proof for route approval. The Applicant must prove its case, or lose, before this Commission.

"Burden of proof" means the obligation of a party to introduce evidence that persuades the factfinder, to a requisite degree of belief, that a particular proposition of fact is true.

1 *Jones on Evidence* § 3.5 (Westlaw 7th Ed, Dec 2016). The Applicant must prove it meets all legal requirements, or fail. *In Re Applic of Overland Armored Exp.*, 229 Neb 524 (1988).

2. The Truth finally emerged at the August hearing. Finally, the time came for proof, not talk. "Time's glory is to calm contending kings, to **unmask** falsehood and bring truth to light." Wm Shakespeare, *The Rape of Lucrece*, Stz 135. **TransCanada's three justifications for its Application were disproven.** **1)** The KXL pipeline will not generate more tax revenues for Nebraska; it will reduce them – O'Hara, unrebutted; **2)** KXL will not create thousands of permanent jobs, or even hundreds in Nebraska. It will create eight or nine, but diminish farm income – O'Hara & KXL admissions; **3)** KXL's "preferred" route is not necessary because of a "fixed entry point". KXL misrepresented the South Dakota situation. (LO235, ¶13 p 23)

3. When it finally came to evidence, TransCanada had woefully little to offer. The Applicant must fail because its proof failed. Politics or personal preferences are not substitutes for proof. Good faith decisions must be evidence based. *Appeal of Levos*, 214 Neb 507 (1983).

II. Jurisdiction

4. *Neb Const* Art IV, § 20 provides "[t]he powers and duties [of the PSC] shall include...general control of common carriers as the Legislature may provide by law." For major oil pipelines, the Legislature conferred authority in two ways: a) specific authority is provided by the *Major Oil Pipeline Siting Act*, *Neb Rev Stat* § 57-1401 *et seq.* and, b) general responsibilities

over all common carriers is granted under *Neb Rev Stat* § 75-109 et seq. (“...the commission shall regulate and exercise general control as provided by law over all common ... carriers engaged in the transportation of freight ... for hire...”). *MOPSA* does not restrict PSC regulatory authority except where *MOPSA* is *inconsistent with the general authority*. *Neb Rev Stat* §75-109.01. Here, no inconsistency exists. You can deny the Application, or approve with conditions.

5. You are asked whether TransCanada proved that the “proposed route of the major oil pipeline would serve the public interest.” *Neb Rev Stat* § 57-1407(4). This is not a question of politics, preferences, or popularity. The public interest determination by the Legislature was not for *this pipeline*, but for pipelines in general. For example, the fact that phone service in general is good does not mean a particular Application to provide service is in the public interest. This decision is for you. The PSC was created to avoid political pressures.

6. This is not a “Yes” or “No” question, unless you want it to be. “Yes with conditions”, or “No without prejudice to a new application with specified provisions” are also potential answers. “[T]he plenary power of the...commission may only be curtailed or diminished where the legislature has, by specific legislation, occupied the field. *State v. Chicago & NW Ry. Co.*, 147 Neb 970, 977 (1947). *MOPSA* does not “occupy the field,” nor provide 100% of required regulations for crude oil pipelines. *MOPSA* contains no provisions concerning the a) applicant’s fitness; b) restrictions on cargoes other than crude oil; c) rates; d) environmental protections; e) duration of authority, f) terms of takings permitted with eminent domain; to name a few. You may impose conditions on KXL if you find conditional approval is warranted by the evidence. All matters touching public interest require consideration. See *Application of Canada*, 154 Neb 256 (1951); *Application of Greyhound Corp*, 178 Neb 9 (1964).

7. The Legislature did not pass a law about one pipeline -- the KXL Pipeline. Such a law would be clearly unconstitutional special legislation. There is no reference to this pipeline in Nebraska's statutes. *MOPSA*'s finding about public interest supported adoption of this law for all crude oil pipelines, but not for a single, particular application. This is the PSC's work. Singular decisions about one application are for the PSC under your authority. The KXL Application before you was not filed until February 16, 2017 -- 5 years after *MOPSA* was enacted

8. Commissioners, you have the power to deny the Application -- as it should be denied -- for failure of proof. Or if, improbably, you believe the proof is adequate, you may grant the Application subject to conditions -- if you decide the evidence proved this is in the public interest. The Landowners urge you to reject the Application for failure of proof.

9. If there is, in your majority's view, enough proof for conditional approval of the alternate route, with restrictions like those imposed in South Dakota and more -- this is within your power. Surely, you must require that the pipeline follow the Mainline corridor nearby the first pipeline, demand that TransCanada remove the exhausted equipment, and clean up its own mess when the pipeline is worn out, and make the land revert to the adjoining farms.

III. Statement of the Case

10. **Nature of the Case.** TransCanada seeks perpetual authorization to take land, build, and operate a crude oil pipeline across the breadth of Nebraska. The pipeline will neither load nor unload products for Nebraskans. Its expected utility is 20 years, and with adaptations it may last 50. If TransCanada has its way, the pipeline with its sludge inside, will then waste in Nebraska's soil until landowners left with the mess are required to remove it. TransCanada will be long gone by then. But, its authority over the abandoned route, and ownership of land dividing farms and ranches would remain -- in perpetuity.

11. No Nebraskan could win such a permit. No trucker could bury a fuel tank without a duty to remove it. TransCanada deserves no exemption from these requirements, or from demands of decency—to clean up its own worn out equipment and restore Nebraska’s soils.

12. Two proposed routes are advanced: a “preferred route” cutting a new swath across the State; and the existing KXL pipeline’s “Mainline route” -- to which there were nearly no objections. TransCanada admits the Mainline route is useable, but not as handy for its purposes.

13. **Core Issues To Be Decided.** Should TransCanada’s Application be granted, and if so, for which route and subject to what conditions? Should it be denied, and if so subject to what reapplication criteria, if any?

14. **How the PSC Is Urged to Decide.** The Landowners urge you to decide that the Application should be denied. But, if approved it should be for the Mainline route subject to all the South Dakota conditions (LO 235), plus the duty to remove the spent pipeline, and automatic termination of easement so title to land reverts to the adjoining property from which it was taken.

15. TransCanada left parts of its Application unproven, failed to bring a single official of the Applicant to testify before you, and produced multiple witnesses who could not answer questions and deferred to others not designated to testimony on those subjects. It could not justify perpetual easements, or abandonment of its machine to waste away as a liability for future generations. And, its economic evidence was surely an embarrassment to the Applicant.

16. TransCanada proved one thing: electrical powerlines associated with its pipeline would have a minor adverse impact on Whooping Cranes that should be moderated by plastic spinners. After spending “billions of dollars” to get here, TransCanada had an opportunity to put on its best case. KXL fizzled when it came time to prove it.

17. **The Application Should be Denied for Failure of Proof.** Proving a fact requires evidence. Evidence is not a matter of personal preference, popularity, or politics. “Facts are stubborn things; and whatever may be our wishes, inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.” John Adams (Defense of Soldiers at Boston Massacre, 1770). Evidence must be relevant; i.e. it must have a tendency “to make a fact more or less probable than it would be without the evidence.” *Neb Rev Stat* § 27-402. Where proof is absent, a legal case fails. TransCanada has the burden of proof. As such it was required, but failed, to: 1) prove all relevant facts – it did not do so and left gaping holes in its case on admitted points and others; and, 2) carry the burden of persuasion – which cannot occur when proof on required elements is absent. M Graham, *2 Handbook of Fed Evid* § 301.3 (7th Ed 2016).

18. The **burden** imposed by the law requires you to find that TransCanada sustained its burden of proof convincingly. Your own Rule says: “The pipeline carrier shall have the burden to establish that the proposed route of the major oil pipeline would serve the public interest.” 291 *Neb Admin C* § 9-023.07. The burden is high because the impact of granting common carrier status, including empowering eminent domain, is great. *Application of Simmerman*, 179 Neb 481 (1965).

IV. Statement of Issues / Specific Failures of Required Matters

19. Did Applicant, TransCanada Keystone Pipeline, LP, establish its burden of proof that its proposed Preferred Route for Keystone XL would serve the public interest of Nebraska? *Neb Rev Stat* § 57-1407(4). **Answer: No. Its proof on some material issues was totally absent, and on others was not credible. KXL argues two benefits justify its Application: a) taxes, and b) jobs. It did not offer proof of any other benefit. TransCanada’s proof of tax and jobs benefits totally failed. KXL’s Ernie Goss was completely refuted by UNO**

Economist O’Hara and his Report, LO 189. No rebuttal to O’Hara was offered. And, Goss was exposed as not credible.

20. Did Applicant prove its compliance with all applicable state statutes, rules, and regulations and local ordinances? *Neb Rev Stat § 57-1407(4)(a)*. **Answer: No. The opposite was proven by TransCanada’s admitted it would build the pipeline without zoning or land use approval from any County or City. It ignored zoning laws that bind everyone else.**

21. Did Applicant prove its proposed Preferred Route for route for Keystone XL will not have a net negative impact upon the natural resources of Nebraska? *Neb Rev Stat § 57-1407(4)(b)*. **Answer: No. TransCanada conceded adverse environmental impacts.**

22. Did Applicant prove its proposed Preferred Route for Keystone XL is a route that will minimize potential negative impacts natural resources of Nebraska when compared to any other possible route? *Neb Rev Stat § 57-1407(4)(c)*. **Answer: No. See short answers above.**

23. Did Applicant prove its proposed Preferred Route for its proposed Keystone XL major oil pipeline will not have a net negative economic impact on the State of Nebraska? *Neb Rev Stat § 57-1407(4)(d)*. **Answer: No. See short answers above.**

24. Did Applicant prove its proposed Preferred Route for its proposed Keystone XL major oil pipeline will not have a net negative social impact on the State of Nebraska? *Neb Rev Stat § 57-1407(4)(d)*. **No. See short answers above.**

25. Did Applicant prove that no other possible utility corridor exists that could be feasibly and beneficially used for an alternative route across Nebraska? *Neb Rev Stat § 57-1407(4)(e)*. **Answer: No. TransCanada admitted that a route closely paralleling its existing Mainline corridor will work; it was proven there is no Route impediment from another state. Schmidt, 540:3-6, III; Kothari, 638:9-642:14 III; SD PUC Order LO, 235 ¶13 p 23.**

26. Did Applicant prove its proposed Preferred Route for Keystone XL will not have a net negative impact on the orderly development of the area around the route? *Neb Rev Stat* § 57-1407(4)(f). **Answer: TransCanada’s Engineer, Meera Kothari, admitted there was no study of the pipeline’s impact on development. She also admitted electricity demands could short-change irrigators with standby electrical contracts, and that it would be an advantage to build the line on a workable route that avoids controversy – the Mainline Route. (642:15-646:14, III) O’Hara proved the pipeline will negatively impact development on either side of the pipeline. (857:16-858:1, VIII) This testimony was not challenged.**

27. Did the Applicant prove any State Agency or the Governor has approved the Route in this Application? **Answer: No. TransCanada’s witness admitted no agencies studied this Route or application and there is no proof the Governor considered this Route as compared with a prior one considered by a prior Governor. (Kothari, 639:1-641:25, III)**

V. Propositions of Law—General Applicable Rules

28. A purpose of the *Major Oil Pipeline Siting Act* is to ensure the welfare of Nebraskans, including protection of property rights, aesthetic values, economic interests and to consider the lawful protection of Nebraska’s natural resources. *Neb Rev Stat* § 57-1402(1)(a-b).

29. The State of Nebraska is responsible for protecting its natural resources, agricultural resources, aesthetics, economy, and communities through reasonable regulation for the common good and welfare. *Neb Rev Stat* § 57-1501(1).

30. Under *MOPSA*, Applicant has the burden to prove the proposed route of the major oil pipeline would serve the public interest. *Neb Rev Stat* § 57-1407(4); 291 *Neb Admin C* § 9-023.07. The burden of proof is high because the impact of granting common carrier status, and empowering eminent domain, is great. *Application of Simmerman*, 179 Neb 481 (1965).

31. A decision [of the PSC] cannot be supported by caprice, i.e., a decision guided by fancy rather than judgment of proof. *In Re Applic A-16642*, 236 Neb 671 (1990). It cannot be arbitrary, *Wagner v. City of Omaha*, 236 Neb 843 (1991). *Appeal of Levos*, 214 Neb 507 (1983).

32. The PSC evaluates all requirements found at § 57-1407(4)(a-h), which include whether any other utility corridor exists in Nebraska that could be feasibly and beneficially used for the proposed pipeline route. *Neb Rev Stat* § 57-1407(4)(e).

33. The benefits of any proposed oil pipeline must be weighed against any concerns brought by the residents of Nebraska. *Neb Rev Stat* § 57-1501(4).

34. An agency's judgment must be based on a facts and give due consideration to all essential elements involved. *In Re Applic of Jantzen*, 245 Neb 81 (1994). The judgment must be based on evidence—sworn evidence—received at the August 2017 hearing. “The evidence is sufficient, as a matter of law, if an administrative board could reasonably find the facts ... from the **testimony and exhibits...**” *Blakely v. Lancaster County*, 284 Neb 659, 669 (2012).

35. Agency action taken in disregard of its own rules is arbitrary and capricious. *Webster County v. Nebraska TERC*, 296 Neb 751,764 (2017). PSC rules expressly limit proof to “evidence which is admissible in civil proceedings under the Revised Statutes of Nebraska...” *291 Neb Admin C* §1-0.16.01.

36. The Evidence Rules allow consideration of only relevant sworn evidence or exhibits proven by a witness, and certain unsworn admissions and exceptions so trustworthy as to be fit to consider. *Neb Rev Stat* §§ 27-401 & 27-801-803.

37. Proof must be precise. Where a case requires proof that something occurred in, a particular county, identifying a town generally known to be in that county is not enough. *State v. Bouwens*, 167 Neb 244, 246-7 (1958). Though it might seem likely that a fact TransCanada was

required to prove might be true, *it must be proven* and cannot be assumed to be true. Assumed facts are not proven facts, and cannot be taken as proven. “It is doubtful that evidence presented in a hearing to determine what might be in the public interest in one state is relevant to a consideration of that issue in another state.” *Applic of Nebraska PPD.*, 215 Neb 8, 15 (1983).

VI. Statement of Facts (“SOF”)

A. TransCanada’s Application and Evidence are Insufficient to Sustain It’s Burden.

These facts are proven, or as demonstrated below, disproven where required to be proven by the Applicant. To assess TransCanada’s proof, this analysis is devoted to TransCanada’s evidence, primarily, and reveals its failures to prove its case.

38. No officer of the Applicant gave testimony, and the Application itself is not signed by an officer of the Applicant. (Tony Palmer, 63:3-11, I; E1, p 70; Sandra Barnett, 345:9-16, II)

39. Only TransCanada Keystone Pipeline, LP, the proposed owner of the KXL pipeline, filed an Application for a route under *MOPSA*. (Applic KXL-001 p 21) The would-be operator of the proposed KXL pipeline, TC Oil Pipeline Operations, Inc., a “pipeline carrier” under *Neb Rev Stat § 57-1404(3)*, failed to join or file an Application. (*Id.*)(Palmer, 63:3-11, I)

40. Nebraska regulators would be separated by at least a half dozen corporate layers from the Applicant and true owner, and also from the Operator. (Palmer,79:4-84:24, I; LO-214)

41. TransCanada presented three route options as depicted as green lines on a map at Figure 2.2-2 (LO-4); it provided no legal descriptions or precise locations. (*Id.*; Palmer)

42. The initial useful life of the proposed pipeline is approximately 20 years and if well maintained it will work up to 50 years. (Palmer, 121:14-25, I)

43. The majority of TransCanada’s experience regarding liquid pipelines is with natural gas pipelines. (Barnett, 340:23-341:22, II)

44. When Paul Fuhrer (“Fuhrer”) was asked about products to be transported (Application § 5.0) he defined it as crude oil, but could not distinguish it from sweet oil or Bakken oil, and could not describe its composition. No witness described about the proposed cargo. KXL-1, § 2.1.4 went unproven. (Meera Kothari, 652:11-20, III)

45. Palmer deferred testimony on the Material Safety Data Sheets, and bypassed any testimony about Application § 5.0. (Palmer, 174:11-20, I) No witness gave testimony about these things and no witness was designated to do so. KXL-1 § 5.0 went unproven.

46. TransCanada did not ask any of these Nebraska agencies or departments to perform any evaluation(s) related to this Application, or its proposed Preferred, or Mainline Alternative Routes, and none did so: Not the Governor, the Department of Environmental Quality, the Department of Natural Resources, the Department of Revenue, the Game & Parks Commission, the Oil & Gas Conservation Commission, the State Historical Society, the State Fire Marshal, nor the Nebraska Board of Educational Lands & Funds. (LO-243, p 6-9)

47. TransCanada admits it does not have fully executed Road Haul agreements with all affected Nebraska counties on its proposed Preferred Route. (LO-243, p 3)

48. TransCanada admits no law exists that requires Canada to guarantee that any portion of refined tar sands oil be specifically used within Nebraska or the U.S. (LO-243, p 22)

49. No contract exists to allocate or deliver to Nebraska, or the U.S. any portion of the tar sands oil to be shipped in its proposed Keystone XL pipeline. (LO-244, p 24)

50. TransCanada can sell its proposed KXL pipeline, including pumping stations, after it is constructed and could sell any of its Nebraska easements – to anybody. (LO-244, p 13)

51. TransCanada did not prove an obligation to compensate landowners for construction-related damages. (Beaver, 407:4-15; 408:6-23, II; See Appendix D § 2.5)

52. No document exists requiring TransCanada compensate any landowner for any lost CRP payments due to TransCanada's construction activities. (Barnett, 365:6-20, II)

53. Landowners have no enforcement mechanism if they disagree with TransCanada's land restoration attempts. (Beaver, 434:1-435:10, III; Appx D § 4.16)

54. TransCanada's Preferred Route seeks a construction 110' right-of-way and a permanent 50' wide easement ie, a continuous dissection of the State. (Barnett, 349:9-25)

55. There is no contract for Union labor to build KXL. (Barnett, 1092:9-13, VI)

B. Alleged Economic Impacts Regarding Jobs & Taxes Are Overstated

56. Applicant's economic justifications for the project, taxes and jobs, were entirely dependent on one witness, economist Ernie Goss. (KXL-1 § 19.0 & Appendix H). His information sources were not credible. (Goss, 283:14-285:9, I)

57. As of May 19, 2017, TransCanada has created 34 permanent jobs in Nebraska. (LO-244, p 9), and as of May 5, 2017, TransCanada employed exactly one (1) temporary worker in Nebraska for its entire existing pipeline. (LO-244, p 10)

58. If the PSC were to approve either of the two Routes, and TransCanada were to construct KXL, fewer than ten new permanent jobs would be created. (LO-244, p 11)

59. KXL's Goss' income figures and tax projections for Nebraska were based on false premises and incorrect estimates found at § 19.0 of KXL-1 which were debunked by unrebutted testimony of Economist Dr. Michael O'Hara. (O'Hara; LO-189)

60. The existence of the Keystone XL pipeline on, in, under, and through the Preferred Route would lead to a decrease in adjacent land values of 15%. (O'Hara; LO-189, p22)

61. TransCanada's property tax obligations owed in every Nebraska County on the Preferred Route, for 2035 through 2069, will total \$00.00, and the Preferred Route will cause a significant net decrease in property taxes over the life of the pipeline. (O'Hara; LO-189, p 23)

62. If built, KXL will cause a loss in State income tax revenue over 20 years, of \$4,843,144.00, and over 50 years of \$14,320,027.00 or more. (O'Hara; LO-189, p 24)

63. Any temporary increase in sales tax revenues during construction will be erased by diminished property tax, and income tax receipts. (O'Hara; LO-189, p 22)

64. Nebraska will experience losses and limits to future economic opportunities by virtue of the pipeline's presence and circumstances. (O'Hara; LO-189, p 26 *et seq*)

65. Nebraska's counties will have increased operating expenses during and after construction because of the pipeline's presence. These expenses **will not** be offset by property, income and sales taxes, as these taxes are not paid to counties. (O'Hara; LO-189, p 35)

66. Dr. O'Hara's economic testimony was unrebutted and not contested.

67. Land KXL acquires for pumping stations, is now generating property tax revenue; but after 15 years of depreciation it will not. (LO-189, p22; LO-243, p 25)

68. KXL claims it would "restore equivalent capability to lands" after construction, but unrebutted Landowner evidence of decreased productivity, top soil loss, compaction, "blow-outs," "sink holes" and other negative impacts will take decades to remediate. (Barnett, 344:6-21; Hammond, 949:22-950, V; Crumly, 766:16-768:2, II; Kilmurry, 810:9-22, II)

69. TransCanada's Application includes no studies of the effects of topsoil replacement and damage upon soil productivity and yields. (Beaver, 402:25-403:14, III)

70. Economic development would be stifled due to Landowners' fear and resistance to develop or build upon their property after pipeline construction. (LO-1, 22:6-23:3; Every Landowner so testified in direct written testimony; O'Hara, LO 189)

C. TransCanada's Proposed Preferred Route's Detrimental Environmental Impacts

71. TransCanada's proposed Preferred Route for its Keystone XL pipeline would enter Nebraska in Keya Paha County and then pass through: Boyd, Holt, Antelope, Boone, Nance, Merrick, Polk, York, Fillmore, Saline, and Jefferson counties. (LO-4)

72. TransCanada's existing pipeline passes through Cedar, Wayne, Stanton, Platte, Colfax, Butler, Seward, Saline, and Jefferson counties. (LO-4)

73. The Keystone Mainline Alternative pipeline route would enter Nebraska in Keya Paha County and then pass through Boyd, Holt, Madison, Antelope, Stanton, Platte, Colfax, Butler, Seward, Saline, and Jefferson counties. (LO-4)

74. TransCanada admits negative impacts of its pipeline construction along its proposed Preferred Route in Nebraska will include: soil erosion; loss of topsoil; soil compaction; an increase of large rocks in the topsoil; and soil contamination. (Barnett, 368:10-369:9, II)

75. It is not in the economic interests of landowners to suffer: soil erosion; loss of topsoil; soil compaction; large rocks in topsoil; or soil contamination. (Barnett, 369:23-370:9, II)

76. KXL admits negative impacts of KXL on surface water resources will include: increased sedimentation; degraded aquatic habitat; changes in channel morphology and stability; a decrease in bank stability; and bank erosion. (Barnett, 373:6-374:12, II)

77. It is not in the public interest to impact surface water resources by increased sedimentation, degradation of aquatic habitats, changes in channel morphology and stability, decreased bank stability, and or bank erosion. (Barnett, 374:13-16, II)

78. Applicant admits there may be a drawdown of the aquifer during construction of the proposed KXL pipeline. KXL fails to present any evidence describing the effects of this on farmers needing irrigation water when the drawdown occurs. (Barnett, 372:13-373:5, II)

79. Within Nebraska there are 2,398 water wells within one mile of TransCanada's Preferred Route while there are only 105 water wells within one mile of their proposed route in South Dakota. (Jon Schmidt "Schmidt", 566:1-10, III)

80. Negative impacts of the proposed KXL pipeline on Nebraska's wetlands will include degradation of wetland habitats, and changes in wetland hydrology. (KXL-1, p 41)

81. TransCanada is unable to quantify what "significant" meant in its allegation that it does not anticipate any "significant" overall effect to crops and vegetation from heat generated by operation of its pipeline on its proposed preferred route. (Schmidt, 562:15-563:9, III)

82. It will take up to 50 years after construction for trees to mature to pre-construction conditions if KXL is built on the Preferred Route. (Barnett, 376:25-377:4, II)

83. TransCanada will not allow trees within its permanent easements if the Route crosses a pre-existing shelter belt. (Barnett, 377:5-21, II)

84. It is in the public interest to have the pipeline removed after its life is over. KXL will be monitored during its operational life, and then abandoned. (Beaver, 432:24-433:25, III).

TransCanada expects the liability to then revert to Landowners. (Id.; Palmer, 115:2-130:15, I)

85. TransCanada claims it can deviate from erosion prevention and mitigation plans in its sole discretion if the Application is approved. (Beaver, 401:5-24, III)

86. TransCanada's Construction, Mitigation, and Reclamation Plan ("CMRP") has not been updated since April 2012. (Beaver, 403:15-404:25, III See Appendix D)

87. TransCanada claims it consulted with local and regional agencies and University of Nebraska scientists but no local agency, regional agency, or Nebraska scientist offered factual evidence in support of the Application. (Barnett, 348:10-24, II)

88. TransCanada did not study soil samples from Landowner Intervenors' property where TransCanada's proposed Preferred Route would be located. (Barnett, 352:10-18, II)

89. TransCanada admits that erosion control is more challenging with sandy fine soils as opposed to heavier clay soils. (Barnett, 350:20-25, II)

90. The soils of Keya Paha, Holt, and Antelope counties are often sandy fine porous soils. (Crumly, LO-46 & 47; 766:16-25, IV; Steskal 870:21-25 V; Grier, 909:5-15; Hipke LO-63 & 64; Kilmurry LO-69 & 70; Glen Miller LO-94 & 95; Milliron Ranch LO-98 & 99; Mudloff LO-77 & 78; Meyers LO-104 & 105; Nichols Family Partnership LO-114 & 115; Tanderup LO-150 & 151; Troester LO-110 & 111)

91. The soils in the counties along TransCanada's existing Keystone Mainline are typically heavier clay soils. (Schmidt 154:1-12, III; Portnoy, 471:20-485:22, III; KXL 1, Ex G)

92. TransCanada claims its intent is to revegetate the right-of-way (easement area) as near as practicable to pre-construction conditions but is unable to explain or quantify how its "intent" could be measured. (Barnett, 352:16-19; 353:25-354:20, II)

93. KXL will deviate from its four feet minimum depth to the top of the pipe on the Preferred Route based on site-specific conditions. (Beaver, 410:18-411:13, III; Appx D § 2.9)

94. TransCanada plans to mitigate construction impacts "to the extent possible," but cannot define what this means. (Beaver, 418:23-420:23, III) Yet, TransCanada admits it has not developed a plan for dealing with contaminated soils. (Barnett, 365:21-366:21, II; See 9.14)

95. TransCanada claims it can re-align its Preferred Route as needed and defines no restrictions on this claimed power. (Beaver, 425:1-20, III; See Appx D § 4.15.2)

D. There is No “Fixed Starting Point” in Nebraska for the Preferred Route

96. TransCanada’s Application and witnesses repeatedly referenced a so-called “Fixed Starting Point” where their proposed Preferred Route is to commence near the South Dakota-Nebraska boarder. (KXL-1 § 2.1)

97. There is no infrastructure built near or at the alleged “fixed starting point” of TransCanada’s Preferred Route at the South Dakota/Nebraska border. (Schmidt, 540:11-23, III)

98. The South Dakota PUC did not determine nor did it “fix” any ending point of the proposed Preferred Route in the State of South Dakota. In fact, the South Dakota PUC specifically found, as a matter of law, it lacks authority to compel TransCanada to select an alternative route from what they unilaterally selected. (LO-235, p 23-24)

99. TransCanada designed its proposed Preferred Route entering Nebraska at Keya Paha County for its business benefits. The shortest route is a diagonal line from Alberta to Steele City, NE. This is how the Preferred Route came to be. (Kothari, 655:9-24, III; 682:3-12, IV)

E. A Less Detrimental Alternative Route(s) and Corridor Is Available

100. TransCanada’s proposed Preferred Route would cross 275.2 miles of Nebraska land. The existing Keystone Mainline corridor crosses 210 miles of Nebraska land which means 65.2 miles, or 23.7% fewer miles (and people) would be impacted by approval of the Mainline Alternative Route. (Schmidt, 541:18-25, III; LO-4; KXL-1 § 2.1.1)

101. The proposed Preferred Route would co-locate with the existing Mainline corridor for 7.3 miles in Jefferson County. (Schmidt, 549:19-550:16, III; LO-4; KXL-1 § 2.1.1)

102. The Mainline Alternative would closely parallel the existing Mainline corridor for 134.7 miles from Stanton County to the Kansas border. (Schmidt, 550:7-551:20, III; LO-4) This leaves only about 80 miles, in Stanton, Wayne County and Cedar counties which Applicant has not proposed to twin or closely parallel. (Schmidt, 553:10-16, III; LO-4;KXL-1 § 2.1.1; 2.1.3)

103. The remaining portion of the KXL Mainline Alternative route, not shown to closely parallel the existing Keystone Mainline corridor, would deviate from the existing Mainline in a north-westerly direction for approximately 153 miles from southern Stanton County to northern Keya Paha County. (Schmidt, 552:10-553:9, III; LO-4)

104. The proposed KXL Preferred Route would have five pumping stations. The existing Keystone Mainline also has five pumping stations. (Schmidt, 542:22-543:7, III)

105. It is important to reduce river crossings when siting a pipeline route. (Schmidt, 546:11-14, III) The proposed Preferred Route would cross five major rivers within Nebraska while the existing Keystone only crosses two major rivers. (Schmidt, 546:15-25, III)

106. The Preferred Route would cross 47.1 miles of highly wind erodible soils while the existing Keystone Mainline corridor crosses none. (LO-208; KXL-1 p 15; and LO-4)

107. Regardless of whether land is specifically identified as “Sand Hills” avoiding fragile and sandy soils is a prudent course when siting a pipeline route. (Schmidt, 545:1-7, III)

108. The proposed Preferred Route would cross through the “Sand Hills Unit” of the Northern High Plains Aquifer System in Nebraska while no part of the existing Keystone Mainline corridor’s location implicates this Sand Hills region. (LO-206)

109. TransCanada admits soils with high sand content are fragile. These fragile soils are in central Nebraska, and Holt & Antelope counties. (421:2-11, III; See Appx D § 4.15)

110. The sandy soils of central Nebraska have high wind and water erosion potential and low water holding capacity. (Beaver, 423:8-424:7, III; See Appx D § 4.15; LO-208)

111. TransCanada's existing Keystone Mainline pipeline route and corridor is located safely outside of the "Sand Hills." (Schmidt, 545:8-12, III)

112. No law prevents twinning or closely paralleling its existing Keystone Mainline corridor within Nebraska with its proposed Keystone XL pipeline. (LO-243 p 10)

113. The existing Keystone Mainline corridor was not presented to the PSC as an alternate route because KXL did not ask its contractors to analyze it. (Schmidt, 547:16-21, III)

114. KXL admitted its Mainline Alternative Route could be feasibly and beneficially used within Nebraska. (LO-243 p 4-5; Kothari, 638:9-2, III)

115. KXL admitted there is no prohibition to locating its proposed KXL Pipeline closely parallel to its already existing Keystone Mainline route. (Kothari, 641:17-24, III)

116. KXL admitted it already has 100% of the easements and all infrastructures necessary along its route where its existing Keystone Mainline pipeline is located, and already has relationships with relevant local government for each and every community through which its existing Keystone Mainline is presently located in Nebraska. (LO-243 p 10-11)

117. The rental value of nearby Nebraska real estate will be depressed by the pipeline's presence. It causes long term operating efficiency losses for farm and ranch operators. (Hammond, 949:1-21, V). The land will be permanently impaired. Even after 35 years, a pipeline's presence scars the land, and alters plant growth above it. (Hammond, 948:25-951:5,V)

118. The pipeline would be built nearby many Nebraska homes. In Landowner Art Tanderup's case, it would be about 600 ft from his Antelope County home. It will take away thin topsoil, expose sand and cause it to blow like snow, disturb cover crops, and expose what USDA

classifies as highly erodible lands. (Tanderup, 724:13-726:13, IV) The pipeline will upset fragile soil microorganisms, eliminate precious air pockets in soil, and leave a dangerous depression in the land because the soil does not backfill fully with its air pockets eliminated. (726:14-730:17, IV). The Tanderup farm will be dissected down the middle for a mile by a strip 110' wide. (732:17-23, IV). Soil temperatures will be disturbed, causing micro organic trouble. (734:14-740:7, IV) Rents will decline and so will land values. (745:22-748:19, IV)

119. Jeanne Crumly and her husband's Holt County land will be dissected. This will impair their drainage tiling, irrigation, and farming operations on fragile soils. Top soil is a only five inches deep; it takes years to heal after disruption. (765:1- 776:8, IV; LO 44-47)

120. Frank Morrison, who farms 60 quarters in Antelope County, and produces his own brand of popcorn, will have his entire operation severed. (LO-100, 101; 912:21-923:1, VIII) Robert Krutz (LO-73-75; 925:1-929:19, V) expected the pipeline construction will destroy his entire certified beef program, requiring a new attempt and new organic recertification.

121. The Dunavan's (LO52, 53; 782:23-801:17, IV) invested 38 years to reestablish virgin prairie on their land. KXL would nullify that work. TransCanada has promised revegetation after construction, but not restoration or reclamation. (*Id.*)

122. The Kilmurry's, cattle ranchers in Holt County (LO-71, 72) have highly erodible land, with sub irrigated meadows. They spent two decades trying to heal a blow-out by fencing all cattle, people and vehicles off of it, and would face an equally hard battle to heal KXL's construction trenches. They estimate the time to heal the wound at 80 years. (806:25-817:4, IV)

123. Every Landowner's testimony illustrates genuine hardships. The Applicant did not rebut testimony by the Landowners.

VII. Argument

A. Very Special Concern

124. One of your members, Commissioners, devoted much of his adult life to the United States military. He knows best that Preparedness is the Greatest Deterrent. The pipeline poses a special, under-recognized, national defense risk. Preparedness takes forward thinking.

125. Unless the PSC imposes permit restrictions and permit transfer restrictions, there is no federal mechanism, and none in any other state, to control the identity of a future purchaser of the pipeline or its operating company. It could be purchased by anybody with enough money. Anybody...even a country or group with interests inimical to the United States. *If this is incorrect, the Landowners call upon TransCanada* to point to the precise statute (not regulation that can be changed by the stroke of a pen of a White House occupant at a single moment in political time) that protects America from a corporate decision by a foreign company to profit by selling an object that dissects our Nation and could be used against us by a future enemy owner.

126. In this country, we do not allow the smallest bank, (12 USC § 1817(j)), the least significant gun dealer, (26 CFR Pt 478), grain trader or food exporter, (31 CFR § 538.523), or even a USDA color standard device, (7 CFR § 51.52), to be sold to a purchaser who does not require prior approval. Why would we allow this with a major oil pipeline? We have regulations about pipelines controlled by the Government of South Sudan, (32 CFR § 538.536), but none for those within the United States! Fate has placed the duty to protect against this risk on the Nebraska PSC. It is up to you to fix what the Federal Government and States overlooked. There is no one else to do it.

127. Again, if we are wrong, we ask TransCanada to cite the law.

B. TransCanada’s Application and Evidence is Insufficient to Sustain It’s Burden

128. The Applicant has to prove these elements under your Rule 291 *Neb Admin C* § 9-023.07, Commissioners. Its failures are overt. These failures do not permit TransCanada to claim with a straight corporate face that its burden is met:

023.07A: compliance with all applicable state statutes, rules, and regulations and local ordinances	Admits non-compliance with any local ordinances, including building codes, zoning, and construction permits. (O’Hara, 840:1-841:623, III; KXL-1, p 38)
023.07B: impact on natural resources & depletions of beneficial uses. 023.07G Reports of State Agencies in §023.05	No rebuttal to Landowners. 023.07B: No environmental impact study. No studies of this Application’s Preferred Route by State Agencies (LO-243, p 6-9)
023.07D No adverse economic and social impacts.	023.07D: Goss economic & social impacts study discredited, rebutted; O’Hara not rebutted.

Even if the majority of you, Commissioners, believe the Landowners lost *every* contested issue where TransCanada did adduce proof, its Application fails for lack of evidence on these mandatory elements. This failure of proof cannot be compensated by politics or paid advertising.

C. Alleged Economic Impacts Regarding Jobs & Taxes Are Exaggerated & False

129. Jobs & Taxes. These are the Applicant’s two proffered justifications for approval of its Application. One, and only one, witness was designated, and testified, on these two topics. That witness was Ernie Goss. Goss’s collapse on the witness stand disclosed one of the law’s most basic trial precepts: “Cross-examination is beyond any doubt the greatest legal engine ever

invented to discover the truth....” John H. Wigmore, *A Treatise on the System of Evidence* 2:1697-98 (1904); paraphrased in *Pointer v. Texas*, 380 U.S. 400, 404 (1965).

130. Goss imploded on cross-examination. He unmasked himself with his demeanor, shallow analysis and unprofessionalism. Later, Goss was *completely* debunked by two witnesses. First, Mr. Fuhrer, a TransCanada employee who contradicted Goss and admitted that permanent employment will increase from about 34 to about 40-44 person, a net gain of six to ten jobs, not tens of thousands. Second, temporary jobs numbers, placed above 40,000 by TransCanada were *utterly* debunked by UNO economist, Michael O’Hara. (858:12-860:12,V; LO-189 p41) Dr. O’Hara analyzed the jobs numbers and responded to specific questions. TransCanada did not rebut O’Hara despite keeping Goss at the hearing to the end to watch O’Hara’s testimony.

131. Goss indefensibly summarized the impact of Keystone XL construction on the Preferred Route to be 3,397.2 construction jobs during construction, 371.7 operations jobs, and 727.6 total jobs for the years 2018 thru 2034. (KXL-1 § 19.0) Goss could not explain his sources, figures or the calculation spreadsheet he used. Goss put income from operations in Keya Paha County at \$217,000 / yr for 2/10ths of one person. And when this folly was apparent to all in the hearing venue, he could not see it – so slapdash was Goss’s work. (311:22-315:4, II)

132. The Goss report tried to prove KXL would be tax revenue positive. Again Goss failed. Goss admitted he disregarded years 16-50 of the pipeline’s use when it will produce *no taxes* because it is depreciated out, but will require government services. He also made no calculation of revenue losses for diminished income, increased operating costs, and lowered land values for farmers and ranchers. (316:7-330:10) The Goss tax and jobs work was as superficial as the naïve art of a precocious child when compared to the masterful work of a career artist. It was awful.

133. Dr. Michael O'Hara gave a comprehensive, intensively researched report. Dr. O'Hara responded to specific questions posed to him. He also gave the Commission, with pin point precision, the documents he reviewed and analyzed. (LO-189, p 17-18)

134. Dr. O'Hara's scope of engagement involved a request for his analysis of eight specific questions. (LO-189, p 20) The first question sought on the analysis of the impact of the Proposed Pipeline along the Proposed Route, on Nebraska property tax revenues over 20 and 50 years, and separately income tax revenues and separately sales tax revenues. Again citing extensive professional research sources, and making appropriate adjustments for the value of adjoining land of 15%, Dr. O'Hara concluded, using recognized economic methodologies, that "It is easy to forecast KXL's property tax obligations owed in each and every county, in each and every one of the years 2035 through 2069, will total \$0." Dr. O'Hara was able to conclude, after analysis, the Pipeline and Route proposed "will produce a significant net decrease in property taxes over the life of the pipeline." (LO-189, p 23)

135. The O'Hara income tax forecast proves the pipeline will produce, over 20 years, a loss in tax revenues for Nebraska of \$4,843,144.00. Over the first 50 years, the income tax loss will be \$14,320,027.00. These figures include increases in sales and income tax revenues from TransCanada's employment and spending, offset by decreases in income and sales tax revenues from diminished land production, values and sales processes, and consumption of services.

136. The sales tax in Nebraska will go up because of TransCanada's existence. This is because TransCanada will, while the pipeline is here, require electricity and services to maintain it. But, increased sales tax revenues will not offset diminished property taxes and income taxes.

137. Dr. O'Hara's analysis and conclusions were not rebutted by TransCanada.

138. Dr. O'Hara also studied the impact of employment circumstances on Nebraska. His results are largely forecasted by information about the income tax. If there are employment benefits to the State over the long term, they would certainly be displayed by an overall net increase in Nebraska's income taxes. But there is no such increase. Indeed, there is a decrease.

139. Dr. O'Hara's fourth area of inquiry concerns "economic opportunities likely to be disrupted or concluded." Here, Dr. O'Hara concluded (LO-189 p 26 *et seq*) that Nebraska would experience great risks to future opportunities by virtue of the pipeline's presence and circumstances. He notes that TransCanada's study did not consider this subject in any manner whatsoever. However, Dr. O'Hara did so, citing the Canadian Standards Association's publication on this subject. Canada, unlike the United States, has given the matter considerable attention. (LO-189, p 26) Also identified by Dr. O'Hara were proposed Mitigation Agreements and Orders drawn by the State of Indiana, and one proposed by Illinois, to minimize the adverse impacts, and negative consequences on future development so easily associated with major oil pipelines. Dr. O'Hara was not rebutted.

140. Dr. O'Hara made it clear that TransCanada's land title needs resemble a lease, and not an easement. He explained the difference and explained why Nebraska will suffer a detriment unless TransCanada is required to pay annually for the use of land owned by Nebraska landowners to facilitate TransCanada's generation of annual income. (LO-189, p 28-34)

141. Finally, Dr. O'Hara concluded that Nebraska's counties will have enhanced budgetary expenses during and after construction because the pipeline is present in their counties. These expenses will not be offset by property, income and sales taxes, either considered individually or collectively. Wind farm leases make positive contributions over the

lifetime of the machines. This pipeline will not. (O’Hara, 853:2-18; 860:22-861:19, V; LO-189, pp 28-36) (No rebuttal by KXL.)

142. Dr. O’Hara also analyzed the Goss Report, KXL-1 Appendix H, without any rebuttal by TransCanada. O’Hara identified these prominent flaws and deficiencies in methods alone used by Goss: no accounting for tax benefits; no calculation of depreciation & incorrect depreciation term of years; failure to calculate decline in real estate values for property intersected and lying nearby; failure to account for escalated demand on public services for 50 years (or even one year); failure to account for pipeline removal costs; failure to provide for any data to permit a reviewer of Goss’s Report to replicate calculations or identify data sources; failure to make rational employment calculations; and failure to note a net gain of only 6-10 jobs when pipeline construction is concluded.

143. An economic report that cannot be examined for accuracy and checked by calculations from the document’s internal data is not acceptable. Goss’s Report is not acceptable. Goss’s testimony proved utterly non-credible during cross-examination. Goss’s work melted down to unproven and false assertions—not evidence. The value of an expert opinion is dependent on, and no stronger than, the facts on which it is predicated. This is basic Nebraska jury instruction. *NJI2d Civ 1.42*. It guides every jury in which an “expert” testifies. An expert opinion has no probative force unless the assumptions upon which it was based are proven to be true. *Gary’s Impl’t, Inc. v. Bridgeport Tractor Parts, Inc.*, 281 Neb 281 (2011).

D. TransCanada’s Preferred Route Is Inferior to the Mainline Alternative

144. The Facts summarized at ¶¶ 73-126 above prove that TransCanada’s first choice, a route handy for it, is obviously inferior to its second choice. The Preferred Route dissected hundreds of newly impacted farms, passes over more fragile soils and the Ogallala aquifer,

makes more dangerous river crossings, passes by 733 nearby, avoidable water wells, and has no justification except that it is convenient for the Applicant.

145. The pipeline does not mitigate threats to Nebraska's natural or environmental resources. Michael B. Portnoy "Portnoy" (KXL-7) is CEO of his own "full service environmental consulting and engineering firm." He carefully restricted his testimony to the work "of a scientist" and declined to give voice to anything about the TransCanada company line. Portnoy conceded, during cross examination, that:

145.1. The Preferred Route passes through fragile soils, (Barnett, 352:1-9, II; Crumly 766:16-768:14, IV; the Alternate Route, does not. (Schmidt, 545:1-12, III).

145.2. Borings will be required under more than 200 rivers and streams. (KXL-1, p 35).

145.3. The Route will be placed with hundreds of domestic, livestock, irrigation and monitoring wells, within one mile on either side. (KXL-1, p 309-328) He inferred that few, and perhaps no, new wells would be threatened.

145.4. Cuts required through river and stream banks do pose threats, but plans are drawn to try to protect them. (Fuhrer 232:15-233:9, I; KXL-1 p 35, 128, 129).

145.5. USDA NRCS documents, upon which he relied, are credible sources. These are the documents the Landowners used in their Affidavits to explain their soils, and are authoritative. (LO-5, 12, 14, 18, 20, 22, 24, 26, 34, 36, 38, 43, 45, 49, 51, 55, 57, 59, 62, 66, 68, 75, 77, 83, 85, 89, 93, 97, 101, 103, 107, 109, 113, 117, 119, 123, 125, 128, 130, 132, 134, 138. 140, 142, 149, 154, 156, 160, 162, 164, 168; Portnoy, 484:2-485:3, III) Thus, the Landowners did prove the porosity, fragility, and load bearings limitations of their soils with their testimony, samples and use

of the USGS Surveys, as was conceded by KXL's independent environmental expert, Mr. Portnoy

146. KXL employee Paul Fuhrer, a UNL graduate, described topsoil stripping, banking, and restoration plans. But, the Landowners gave clear, compelling rebuttal evidence. Mrs. Crumly (766:16-768:2, II) testified about the fragility of one to two inches of topsoil. Mrs. Kilmurry (810:9-22, II) described 20 years of fencing out blowouts to get them reestablished and the risk that the pipeline, with recurrent visitation by TransCanada, could become a long and expanding blowout that could not be repaired. Mrs. Dunavan (748:8-22, II), described a 38 year effort to restore the native soils of Nebraska to the 80 acres her husband and she have cared for throughout their adult lives. The pipeline in the Preferred Route would destroy those efforts. The Alternate Route would avoid them.

147. The Landowners largely defer to the Natural Resource Intervenors on threats to Flora, Fauna & Water. The Landowners were impressed by Dr. Johnsgard, one of the World's most published scientists. At age 86, Dr. Johnsgard displayed quickness, sincerity, and depth unmatched by any witness for TransCanada. Admitting the risk to whooping cranes from the pipeline is minor, Dr. Johnsgard stood his ground. He proposed diversion devices on powerlines.

E. TransCanada's Preferred Route Has Detrimental Cultural Impacts

148. During TransCanada's interrogation of Shannon Wright, the Yankton Sioux Tribal Official responsible for Preservation of Heritage, TransCanada mocked and belittled Nebraska's intertwined history of territorial and statehood with the lives of its Native citizens.

149. Native artifacts are Nebraska artifacts. Native rituals are Nebraska rituals. Native history is Nebraska history. (Allpress 888:18-891:8, V). And, though discounted too often, surely Native futures are also Nebraska futures. (LO-9).

150. TransCanada pays lip service to concerns of Indigenous Americans. Its lack of caring was displayed at the hearing. This behavior is consistent with Canadian rejection of KXL efforts to procure pipeline routes to the east and west coasts of Canada-blocked again and again by Canada's indigent citizens, and millions of Canadians just like the Landowners.

151. TransCanada's behavior disproved its stewardship of history.

F. There is No "Fixed Starting or Entry Point" For the Preferred Pipeline Route

152. Paragraphs 99-102 above, and LO-235 set out the proven Facts that make this point. There is a preferred, but not a fixed, entry point into Nebraska for the KXL pipeline.

153. TransCanada flagrantly misled you, Commissioners, about an alleged "fixed entry point into Nebraska." Tony Palmer, the senior person who testified, called it a fixed point. (148:16-149:12, I). So did engineer Kothari, 638:9-16, 641:18-642:14, III. But, when directly confronted with the South Dakota PUC Order, LO-235, ¶13 p 23-24, Kothari conceded that South Dakota's PUC did not approve a route or even consider; it simply issued a building permit in the location TransCanada wanted. (632:18-636:12). In fact, the PUC found there was no statutory basis under South Dakota law for denying a building permit and no basis under South Dakota law for approving or denying a route. South Dakota's PUC's role was completely different from yours with the Nebraska PSC. You cannot approve building permits, and must consider the route and its impact on best interests of Nebraskan.

154. TransCanada could have previously, and can still, go to South Dakota, get route approval along the I-90 route (described by witness Kothari) and enter Nebraska from Yankton County into Cedar County, Nebraska where the existing pipeline enters. Doing so, would avoid all the fragile soil samples of every Nebraska Landowner who presented a sample. (LO-7, 16, 28, 47, 64, 70, 79, 87, 91, 95, 99, 105, 111, 115, 121, 136, 144, 151, 158, 166) These samples are

from the Keya Paha, Boyd, Holt, Antelope, Boone, Merrick and York Counties. The existing Route does not pass through those Counties. The Preferred Route does.

155. TransCanada offered no justification for its Preferred Route through Nebraska except for taxes, jobs, and an alleged “fixed starting point” from South Dakota. Taxes and jobs claims were destroyed by the Goss testimonial debacle, and the unrebutted work of Dr. O’Hara. As for the false “fixed starting point” claim, TransCanada never attempted to recover from this admission by Ms. Kothari that the South Dakota decision does not fix a starting point for Nebraska. The South Dakota PUC Order (LO-235, ¶13 p23), closes the book on this subject.

G. Abandonment Should Not Be Allowed To Saddle Future Nebraskans With Liability.

156. TransCanada plans to abandon its pipeline to waste in Nebraska’s soil after it is used. (LO-244 p 14-15) This is the only reason KXL wants a “perpetual” easement for its 20 to 50 year machine. The Company’s 1st witness, Mr. Palmer, admitted abandonment is “one of the options”, and that removing the pipe has not been considered. TransCanada was unable to give you any estimate of costs to remove the pipe, clean up the mess, and remediate the land. (Palmer, 131:13-20, I) If the Application is approved as requested, the dye is cast: future Nebraskans will pay billions to clean up, after getting virtually nothing for putting up, with the KXL.

157. No businessperson would make such a deal. Indeed, no responsible parent would let a child have all the toys, and never learn to clean their room. Why would you do this for the Applicant? Consider the lesson Stan & Jan Bernstein, *The Bernstein Bears & the Messy Room* (Penguin 1983) about the duty to clean up your own mess.

158. TransCanada’s admitted plan is to abandon its pipeline in Nebraska’s soil. (LO-244) It admitted this in writing. (LO-244 p 14-15) The company plans to take its profit and run. Your heirs, Commissioners, will be left with the cleanup bill. They will share it with all who

outlive you in 50-70 years. And all those folks, victims of a 2017 decision, will wonder what in the world was going on in 2017 to create such circumstances! How much will the clean up cost? TransCanada cannot say and has not thought about it. (Palmer 131:13-132:6, I) But the cost can be avoided. Readers of *The Bernstein Bears & the Messy Room* learn this at an early age.

159. Leaving this cost of the abandoned line to future Nebraskans dramatically outweighs any modest short term benefit. The KXL project is a massive net financial liability to Nebraskans if TransCanada is allowed to take its profit and run. KXL was unable to identify any Nebraska pipeline or pipeline easement that permits abandonment of the line in the ground. (Palmer 130:3-9, I). TransCanada would be the first.

160. This problem can be solved. Wherever, if anywhere, a route is granted, TransCanada should be required, as a condition of permission to put KXL in that it must take KXL out at the company's expense, clean up the mess and its easements should then end. It must also maintain proof with the PSC of financial responsibility to cover this cost.

161. **TransCanada's Evidence re the Environment & Energy.** KXL's Mr. Fuhrer's direct testimony did deal with endangered species (KXL-3, p 9) and comparative mileage. (KXL-3, p10) The Preferred Route would be 5.3 miles shorter than the Mainline Alternative. *Id.* It would be farther east than the migratory paths of the Sandhills and Whooping Cranes.

162. The Preferred Route would cross 70 more miles of pivot irrigated crops than the Mainline Alternative Route. (KXL-1, p 18)

163. The Proposed Pipeline will consist of five pump stations. Each using six engines that will consume 5500 horsepower of energy per hour, on a constant, unremitting basis. Testimony from farmers discloses low level demand for electricity for center pivot irrigation. (LO-25 p 20, LO-29 p 20, LO-56 p 28). And pipeline personnel admitted that farmers have

standby contracts for center pivot power. They conceded potential interference. (Fuhrer 214:12-215:11, I; Kothari 642:22-644:3, III).

H. The Existing Mainline Avoids Problems & Is Superior to What is Handy for KXL

164. If Nebraska is going to have major crude oil pipelines crossing it, the existing Keystone Mainline Route is not controversial, and is an overly superior route to the one KXL wants. Its existing line and location is *prima facie* evidence of superior siting. All testimony and facts suggest that if the PSC is inclined to eventually grant an application for a 36-inch tar sands pipeline through Nebraska, the only logical one would be to parallel the current location. TransCanada admitted this can be done. It presented no evidence of impediments to the contrary. (LO-4 see Mainline Alternative from Stanton to Jefferson counties; Schmidt, 550:7-551:20, III).

165. This is the bottom-line: if there is any sentiment to approve a Route for KXL – the most intelligent location is not a dangerous new route. It is the uncontested existing one.

VIII. Constitutional Issues Raised; Brief Argument & Preservation

These constitutional issues are raised, briefly argued, and reserved for judicial review.

166. **Art I §§ 16 & 18.** Does *MOPSA* violate either of these sections of the Nebraska Constitution? **Argument: Yes, both.** *MOPSA* grants special privileges to a single pipeline company that had a presidential permit pending at the time defined in the Act when no other could qualify; it constitutes special legislation contrary to both of these constitutional provisions. *Big John's Billiards v. State*, 288 Neb 938 (2014); *Le v. Lautrup*, 271 Neb 931 (2006).

167. **Art I §16.** What conditions should or must be imposed to prevent granting of special privileges or immunities to the Applicant by *MOPSA* contrary to *Neb Const* Art I, §16? If no conditions may be imposed, does the statute violate this constitutional provision? **Argument: Yes, Art I § 16 is violated; PSC imposed conditions cannot save it.** Special

privileges are conferred by *MOPSA. Big John's Billiards v. State*, 288 Neb 938 (2014); *Le v. Lautrup*, 271 Neb 931 (2006).

168. **Art I, § 3.** What conditions should or must be imposed to prevent denial of due process of law or equal protection of law contrary to *Neb Const* Art I, §3, or *US Const* Amend XIV? If no conditions may be imposed, does the statute violate this constitutional provision?

Argument: The PSC has authority to approve with conditions. These can be restricted only if the Legislature expressly so states *and* the Legislature retains control over those areas. *Thompson v. Heineman*, 289 Neb 798, 836 (2015) (Opinion of four Justices).

169. **Terrorism.** What conditions on Application approval should or must be imposed to protect the public from acts of terrorism against the pipeline? If no conditions may be imposed, does the statute violate this constitutional provision? **Argument. The PSC may, and must, impose conditions.** *Thompson v. Heineman*, 289 Neb 798, 836 (2015), *supra*. **This is why: no federal law and no law in any state outside Nebraska restricts the potential sale of the pipeline or route to an enemy of the United States.** This is contrary to the law governing sales of banks, telephone companies, pharmaceutical companies, transportation companies, privately owned utility companies, medical companies, and defense contracting companies. Only the PSC can protect a nation that has failed to protect itself from this deficiency. If the landowners are wrong about this, they challenge TransCanada site specific authority from a federal statute. While this is a matter of urgent importance to every Commissioner, the landowners appeal particularly to Commissioner Landis, recalling his distinguished military career.

170. **Art IV §20.** Is the finding of the Legislature set forth at *Neb Rev Stat* §57-1403 (3) purporting to constitute a declaration that the "construction of major oil pipelines in Nebraska is in the public interest of Nebraska" an unconstitutional invasion of the authority of the

Nebraska PSC, and a violation of the doctrine of separation of power contrary to *Neb Const Art IV §20* as the determination of public interest as it relates to common carriers is within the express responsibility of the PSC to regulate "general control of common carriers"? Does this unconstitutionally restrict judicial authority? If judicial decision is allowed, does the statute violate this constitutional provision? **Argument: Yes. This finding violates Art IV §20.** *Thompson v. Heineman*, 289 Neb 798, 836 (2015) (Opinion of four Justices) because the Legislature did not occupy this field. It also violates the doctrine of separation of powers and unconstitutionally restricts judicial authority.

171. **Art II §1.** Is the question of whether the proposed pipeline and Route are for” public use” reserved for determination by the judicial branch of government only, as required by *Neb Const Art II, §1*? **Argument: Yes, this is a judicial, not a legislative, issue. The Legislature can find a public purpose for a new statute, but when it involves eminent domain, the Courts must decide if a particular taking is for a public use.** *Estermann v. Bose*, 296 Neb 228, 240-44 (2017). *May v. City of Kearney*, 145 Neb 475 (1945). However, the courts cannot rewrite the extent of a taking; they can only validate, or invalidate, it. The PSC therefore should provide restraints on duration and scope of easements and on certain essential easement terms, including mandatory removal of the pipeline and reversion of title. *Thompson v. Heineman*, 298 Neb 798 (2015).

172. **Art I § 6.** Is the question of whether the proposed pipeline and Route are for public use reserved for determination by the judicial branch only, in a trial to a jury, under *Neb Const Art I §6*? **Argument: Yes.** The question is reserved for the judiciary and the landowners believe the jury trial right applies. *Thompson v. Heineman*, 298 Neb 798 (2015).

173. **Art I § 6 Pt 2.** Does the attempt to legislatively determine that the proposed Route and proposed pipeline are for public use violate the right to trial by jury contrary to *Neb Const Art 1 §6*? **Argument: Yes.** The question is reserved for the judiciary and the landowners believe the jury trial right applies. *Thompson v. Heineman*, 298 Neb 798 (2015). *City of Mitchell v. Western Public Svc Co.*, 124 Neb 248 (1933) was incorrectly decided to the contrary in 1933.

174. **Art I § 13.** Is *MOPSA* unconstitutional because it purports to deprive property owners of access to the courts contrary to *Neb Const Art I, § 13*? **Argument: Yes.** The question is reserved for the judiciary and the landowners believe the jury trial right applies. *Thompson v. Heineman*, 298 Neb 798 (2015).

175. **Art I §§ 20 & 21.** Is *MOPSA* unconstitutional contrary to *Neb Const Art I § 21* because it fails to restrict takings to those within the public need or purpose? **Argument: Yes.** No statute can transcend *Neb Const Art I, § 21*.

176. If parts of the Act are unconstitutional is the entire Act unconstitutional? **Argument: Yes.** “Where valid and invalid parts of a legislative act are so intermingled that they cannot be separated, no part of the enactment can be enforced.” *Smithberger v. Banning*, 129 Neb 651 (1935); *State v. Junkin*, 85 Neb 1 (1909).

IX. Conclusion

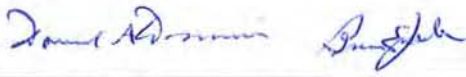
177. TransCanada had its chance to put on its *best case* before you, Commissioners. What it had is what you got. In a few minutes with each of its eight witnesses, the curtain was pulled back, and the “Wizard” behind the noise and impressions was exposed. TransCanada did not meet the burden of proof. It had virtually no meaningful facts. Gaps in the evidence left materials elements completely unproven, and others were unmasked by superficial statements that do not cut the mustard as “evidence”.

178. Required of you, is this: an evidence-based decision on the record before you. TransCanada failed to prove its tax claims, failed to prove its jobs numbers, failed to defend its “fixed starting point contention – which proved to be designed to mislead you.

179. No jobs – reduced production for farmers. Net taxes lost. No justification for perpetual rights or easements. No fixed starting point. No evidence! And, without your thoughtful decision, no protection against a sale by the Applicant to an enemy owner, and no protection against a huge future clean up liability.

180. TransCanada did not earn your vote with proof. The Landowners ask, on behalf of all well-informed persons, that you deny the Application entirely. But if you must approve something, make TransCanada closely parallel what it has now. Also impose the South Dakota conditions (LO-235), plus required approval for any sale, and a duty to take the pipeline out of the ground, clean up the mess, and terminate the easements so title to the land is whole again when TransCanada is gone.

Landowners (Domina Group),

By: 

David A. Domina, #11043
Brian E. Jorde, #23613
Domina Law Group pc llo
2425 S. 144th St., Omaha, NE 68144
(402) 493-4100
ddomina@dominalaw.com
bjorde@dominalaw.com

Landowners' Lawyers

Certificate of Service

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

Jacques	Tallichet	2821 S. 79th St	Lincoln	NE	68506	jacques.tallichet@gmail.com
Leverne A	Barrett	1909 Co Rd E	Ceresco	NE	68017	Vernbarrett@fureuretk.com
Becky	Hohnstein	PO Box 272	Minatare	NE	69356	jim.hohnstein@gmail.com
Taylor R M	Keen	5022 Hamilton St	Omaha	NE	68132	taylorkeen7@gmail.com
John	Jarecki	6112 Bedford Ave	Omaha	NE	68104	johnjarecki110@gmail.com
Karen	Jarecki	6112 Bedford Ave	Omaha	NE	68104	tenbuckstwo@yahoo.com
Julie	Shaffer	5405 Northern Hills Dr	Omaha	NE	68152	ksjaffler59@gmail.com
Michelle C	LaMere	PO Box 514	Winnebago	NE	68071	iamere@rocketmail.com
Jonathan H	Thomas	960 S Cotner Blvd	Lincoln	NE	68510	thewild_things@yahoo.com
Jayne	Antony	16064 Sprint St	Omaha	NE	68130	jayneevan@yahoo.com
Joseph	Pomponio	551B Sand Creek Rd	Albany	NY	12205	lukaz@msn.com
Christine	Polson	4923 Valley St	Omaha	NE	68106	snpolson@cox.net
Wrexie	Bardaglio	9748 Arden Road	Trumansburg	NY	14886	wrexie_bardaglio@gmail.com
Mia	Bergman	86424 514 Ave.	Orchard	NE	68764	mbergman85@hotmail.com
Kimberly E	Craven	33 King Canyon Road	Chadron	NE	69337	kimecraven@gmail.com
Kimberlee A	Fraudendorfer	50092 - 520 Ave	Newman Grove	NE	68758	
Randall L	Fraudendorfer	50092-520 Ave	Newman Grove	NE	68758	
Troy R	Fraudendorfer	Box 493	Newman Grove	NE	68758	
Cathie (Kathryn)	Genung	902 East 7th St	Hastings	NE	68901	tg64152@windstream.net
Louis (Tom)	Genung	902 East 7th St	Hastings	NE	68901	tg64152@windstream.net
Andy	Grier	916 S. 181st St.	Elkhorn	NE	68022	griec01@cox.net
Christy J	Hargesheimer	620 S 30th St	Lincoln	NE	68510	chrispaz@neb.rr.com
Richard S	Hargesheimer	620 South 30th St	Lincoln	NE	68510	rshargy@gmail.com
Marvin E	Hughes	714 W 5th St Ste 120	Hastings	NE	68901	bhughes@gtmc.net
Judy	King	1261 Fall Creek Rd	Lincoln	NE	68510	kingjud@gmail.com
Paul M	Latenser	2271 S 135 Circle	Omaha	NE	68144	pmlatenser@cox.net
Pamela	Luger	8732 Granville Pkwy	LaVista	NE	68128	pam1181@yahoo.com
350.org	Kendall Maxey	20 Jay Street	Brooklyn	NY	11201	kendall@350.org
Elizabeth (Liz)	Mensingher	6509 Wirt St.	Omaha	NE	68104	lizmensingher@gmail.com
Janece	Mollhoff	2354 Euclid Street	Ashland	NE	68003	wjmollhoff@windstream.net
Crystal	Miller	7794 Greenleaf Drive	LaVista	NE	68128	neccmiller@juno.com
Greg	Nelson	3700 Sumner St	Lincoln	NE	68506	gnelson@inetnebr.com
Julie	Nichols	1995 Park Ave	Lincoln	NE	68502	willpower2@earthlink.net
James Douglas	Osborn	43110 879th Rd	Ainsworth	NE	69210	jdosborn30@yahoo.com
Jana	Osborn	1112 Meadowlark	Alliance	NE	69301	janajearby@gmail.com
Dave	Polson	4923 Valley Street	Omaha	NE	68106	honk@cox.net
Collin A	Rees	4721 Heather Lane	Kearney	NE	68845	collin@priceofoil.org
Donna	Roller	2000 Twin Ridge Rd.	Lincoln	NE	68506	rollerski@gmail.com
Corey	Runmann	2718 S. 12th St.	Lincoln	NE	68502	rumannc@gmail.com
Cecilia	Rossiter	949 N 30th St	Lincoln	NE	68503	punion@gmail.com
Sandra	Slaymaker	102 E 3rd St., #2	Atkinson	NE	68713	sandyslaymaker@gmail.com
Lois	Schreur	2544 N. 61st Street PO Box 4376	Omaha	NE	68104	leschreur@centurylink.net
Susan	Soriente	1110 Rockhurst Drive	Lincoln	NE	68510	ssoriente@gmail.com

Susan Oil Change International	Straka-Heyden Lorne Stockman	46581 875th Rd 714 G St., SE Suite 202	Stuart Washington	NE DC	68780 20003	suzie_sl@hotmail.com lorne@priceofoil.org
Tristan	Scorpio	208 S Burlington Ave Ste 103 Box 325	Hasting	NE	68901	linda@boldnebraska.org
Kimberly L Paul	Stuhr Theobald	19303 Buffalo Rd 85718 544th Avenue	Springfield Foster	NE NE	68059 68765	kimberlystuhr13@yahoo.com ptheobald36@gmail.com
Christine Elizabeth L	Troshynski Troshynski	101 S. 1st St. 87769 484th Ave	Emmet Atkinson	NE NE	68734 68713	ctroshynski@gmail.com btroshyn@hotmail.com
Julie Susan C	Walker Watson	2570 West Luther St. 2035 N 28th St Apt 213	Martell Lincoln	NE NE	68404 68503	jw9095@yahoo.com scwatson1965@gmail.com
Susan J Douglas	Weber Whitmore	2425 Folkways Blvd Apt 329 8856 N 83rd Ave	Lincoln Omaha	NE NE	68521 68122	susanjweber4@yahoo.com douglas@whitmore4congress.com
Sandy Sarah	Zdan Zuekerman	4817 Douglas 1729 K St #7	Omaha Lincoln	NE NE	68132 68508	sandywz@cox.net sarahj1182@gmail.com
Blake & Uhlig, PA	Robert J Henry Michael E Stapp	753 State Avenue Ste 475	Kansas City	KS	66101	rjh@blake-uhlig.com
Blake & Uhlig, PA	Robert J Henry Nuchael E Amash	753 State Avenue Ste 475	Kansas City	KS	66101	rjh@blake-uhlig.com
O'Donoghue & O'Donoghue LLP	Ellen O. Boardman	4748 Wisconsin Avenue, NW	Washington	DC	20016	eboardman@odonoghuelaw.com
Robert Kenneth C	O'Connor, Jr. Winston	PO Box 45116 1327 H St Ste 300	Omaha Lincoln	NE NE	68154 68508	reolaw@aol.com kwinston@inebraska.com
Cavanaugh Law Firm, PC LLO	James P Cavanaugh	6035 Binney Street Ste 100	Omaha	NE	68104	cavanaughlawfirm@aol.com
Brad S Jolly & Associates	Brad S Jolly	15355 Gadsen Dr	Brighton	CO	80603	bsj@bsjlawfirm.com
Fredericks Peebles and Morgan LLP	Jennifer S Baker	1900 Plaza Drive	Louisville	CO	80027	jbaker@ndnlaw.com
McGrath North Mullin & Kratz, PC LLO	James G. Powers	First National Tower Ste 3700 1601 Dodge Street	Omaha	NE	68102	jpowers@mcgrathnorth.com
McGrath North Mullin & Kratz, PC LLO	Patrick D. Pepper	First National Tower Ste 3700 1601 Dodge Street	Omaha	NE	68102	ppepper@mcgrathnorth.com

James G. Powers
8.15.17