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Transcriber's Office

Judiciary Committee
November 08, 2011

[LB3]

The Committee on Judiciary met at 10:00 a.m. on Tuesday, November 8, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB3. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson. Senators absent: Amanda McGill; and Scott Lautenbaugh.

SENATOR ASHFORD: Good morning, everyone. We're, by my reckoning, 50 seconds behind schedule. So Senator Avery is here. Let me just talk a little bit about what we're going to do today. My name is Brad Ashford. I am the Chair of the Judiciary Committee. And we are here to consider Senator Avery's bill, LB3. Let me introduce my colleagues on the committee. To my left, Senator Tyson Larson from Holt County, from O'Neill, Nebraska; Senator Colby Coash is from Lincoln; Scott Lautenbaugh from Omaha, I think, is still in court. We tried to get him out of there, but he's still there. Anyway, Senator Burke Harr from Benson is here; Steve Lathrop, Senator Lathrop from Ralston, Nebraska; and Brenda Council from Omaha. Senator McGill, Amanda McGill from Lincoln is ill today, but she is in the building and is available if we need her or if she wishes to come. But I've indicated to her that if she just wishes to stay in her office and listen to the testimony that that would be great. Stacey Conroy is the legal counsel to my right; Oliver VanDervoort to my left is the committee clerk. This session is televised, as was the session yesterday, on NETV. We don't have a full room yet, but there is an overflow room, I understand, it is 1524, Tom?

_____ : Correct.

SENATOR ASHFORD: Room 1524 is the overflow room. So at this point, I don't see any particular need in anyone leaving and going to the overflow room, since we have plenty of room now. Everyone who wishes to testify will be given an opportunity to testify. We do ask that we adhere to the three-minute rule, except for Senator Avery; he has two minutes. (Laughter) But I'm just kidding, Senator Avery. But we would ask you to sum up, when the orange light comes on that indicates that you have a minute left in your testimony, so we would ask you to sum up. Start finishing your comments and then sum up when the red light comes on. As I say, we aren't...there's no time limit per se on sides or who gets...but we would ask that if you do have any exhibits with you, that you, hopefully, have sufficient copies. We're not, if you don't, you don't, but we'd prefer you do. Give them to the page and we'll distribute them to the members of the committee. Each exhibit, obviously, is made a part of the record and will go with our consideration of LB3. There are sign-in sheets. There are sign-in sheets in the side or back of the room, and there are sign-in sheets at the brown desk behind the speaker's area. If you would sign that sheet before you come up to testify that would be good. If you don't...and you can sign it any time. If you don't wish to testify but wish to have your presence noted, simply sign the sheet and leave it at the desk behind the speaker's

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area and we will collect those. Thank you all for coming. This is a matter of significant importance to the state, and we appreciate your presence and all of you coming to give us your views. Senator Avery, would you please introduce LB3.

SENATOR AVERY: (Exhibit 1) Thank you, Senator Ashford. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28 here in the heart of Lincoln. I am bringing before you LB3 which amends Nebraska Statute 57-1101 and 57-1103 to instruct that prior to the right to exercise eminent domain on a pipeline construction project, a company, corporation, or association must apply for and be successfully granted an order, permit, or other authority by a federal or state authority of proper jurisdiction. I would like to start by pointing out that the Fifth Amendment to the U.S. Constitution does provide for private property to be taken for public use without...with...with just compensation. It bars private property taking without just compensation. I would also refer you to Black's Law Dictionary where eminent domain is defined as the power to take private property for public use by the state, municipalities, and private persons or corporations authorized to exercise functions of public character. The emphasis there is on the public character. LB3 was introduced to protect Nebraska landowners from improper and unjust condemnation actions. It does not deal with siting. And I think you will be happy to know that because last night I think the Natural Resources Committee finally finished, just about 10:00, with a siting bill. So this does not deal with the siting. In fact, it will apply wherever petroleum pipelines are constructed in this state. LB3 simply states that prior to being conveyed the right to exercise eminent domain in Nebraska a company must be issued an order, permit, or authority by a state or federal agency of jurisdiction. Now I have drafted an amendment that has been circulated by the page for your review that deals with false representation and deceptive practices when claiming rights under our eminent domain statutes. The amendment also imposes criminal penalties for such activities, including a Class I misdemeanor for the first offense, and a Class IV felony for all subsequent offenses. We have clear evidence that TransCanada began threatening landowners in Holt County and other places as early as last summer. I have actually seen letters that were dated April of last year. They were threatening landowners with condemnation proceedings. TransCanada sent letters, and you have a copy of one of those letters that was sent to landowners. I urge you to read that because what you will see is that TransCanada said that we are making an offer and you have 30 days in order to accept this offer or we will invoke the power of eminent domain. You'll see in there, too, there is nothing in the letter indicating any fair market value evaluations of the easements, no payment schedule. How were the landowners to know whether the offers were just compensation? The TransCanada letter further indicated that, "we will be forced to invoke the power of eminent domain and will initiate condemnation proceedings against this property promptly after the expiration of this one month period." That is offensive. They do not have a permit yet. They did not have one then, and it was completely inappropriate for them to be using this kind of tactic with the landowners. I've talked with the landowners in Holt County who told me that they were completely intimidated by this. They were frightened that they were going to lose

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property and they didn't know what to do, and they only had 30 days, so many of them signed, which I would argue they signed under duress. So why did not they offer...why didn't TransCanada offer to act in good faith when negotiating easements and rights of way? Their actions, I believe, were threats designed to intimidate the landowners into accepting easement deals on...or if they didn't accept the deals they would face legal action in forcible condemnation. This is unethical, it is deceitful, and it is intolerable. We in this state do not have to sit back and allow our citizens to be mistreated in this manner. We can do better by our neighbors and friends throughout the state. Not only can we do better, but we must do better to protect our landowners from this kind of action. Let me ask you to consider this: The Federal Energy Regulatory Commission, known as FERC, F-E-R-C, has jurisdiction over natural gas facilities. And they have published a 26-page manual entitled, "An Interstate Natural Gas Facility on my Land? What do I need to know?" This manual details the process of a pipeline company's application for permit, where and when landowners have rights, how landowners can have appropriate communications with the agency, and how the independent landowner has adequate recourse, and a resolution hot line. FERC also notes that, and I'm quoting here, "Construction cannot commence until the commission issues a certificate, the applicant accepts it, and the applicant receives all other necessary permits and authorizations, including compliance with environmental conditions attached to the certificate." Natural gas pipelines are, of course, smaller in size, utilize less pressure, and present much less exposure to risk than crude oil pipelines. This is certainly worth noting I think with regard to landowner rights and eminent domain proceedings. This is a government agency that says, here are your rights, here is how you go about protecting those rights. What did TransCanada do? I think we have to take some action. I am proposing in LB3 a reasonable protection of landowner rights. It establishes a process that will discourage intimidation practices by pipeline companies which may need to resort to eminent domain to acquire needed rights of way in order to complete an approved project. I believe this is the right thing to do, and I urge that you advance this bill to General File for full floor debate. Thank you. [LB3]

SENATOR ASHFORD: Thank you, Senator Avery. Any committee members have any questions of Senator Avery? Senator Council. [LB3]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford, and thank you, Senator Avery. And I'm just curious. One of the last statements that you made was that LB3 will discourage what you've defined as these unethical practices. And I guess I'm at a loss as to what is it in LB3 that accomplishes that representation? [LB3]

SENATOR AVERY: Criminal penalties. [LB3]

SENATOR COUNCIL: Okay. Now the criminal penalties, though, in terms of what you described as the unethical or unacceptable practices, I'm having difficulty following. For example, one of the things that you identified as being, at a minimum, unethical or, at

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best, threatening was the 30-day open period to accept the offer. I find nothing in LB3 as amended that addresses that issue in any respect. So I guess I'm... [LB3]

SENATOR AVERY: Well, it addresses it in this manner: All pipeline companies would be required to first have a permit before they could even open the conversation about eminent domain. So this would be a deterrent to any company saying to a landowner: You have 30 days to accept this offer or we will initiate or, as they used, we will invoke eminent domain proceedings. And they cannot do that without the permit. [LB3]

SENATOR COUNCIL: But if they have the permit they can do that. And it's the same 30... [LB3]

SENATOR AVERY: If they have the permit, they have the right to inform the landowner that they have a permit. That permit carries with it the right of eminent domain, unless the permit forbids that, of course. And there would be no problem with saying to the landowner, we'll give you 30 days to make a decision. [LB3]

SENATOR COUNCIL: And I guess I just don't...I guess I'm having trouble understanding the difference. I mean, if the offense is only giving a landowner 30 days, what does the possession or lack of a permit alter that? I mean, if you have the permit and you can still go and say, you got 30 days to accept our offer or we'll exercise our right of eminent domain, how does that temper the concern that the landowner...I mean, you still have the 30 days. I guess I'm not making the connection between how does having the permit in hand make that situation any less threatening or offensive? [LB3]

SENATOR AVERY: Well, I wouldn't focus so much on the 30 days. The fact that TransCanada has been already threatening eminent domain actions before they have a permit I think is where the focus ought to be. [LB3]

SENATOR COUNCIL: Okay. And the bill says prior to exercising the right to invoke eminent domain they must have the permit, and then under your amendment you speak to these representations. Now, reading the amendment, it says, claiming to have rights under this section before having been granted authority leads to the criminal...but doesn't the statute even as amended grant that right? It just conditions when they can exercise the right? [LB3]

SENATOR AVERY: But the amendment adds clarification. You cannot claim...if you claim to have the right of eminent domain but you don't have a permit, that is a false representation and it carries a criminal penalty. [LB3]

SENATOR COUNCIL: But is it... [LB3]

SENATOR AVERY: If you direct someone else to do that on your behalf it also... [LB3]

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SENATOR COUNCIL: But is it a false representation, Senator Avery? That's what I'm saying. As the statute reads, even with your amendment, it grants the right of eminent domain. Your bill... [LB3]

SENATOR AVERY: But the bill says "prior to." [LB3]

SENATOR COUNCIL: Exercising that right--prior to exercising that right. It doesn't say...well, it says, "prior to having the right set forth," and that is the right to exercise eminent domain. [LB3]

SENATOR AVERY: If you wish to amend this to clear up what you see as an ambiguity, I would be happy to have you do that in the committee. That was not the intent. We didn't use the word "exercise." [LB3]

SENATOR COUNCIL: And I guess my other issue is if that is the concern, why don't we amend every one of our eminent domain statutes? Because most parties that have the right to exercise eminent domain, when they approach a landowner they advise them: We can negotiate an agreement; if we can't get an agreement we're going to exercise the right we have to eminent domain. If that is a concern, why don't we amend all of our eminent domain statutes and impose this obligation on any party that has the right to exercise eminent domain, that they cannot represent that they can exercise eminent domain until they have cleared every conceivable hurdle. For example,... [LB3]

SENATOR AVERY: I... [LB3]

SENATOR COUNCIL: For example, in redevelopment projects that cities undertake, the developer may begin negotiations for acquisition of the land before they get approval from the planning department or the city council or the county commission. And they are approaching landowners, attempting to acquire their property by private negotiation, advising them if... [LB3]

SENATOR AVERY: I understand. [LB3]

SENATOR COUNCIL: So I mean... [LB3]

SENATOR AVERY: That, Senator, would be outside the call of the special session. And if you want to work on this next session, I think we probably should. [LB3]

SENATOR COUNCIL: Oh, I have plenty of my own to do. Thank you very much, Senator Avery. [LB3]

SENATOR AVERY: (Laugh) [LB3]

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SENATOR COUNCIL: That's all I have. [LB3]

SENATOR ASHFORD: Thank you, Senator Council. Senator Larson. [LB3]

SENATOR LARSON: Thank you, Senator Avery. Kind of to...my question kind of branches off Senator Council's, where she was going with it. I understand that this legislation is only for crude oil pipelines or those dealing with it. And my concern is what happens, I have about six REAs in my district now. [LB3]

SENATOR AVERY: I'm sorry. You have six... [LB3]

SENATOR LARSON: REAs. Rural electric associations... [LB3]

SENATOR AVERY: Okay. [LB3]

SENATOR LARSON: ...that will essentially have to be providing the power to these pipelines as the power moves through. And now does this have anything to do with them? Will they still be able to use eminent domain... [LB3]

SENATOR AVERY: Sure. [LB3]

SENATOR LARSON: ...for the purpose of supplying power to the pipeline before these oil or crude companies are able to use them? [LB3]

SENATOR AVERY: Well,... [LB3]

SENATOR LARSON: Because under the Nebraska Constitution, since we're a public power state, they have to be able to provide the power by the time that the customer requests the power as long as the customer pays for those services, it is my understanding. So essentially, NPPD or my local electric companies will have to use eminent domain to ensure before they actually even have...before the...well, in this case, in the special session case, TransCanada or pipeline companies can use it. These REAs or NPPD will be having to use eminent domain before the permits. And so does this deal with that? [LB3]

SENATOR AVERY: I'm not sure that they would need eminent domain before permits are issued because no building is going to start before permits are issued. But I...there will be legal experts following me. [LB3]

SENATOR LARSON: Building or surveying even, I mean? Because they're going to have to survey as well, I mean. But does this bill affect the... [LB3]

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SENATOR AVERY: This affects only pipelines and products thereof. [LB3]

SENATOR LARSON: So it won't affect the electric associations or the public power district at all? [LB3]

SENATOR AVERY: I don't think it does. [LB3]

SENATOR LARSON: No. Okay, thank you. [LB3]

SENATOR ASHFORD: Senator Coash. [LB3]

SENATOR COASH: Thank you, Chairman Ashford. Thanks, Senator Avery, for bringing this. I think Senator Council's discourse with you was...I think she's on to something. Because I'm looking at the letter, a copy of the letter that you provided to the committee, and I'm trying to picture how this letter might look differently if your bill were law prior to the issuance of this letter to this particular landowner. And in the second paragraph--I'm going to throw in my own language here that I think is applicable here. "It is Keystone's strong preference to negotiate a voluntary transfer with each property owner. However, in the event we cannot come to an agreement, Keystone will use eminent domain..."--and I'm going to throw in my own language here: once a permit is issued--"...to acquire the easement which is authorized pursuant to Statute 57-1101." So I think if your bill had become...I'm asking. If your bill had been law prior to this letter, and Keystone in this letter had said, "We'll exercise eminent domain..."--in their case they're using the word "use"--"use eminent domain once a permit is issued," I think all other things would stand. Because I think threatening the use of eminent domain and actually using eminent domain are two separate things. And I'm just trying to frame how your bill would have changed this outcome. [LB3]

SENATOR AVERY: Well, the way the bill reads is they cannot avail themselves of eminent domain authority until they have a permit, and they cannot falsely claim that they have eminent domain until they have a permit. If they do claim to have eminent domain authority prior to a permit, that's a false representation. Now I...you might want to ask one of the lawyers that comes after I that will be able to answer that perhaps a little more definitively. [LB3]

SENATOR COASH: I'll do that. I'm sure they're going to address that. My second question has to do with just accessing property. I mean, I think we can all agree that before something as profound as a pipeline would go through our state, that we'd all want to have some thoughtful consideration of the property, the nature of the property and the land, who owns it, and rights, as you have said. If we have a process that restricts access, and I'm not saying your bill restricts access between a company and a landowner, but if we restrict access, how will a company that wants to do this be able to know the lay of the land, so to speak? And do you anticipate this piece of legislation

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restricting any kind of access between a company and a property owner so that they can find out what's going on with that property? [LB3]

SENATOR AVERY: It would be my hope that companies would have a permit before they even start knocking on doors and making phone calls and showing up every day, as they're doing in Holt County, and badgering landowners. [LB3]

SENATOR COASH: Okay. But a permit is specific to a route, right? I mean, if you have a company that applies for a permit, it's not a permit to build a pipeline; it's a permit to build a pipeline along a particular route, correct? [LB3]

SENATOR AVERY: Um-hum. [LB3]

SENATOR COASH: Wouldn't we want the company who's going to build the pipeline to have access to the land that they propose to build one through, so that they understand the characteristics of that property so that...? I mean, if you have a... [LB3]

SENATOR AVERY: Yeah, I understand. But this doesn't stop them from contacting landowners. [LB3]

SENATOR COASH: Okay. [LB3]

SENATOR AVERY: It just says that when you contact a landowner you can't come in and start smacking them around with threats of eminent domain. [LB3]

SENATOR COASH: Okay. I just wanted to get that on the record. Thank you. [LB3]

SENATOR ASHFORD: Senator Lathrop. [LB3]

SENATOR LATHROP: If I may, I just want to clarify. Your objective is to require...because I look at this letter and I'm thinking it looks like a collection letter. Every lawyer sends these out that says: Look, pay your bill or we're going to take you to court. That's the consequence of not doing something you're being asked to do or told to do. And the object...Burke and I were just talking about this, Senator Harr. This just looks like a lawyer letter to me. And what you're trying to do in this bill is to say, you don't even get to put eminent domain on the table until the feds have approved your pipeline. [LB3]

SENATOR AVERY: Right. [LB3]

SENATOR LATHROP: All right. Thanks. [LB3]

SENATOR ASHFORD: Thank you, Senator Lathrop. Senator Harr. [LB3]

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SENATOR HARR: I guess I want to follow up because with a collection letter you have the ability to take a person to court. In this case, the party doesn't have the ability to take them to court for eminent domain. And so looking at this letter, I would make even a simpler modification to it: While we hope to acquire this property through negotiation, if we are unable to do so we may be forced to invoke the power of eminent domain and will initiate condemnation proceedings. Would that be allowable under this statute? [LB3]

SENATOR AVERY: Perhaps not because it says you cannot make the claim that you have that right until you have the permit. [LB3]

SENATOR HARR: Well, they're not making the claim they have the right; they're saying we "may" do this. [LB3]

SENATOR AVERY: Parsing words, as lawyers do. I would ask you to reserve that question for a legal authority who may come after me. [LB3]

SENATOR HARR: Okay. I appreciate your candor. Thank you very much. [LB3]

SENATOR ASHFORD: Thanks, Senator Avery. And, of course, whenever we throw criminal penalties into something this committee's ears start to fixate on it in their minds, because we're starting to deal with criminal penalties and rights and constitutional rights. [LB3]

SENATOR AVERY: Yes. Well, my feeling was...I know you didn't ask a question, but if you don't mind I'd like to comment on that. My feeling was that if we didn't have any penalty for noncompliance that there would be the temptation to say: Well, okay, but there's no penalty here, so we'll include some squishy language here about eminent domain and get the same message across, and it probably would be okay; and if it's not, what difference does it make; there are no penalties. [LB3]

SENATOR ASHFORD: If someone were to make a spurious claim that, in a letter, that would refer to some sort of right of eminent domain that is...where there is no real possibility of it occurring, that really becomes deceit and fraud and a lot of bad words we could use for that. I think that this committee is always challenged to try to find a way to deal with criminal penalties where those words do have, could have a chilling effect on justifiable actions by citizens and so forth. So we'll listen to more and more of those comments. Thank you, Senator. [LB3]

SENATOR AVERY: Well, you may in Exec Session decide you'd like to revise that provision. [LB3]

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SENATOR ASHFORD: Well, and we've been known to... [LB3]

SENATOR AVERY: (Laugh) You've been known to do that in the past. [LB3]

SENATOR ASHFORD: ...to reflect and revise or revise and reflect or whatever. But thank you, Senator Avery, for your opening. [LB3]

SENATOR AVERY: All right, thank you. I will stay as long as I can, depending on how long this goes. [LB3]

SENATOR ASHFORD: Okay. And just to give a scheduling...thank you, Senator Avery. Just as a scheduling update here: We will go until noon and then take a...we'll see how everybody is, but probably an hour and fifteen minutes, an hour and a half for lunch, and then come back after that. So if we are still going after 12:00, which I assume we will be, we will reconvene around 1:30 or so, so. Let's go to the proponents. Dave. [LB3]

DAVE DOMINA: Mr. Chairman, I'm Dave Domina. I'm here on behalf of myself. I favor LB3, and I'd like to comment about where I think LB3 finds its source. Eminent domain has been described by a number of state supreme courts as a power of the sovereign that precedes the constitution. So it is fundamental to nationhood, fundamental to statehood. It is a power that is not required to be delegated to anyone or by anyone. It can only be delegated by a state legislature in the United States for a state. In our state, when you have delegated the power of eminent domain in the past, you have done so with very careful definitions. You have identified who is the recipient or delegee of that power, for what specific and narrow purposes it can be used, and under what conditions it can be used. This proposed statute tries to bring some of that discipline to pipelines. Presently, the statute simply refers to pipeline companies. It doesn't define what a pipeline company is and it doesn't offer any frame of reference for who might constitute a pipeline company. Under this statute, a pipeline company will be, by definition, a delegee of the power of eminent domain if it has a permit to function as a pipeline company in connection with the project under consideration. It will not be a delegee of the power of sovereign immunity until that happens. So before a company that wants to be a pipeline company is one because it holds a permit, this statute would prohibit it from impersonating a sovereign. That's what this statute is about. And the crime defined, Senator Council, is really the crime of impersonating a sovereign. It means that if you behave like you have the power of eminent domain, if you claim you have it but you don't have it, you've violated a criminal law. I think that there is real benefit to the people of the state in that provision of the statute. This statute helps to control the problem of acquisitions and mergers because there would be a federal regulatory process that would, by implication, be incorporated here. This statute doesn't reach some things that I'd ask you to consider at some point, and I don't think it's in connection with LB3. But when the power of eminent domain is delegated, an important question is: Is sovereign immunity also carried with the delegation? Is it the intention of

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the Legislature, when it delegates the power of eminent domain, to make the delegee immune from liability for fault in connection with the exercise of the power or the project that is operated after it's exercised? Is an actor in the process of exercising the power of eminent domain, an actor, a state actor within the meaning of 42 U.S.C. Section 1983? There are volumes written on that subject about when there is liability for that kind of conduct. I have one sentence with which...two sentences with which to close, and I'm quoting now from a professor at the University of Mexico describing his country's investment in the power of eminent domain and speaking about NAFTA. "This competition for international resources should not lead us to dismiss the duties of the state and its sovereign attributes." To decrease state jurisdiction by delegating essential powers ordinarily belonging to the state in favor of an external body or company places the continuity of the state at risk. Thank you. [LB3]

SENATOR ASHFORD: Any questions of Dave? Yes, Senator Larson. [LB3]

SENATOR LARSON: Thank you, Mr. Domina, for coming and explaining to me. I'm one of the few on the committee that isn't a lawyer. You mentioned that eminent domain is up to the state legislatures. How many other states have eminent laws for, well, I guess such as LB3 for crude oil companies? Did Senator Avery...and I should have asked Senator Avery; I'm sorry. Did he model this off another state? Are there other states that require the federal permitting before they are able to invoke eminent domain? Again, I'm sorry. I should have asked Senator Avery. You just brought it up and my only legal education you just gave me, so you're the one that gets it. [LB3]

DAVE DOMINA: Senator, I'll answer in three ways. First of all, every state has delegated the power of eminent domain to some private companies that act as utilities. Second, there is great variety among how the states have made that delegation. You'll see in a few minutes an example of North Dakota's very thorough and careful delegation. No state in the country right now is more active in oil and gas than North Dakota. Nebraska is the least of its brethren. It has given the least and indeed no control over the delegation of the power of eminent domain to oil pipeline, gas companies, which is why you are in special session. Something needs to be done here because we have overly delegated. We have not passed along...even the kind of limitations that apply to those six utilities in your district, they all have very limited rights to exercise the power of eminent domain. The pipeline company has the same power the state has because it is unabridged by this body. [LB3]

SENATOR LARSON: So you're saying that the other states do have much more stringent eminent domain is what I'm under...I'm just trying to get a... [LB3]

DAVE DOMINA: Ranging from many pages to many paragraphs to some sentences to Nebraska having none. [LB3]

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SENATOR LARSON: Okay, thank you. [LB3]

SENATOR ASHFORD: Senator Harr. [LB3]

SENATOR HARR: Thank you, Senator Ashford. And thank you, Mr. Domina, for coming here today. I have a question. Assuming this bill is passed into law and the letter dated July 21, 2010, that we've referenced earlier, were sent out, who would be held liable criminally? [LB3]

DAVE DOMINA: As it is drafted, and as I think it should be passed, the crime would be committed by the company and by the person who executes the letter. The crime itself can be a corporate crime. That's not uncommon. In fact, our criminal code contemplates that. [LB3]

SENATOR HARR: So it would be a \$1,000 fine to the corporation since they can't serve jail time. And then the person who signs the letter would be held liable, whether that was in-house counsel or outside house counsel? [LB3]

DAVE DOMINA: That's correct. [LB3]

SENATOR HARR: All right. And let's say this letter is written, and in response to that letter I give up eminent domain; I give up an easement to my property. Would that easement still be valid? [LB3]

DAVE DOMINA: It would be voidable, Senator. The landowner would have the opportunity to say: You acquired an easement from me by impersonating a sovereign; you didn't have the right to impersonate that sovereign, you've tricked me. And as in all property rights acquired through fraud, the victim of the fraud has the right to proceed to court to declare the transaction invalid, which makes it voidable instead of void from the beginning or ab initio. [LB3]

SENATOR HARR: Okay, thank you. [LB3]

SENATOR ASHFORD: Senator Lathrop. [LB3]

SENATOR LATHROP: If this letter is written by somebody in Canada or Switzerland, or wherever the company resides that is trying to exercise or make the...or get the landowner to provide an easement, can we prosecute that? I mean, is that a crime that actually happens in Canada, and can we make it unlawful to do something in a jurisdiction outside of Nebraska, if the point is that the letter ends up in a mailbox in Holt County? [LB3]

DAVE DOMINA: Senator, there are a number of federal cases that hold that the crime

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occurs where the letter is delivered and that the actor intended that it occur there, so it's a crime within our jurisdiction. The most famous example of this I think is the prosecution of Ford Motor Company for the Pinto explosion. It was prosecuted and convicted of homicide in Indiana and, of course, it was a resident of Delaware, with its headquarters in Michigan. [LB3]

SENATOR LATHROP: Okay. Are the criminal penalties in this bill necessary or do we accomplish the point of the bill by making the contract to provide an easement voidable? [LB3]

DAVE DOMINA: That's a question of how much deterrent effect do you think is necessary. I think that from the landowner's point of view the problem can be remedied by invalidating the easement. The question really is one of public policy for you to decide how bad is this? I would say this: Impersonating a law enforcement officer is a crime. This is impersonating the sovereign. So from that perspective I would argue that there's no public policy antithesis to making this criminal. [LB3]

SENATOR LATHROP: And at the point, right now, and I haven't read 57-1101 through 6, in the last two days; I've read it a number of times. But is there any limitation whatsoever on the ability of someone who fits the classification of a petroleum pipeline on the exercise of eminent domain? [LB3]

DAVE DOMINA: No. [LB3]

SENATOR LATHROP: And is there anything that would stop a pipeline currently, before they have a federal permit or federal approval or state approval or anybody's approval from just beginning the process of eminent domain? [LB3]

DAVE DOMINA: No. In fact, they could do it anticipating that they would build a pipeline in 2050 or 2080. [LB3]

SENATOR LATHROP: And that gets to the point you made with Senator Larson that we have no limitations on that exercise. [LB3]

DAVE DOMINA: It does, sir. [LB3]

SENATOR LATHROP: All right, thank you. [LB3]

DAVID DOMINA: Thank you. [LB3]

SENATOR ASHFORD: And I guess...Senator Larson. [LB3]

SENATOR LARSON: Real quick. Again showing my lack of legal knowledge, if the

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transaction is voidable through this law, would the landowner have to pay back the easement? [LB3]

DAVE DOMINA: Yes. [LB3]

SENATOR LARSON: Okay. [LB3]

SENATOR ASHFORD: And I guess, just to summarize. This is the first time I've seen the letter, but it's slightly presumptuous I suppose to suggest to the landowner that this pipeline is going to occur or cross the land, because there has been no permit. But under current law you see no violation of current law with this letter? [LB3]

DAVE DOMINA: I do not, Senator. [LB3]

SENATOR ASHFORD: Okay. So what has occurred up until now is maybe, as you suggest, a function of not having placed in statute oversight over how a pipeline acquires land. [LB3]

DAVE DOMINA: And, of course, this criminal law can't be retroactive, obviously. [LB3]

SENATOR ASHFORD: Okay. [LB3]

DAVID DOMINA: Thank you very much. [LB3]

SENATOR ASHFORD: Thank you. [LB3]

JOHN HANSEN: (Exhibits 2, 3) Chairman Ashford, members of the committee, for the record, my name is John Hansen, J-o-h-n, Hansen, H-a-n-s-e-n. I am the president of Nebraska Farmers Union. We're the second largest general farm organization in the state. By our reckoning, we have probably 50-some members of our organization that are directly impacted by the pipeline; and as a result of that, we have been involved in a substantial amount of service work with those landowners as they have come in direct contact with TransCanada. And what it strikes us is that unlike all other areas of eminent domain, and as a former public official and having used eminent domain and having been involved in eminent domain issues before this committee in other areas, I would say that unlike all other areas of eminent domain this particular area has no standards. There is no guidance. We are not prescriptive; we are not definitive; we do not restrict; we do not define; we do not prescribe in any other kind of comparable way; and as a result of that, TransCanada has taken advantage of that absence of standards, and they have treated our Nebraska landowners in a deplorable fashion. And there has been a consistent and a pernicious and a very constant effort on their part to use whatever tactics necessary in order to get landowners to sign. And the handout that I gave you represents one such landowner. The pivotal paragraph is, "This letter

represents our final offer, and will remain open for one month after the date of this letter or until you reject it, whichever is earlier. After that period, we will initiate the eminent domain process." At this point, this company did not have eminent domain authority. They misrepresented their current legal standing in our state in order to acquire control, use, and material gain for their benefit. They changed the willing buyer/willing seller relationship between the company and the landowners, and they tilted it to their advantage. And this is the result of the commitment of TransCanada at the February 9 hearing before the Natural Resources Committee, after our landowners came in, in great detail, detailing the kind of high-pressure tactics, the arm-twisting, the bullying, all of the threats, all of those things that have been used, and made the public assurance that this is not our company, this is not how we do business, things are going to change. And that was February 9. And so now we see, April 7, we see that there was in fact a change and that represented the landowner's view as well, and that is things did change: They got worse. So here's what happens when you don't have standards. And so from our perspective, this issue needs to be addressed because in the absence of any kind of standards or any kind of delineation, we have hit bottom. This is the Wild West at its worst. We do not have any kind of protections for landowners relative to this company. And so when we get past the area of what has been clearly drafted by lawyers, then we get to how it is that the company actually interacts with landowners. [LB3]

SENATOR ASHFORD: Okay. Senator Lathrop. [LB3]

SENATOR LATHROP: Just as a point of clarification, John, the fact of the matter is, is that there was nothing wrong with the letter as written under current law. They had the right to exercise eminent domain under current law. [LB3]

JOHN HANSEN: Not until the State Department gives them the permit. [LB3]

SENATOR LATHROP: That's the point of the bill though. [LB3]

JOHN HANSEN: Well, that... [LB3]

SENATOR LATHROP: Until something changes and they cannot exercise eminent domain until there has been State Department approval, the letter that was written is a true statement. And that's the point of Avery's bill, is it not? [LB3]

JOHN HANSEN: Yes, it's a true statement in that they, if the permit was granted, they would then have eminent domain authority. The point that... [LB3]

SENATOR LATHROP: But in Nebraska, currently, their eminent domain authority is not dependent upon State Department approval. And that's what Avery is trying to do, as I understand the bill, which is to say: You cannot exercise eminent domain authority until

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after you've secured federal approval. And so the letter, as written, is a statement of what they intend to do, which is not a misstatement of what they're authorized to do under current law. You just are advocating for Avery's bill, which would say: Before you can send a letter like this out, you better first have...you must first have approval from the State Department--which isn't the law today. [LB3]

JOHN HANSEN: I am advocating for Avery's bill, which is a way of addressing a wrong that was created in the absence of standards. I would say, Senator, that in my opinion, and I am not a lawyer, but I would say that my opinion that the fact that TransCanada has significantly shifted the way that they were engaging. And this letter was the first of many. Then there was a substantial change as well as public statements that said: Oh, and by the way, you have nothing to fear; we won't be using eminent domain. I think that that shift represents their legal belief that they in fact overran their legal authority. [LB3]

SENATOR LATHROP: There may be some PR problems with how they've gone about... [LB3]

JOHN HANSEN: No, I think there's more than just PR problems. [LB3]

SENATOR LATHROP: We'll hear this later. We're talking about the letter right now. [LB3]

JOHN HANSEN: Right. [LB3]

SENATOR LATHROP: And the letter, as written, is not a misstatement of what they have the authority to do under current law. We've not heard from the people, at least in this committee, about the face-to-face conversations. To this point in time, we're talking about a letter, and it is not a misstatement of what they're entitled to do under the law as it exists currently. Isn't that true? [LB3]

JOHN HANSEN: I don't think so. I don't really think they have the power of eminent domain authority until the State Department grants it. [LB3]

SENATOR LATHROP: Okay, well,... [LB3]

JOHN HANSEN: And I think that they ran out over on top of the ice a little too far and they got ahead of themselves. [LB3]

SENATOR LATHROP: Okay. John, I think you may not have heard what Mr. Domina just got done telling us and that is... [LB3]

JOHN HANSEN: It wouldn't be the first time that... [LB3]

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SENATOR LATHROP: ...and that is there's no limitation. And they could start eminent domain proceedings on a pipeline that they may not construct for another 30 years. In any case,... [LB3]

JOHN HANSEN: Right. [LB3]

SENATOR LATHROP: ...I'm just going to say this about the letter. I've read it. I can see a lawyer sending the letter out and saying: This is what we'll offer you, and the alternative is for us to engage in eminent domain proceedings. And under the current law, that's a fair statement from a corporation or a law firm. You just want to change that with Avery's bill. [LB3]

JOHN HANSEN: Well, I want to change that. But I also...landowners deserve to know when they do and when they don't actually have the power of eminent domain, and that needs to be clarified. Because the difference between whether they do or whether they don't, materially and substantially changes the nature of the negotiation. [LB3]

SENATOR LATHROP: And I just want to make sure that I'm clear on this, though. We're not clarifying when they do and when they don't, because right now it's pretty clear that they can send this letter out on eminent domain whenever they want. So what we're doing is putting a limitation in this bill on their right to the exercise of eminent domain, and therefore, their right to indicate to the landowner that that's their intention. [LB3]

JOHN HANSEN: The landowners that we provide services to felt that the eminent domain was going to be used imminently. I mean, that the proceedings were going to...that based on their conversations with the land agents, it was going to start right after that, and... [LB3]

SENATOR ASHFORD: And I think we have to hear from them, John,... [LB3]

JOHN HANSEN: And that was not the case. [LB3]

SENATOR ASHFORD: ...to find that out. I think that's all Senator Lathrop was getting at. And, Senator Lathrop, do you have any further...? [LB3]

SENATOR LATHROP: No, that's fine. [LB3]

SENATOR ASHFORD: Senator Council. [LB3]

SENATOR COUNCIL: I was just saying, and I think where the misunderstanding is occurring, and that's all that Senator Lathrop was saying, and I think by Mr. Domina's last statements he concurred in, under current law there's nothing unlawful about this

letter. That under current law they could exercise eminent domain, even if the permitting process is 20 years out; that as a pipeline proposing to construct, under the current status of the law they have that right to exercise eminent domain. And without Senator Avery's law there is nothing in this letter that is not an accurate statement of the rights TransCanada had at the time this letter was written. They have the right under existing law to exercise eminent domain. And again, what Senator Avery's bill is intended to do is limit their ability to exercise the right of eminent domain to a point where they cannot even discuss the exercise of that right unless they have the appropriate permit to construct the pipeline. That's where we are. And, you know, it's regrettable that landowners believed that there was some permitting that needed to occur. And I guess I'm not hearing that. What I'm hearing is the objection to the method that TransCanada may have employed in acquiring the easements that were acquired. But based upon this letter and the current state of the law, they have every right to acquire the land in that...and I heard you say landowners were under the impression that they would exercise the power of eminent domain imminently. Well, that may have been the case, but that was also a right that they had. If the negotiations failed, under current law they could have exercised eminent domain imminently. [LB3]

JOHN HANSEN: Senator, I would just tell you that if TransCanada actually thought they had that right, they would have used it by now. But I would also tell you that the landowner in this case, and that's what happens when we don't have clear standards on how you do business and we don't enforce them, is that the landowner in this case was told by the land agent from TransCanada that "You better sign," and this was part of the high pressure and the intimidation: You better sign, and if you don't, we're not only going to withdraw our offer, which is the case, but if you go through the eminent domain process there's a good chance you'll get nothing; now, you might get more or you might get less, you might get the same, but you're going to get whatever the eminent domain process yields you. But that is an example of what, if you're a landowner looking at this issue, how even the eminent domain process was misrepresented to our landowners, which speaks again to the need to have something that is at least similar or comparable to all other areas of eminent domain, where we have public officials or their agencies using eminent domain in order to acquire land or the use or control of it for what is clearly some public purpose or public benefit. In this case, we have a private company who is doing this with no guidance for private commercial gain, and in our view the public benefit or the public access is less than clear. [LB3]

SENATOR ASHFORD: I think we've established sort of where we are. Senator Harr. [LB3]

SENATOR HARR: Yes. And just a quick question. To the best of your knowledge, have they exercised eminent domain at this point? [LB3]

JOHN HANSEN: No. [LB3]

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SENATOR HARR: No. Okay. [LB3]

SENATOR ASHFORD: Okay. Thanks, John. I think... [LB3]

JOHN HANSEN: Not in this pipeline. [LB3]

SENATOR HARR: Yeah, thank you. And I just didn't know. [LB3]

SENATOR ASHFORD: I think in fairness to everyone here, we have to see what's in front of us. And the statute that, 57-1101, that was passed in the '60s, I guess, or maybe prior to that time, talks about a company that's engaged in the gas business. Clearly, TransCanada is engaged in the gas and oil business, oil and gas business, and I assume they have filed--we'll hear more--but they have filed the proper..."shall have the right to acquire by filing with the other governing body having title or supervision, a plat describing the portion of land" they are concerned about; and then they have gone ahead and they have attempted to acquire the land without filing a case, but to do it through negotiation. If that isn't the case, we'll hear later. But up until this point I think that's what we have as a committee, and if there's something else out there, some other violation of some law somewhere, then we'll have to be alerted to that. But at this point, it seems fairly clear that TransCanada was following what they had in front of them. So thanks, John. [LB3]

JOHN HANSEN: Thank you. And, Mr. Chair, where does this go? [LB3]

SENATOR ASHFORD: To our... [LB3]

JOHN HANSEN: I can't leave until the paperwork is done. (Laughter) Thank you very much. [LB3]

SENATOR ASHFORD: Okay, thank you. Who is the next? Alan. [LB3]

ALAN PETERSON: (Exhibit 4) Chairman Ashford and members of the Judiciary Committee, I'm Alan Peterson. I appear as an attorney for the Nebraska Chapter of the Sierra Club in support of LB3. I appear for a limited purpose. We've done quite a bit of research on comparable laws regarding siting and routing, and found in North Dakota an exemplar of what I think is a very favorable and fairly detailed treatment of this same issue that LB3 deals with. So I handed it around. I think it is page 8 there is a yellow mark at the point where intimidation, harassment, and especially deception are used in acquiring easements. Penalties are set forth, including the potential of a cancellation of the easement. And while there's no criminal penalty for that particular section, there is a catchall misdemeanor penalty, I found a page or two further, for any violation of anything in the chapter. And North Dakota was one of the models for some of the other

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bills that have been introduced at this special session. I, with a little trepidation, I want to mention, I think it ended up clear, but I want to throw my two cents' worth in on the issue that took a lot of discussion. I do agree with the statement that a company such as TransCanada could institute eminent domain. However, the very statute that is being modified by LB3 also says that if you're going to use it, you have to meet all the requirements of eminent domain procedure, including the things you've got to prove. One of those is public purpose--the validity of the public purpose, so that once you got in court--yeah, they can get that far, but then they've got to prove the public purpose. I don't think it's absolutely clear that a company that did not have the permit to go forward, that couldn't necessarily use the land, has a public purpose in taking it. I think that's an issue for the court. So I don't think it's a slam dunk, eminent domain, easily taken situation. I'm not an expert in the area and I really hesitate to go further, but I have read those statutes. It seems to me public purpose would be a fair (inaudible) argument if they don't even have a permit to go forward. So I suggest that the committee, if it wishes, take a look at North Dakota's approach. It's comparable, it's more detailed, and I think it's very good. It provides primarily the possibility of losing those easements, and if there are repeated violations, even losing the permit to go forward with the pipeline. So I offer it for what it's worth. [LB3]

SENATOR ASHFORD: Thank you, Alan. Any questions? Senator Coash. [LB3]

SENATOR COASH: Thank you, Chairman. Thanks, Alan. Do you think a company would ultimately exercise eminent domain without a permit? [LB3]

ALAN PETERSON: I think that they might get beat in court on trying to prove a public purpose. I think they can exercise it up to the point of getting into court, but then the court would have to decide. They don't have a permit. How much can they take? Is there a public purpose in granting them this right on this land before they have a permit? [LB3]

SENATOR COASH: Right. But do you think a company would...if you didn't ultimate have a permit, you don't need the land. I mean, if you're denied a permit you don't need the dirt that you would put something through. [LB3]

ALAN PETERSON: Right. So what's the public purpose in that case? [LB3]

SENATOR COASH: So I keep going back to these letters--and we've got another copy here--and the letters, both letters that have been presented say that in circumstances property laws in Nebraska and most other jurisdictions allow proponents of projects that are in the broader public interest to use eminent domain to acquire that easement authorized pursuant to Statute 57-1101. [LB3]

ALAN PETERSON: Yes. [LB3]

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SENATOR COASH: So if we change 57-1101, I don't see how this letter would change. They would just say...in other words, I think we can change the law, but I don't think we'll change the approach. I think companies who would do this would still threaten to do it; they just couldn't exercise it until they had permit. [LB3]

ALAN PETERSON: People receiving these letters don't know the difference between having their land taken, having eminent domain exercised, and so forth. Some of us are lawyers and that's a handicap. We forget what the average person reads when they get a letter like this. Yeah, it's a tough collection letter, as Senator Lathrop suggested that's comparable. But if it's deceptive--that, especially, is the target of North Dakota's laws--and I'm suggesting that it would be deceptive to say, "We will take your land," because they still have to prove public purpose. That's a legitimate fight. I know that the Domina law firm works in the area more than I do, so I'm hesitant to go much further than that. [LB3]

SENATOR COASH: I think these letters would say, we'll take your land under the law. And if the law says that we can't do it until we get the permit, we won't do it until we get the permit. Wouldn't do it anyway. So I'm just...I'm clear on what Senator Avery wants to get done with LB3. It's just I'm not sure that anything would change in the way that these projects are done as a result of changing this statute. [LB3]

ALAN PETERSON: I understand. [LB3]

SENATOR COASH: So that's what I'm trying to dig through. Thank you. [LB3]

SENATOR ASHFORD: Yes, Senator Council. [LB3]

SENATOR COUNCIL: Thank you. And thank you, Mr. Peterson. I have a question. Under the current law, there's nothing in Nebraska law currently that prevented TransCanada, if they didn't negotiate a voluntary easement agreement, to go and acquire those easement rights under eminent domain. Correct? [LB3]

ALAN PETERSON: I don't think that's right. I think they have to go through the steps which includes proving the public purpose. And if I were a good eminent domain lawyer, like there are in this room, I'd be arguing there isn't a public purpose. And so I'm not so sure I'd say they automatically get it. [LB3]

SENATOR COUNCIL: Okay. But the point I'm saying is they initiated an eminent domain proceeding. [LB3]

ALAN PETERSON: Yes. [LB3]

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SENATOR COUNCIL: Let's say they did. [LB3]

ALAN PETERSON: Yes. [LB3]

SENATOR COUNCIL: They didn't negotiate the private agreement. [LB3]

ALAN PETERSON: Right. [LB3]

SENATOR COUNCIL: They initiated an eminent domain proceeding. The landowner unfortunately didn't have a brilliant lawyer, like yourself, to raise the public purpose. The award...they granted the right of eminent domain; set the amount to be paid to the landowner. Now let's assume that TransCanada doesn't get the federal permit. Okay? [LB3]

ALAN PETERSON: Yes. [LB3]

SENATOR COUNCIL: Are they bound now to that easement and any associated annual payments or whatever, notwithstanding the fact that they can't build the pipeline? [LB3]

ALAN PETERSON: I think the judgment goes in favor or against both parties. I think it would be a judgment. But again, I'm beyond the depth of knowledge I have in this area. And I wish Mr. Jorde or Mr. Domina would handle that. [LB3]

SENATOR COUNCIL: Okay. Well, I'm just saying, I mean,... [LB3]

ALAN PETERSON: Yeah. [LB3]

SENATOR COUNCIL: ...that currently in order for TransCanada to actually construct this pipeline... [LB3]

ALAN PETERSON: Right. [LB3]

SENATOR COUNCIL: ...under current law they have to have the permit, the approval of the State Department? [LB3]

ALAN PETERSON: Yes. [LB3]

SENATOR COUNCIL: Okay. If they do not receive that and they have exercised their current Nebraska statutory right to eminent domain... [LB3]

ALAN PETERSON: Yes. [LB3]

SENATOR COUNCIL: ...and acquired these easements, they are bound by those. [LB3]

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ALAN PETERSON: I don't think they can say "King's X." [LB3]

SENATOR COUNCIL: Exactly. [LB3]

ALAN PETERSON: Yeah, I think you're right. I think they're bound. [LB3]

SENATOR COUNCIL: Okay. Thank you. [LB3]

ALAN PETERSON: Thank you. [LB3]

SENATOR ASHFORD: And just to clarify that, your disclaimers aren't going to work with me, Alan. (Laugh) We can have some other testimony, of course. But no, seriously, I think this is an incredibly important...because I question, wonder whether the citizens of the state really have a clear understanding, because I was somewhat fuzzy on this certainly, is, you know, where does this right emanate from? It clearly emanates from Statute 57. [LB3]

ALAN PETERSON: Yes. [LB3]

SENATOR ASHFORD: But...and it is very loosely drawn. And it was loosely drawn I assume for a purpose. I wasn't here in 1963 or whatever, but it was loosely drawn. It was debated in the Legislature and it was passed. And apparently it expanded...what it did do, clearly, is expanded the right of eminent domain to pipeline companies. Railroads,... [LB3]

ALAN PETERSON: Yeah. [LB3]

SENATOR ASHFORD: ...of course, had it, and there are volumes of litigation involving railroads. And, in fact, Abraham Lincoln's famous case, I think, in Illinois was...at least the question was: What power do the counties have? Maybe Dave knows this. What power do the counties have in collecting a tax from railroads that went through the state of Illinois? [LB3]

ALAN PETERSON: Um-hum. [LB3]

SENATOR ASHFORD: And he won that case. And I think just to conclude, I think that it's hard for me, as Senator Lathrop has suggested, it's hard for me to read this letter and find anything that's violative. Now if TransCanada acted in some other way in addressing this letter to particular landowners, there are other remedies available to those landowners in the civil and criminal law in our state as well. But anyway, I think at least we might have established that. So it's...thank you, Alan. But go ahead. [LB3]

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ALAN PETERSON: Yeah, you bet. May I respond very briefly? [LB3]

SENATOR ASHFORD: Yeah. [LB3]

ALAN PETERSON: I think a lot of what is targeted by this bill, and certainly by North Dakota, is deception or fraud. [LB3]

SENATOR ASHFORD: Clear. [LB3]

ALAN PETERSON: And we heard a lot of testimony in another hearing yesterday about that. [LB3]

SENATOR ASHFORD: Right. [LB3]

ALAN PETERSON: That's part of the target. [LB3]

SENATOR ASHFORD: Right. And but to Senator Council's point, just so we, and those who are watching this and will read about this hearing, I see nothing to prevent TransCanada from filing an eminent domain case in Holt County today. [LB3]

ALAN PETERSON: Right now, I think you're right. [LB3]

SENATOR ASHFORD: Okay. And that the public...and even if...even if the permit has not been granted to your argument, it would be an argument that would be made...at least, I don't know of any case. Maybe there is one that would. At least, it's an argument that would prevent that case from continuing on and there being a finding of public purpose. But your argument would be there's no permit, there's no public purpose. That doesn't seem to be consistent with 57-1101, et seq. [LB3]

ALAN PETERSON: I understand. [LB3]

SENATOR ASHFORD: Okay, thanks. Ken. [LB3]

KEN WINSTON: Good morning. My name is Ken Winston and I'm the lobby for the Nebraska Sierra Club, and I'm here to muddy the waters. Actually, I'm here in support of Senator Avery's bill. But what I'd like to say is it's our position that TransCanada or any other company currently in their position does not have the authority to exercise eminent domain. And as authority for that, I'm going to read from the statutes, because 57-1101 says that it's subject to the provisions of 76-704 to 76-724. And 76-704.01 states, that a petitioner has to state the statement of authority for the acquisition. And it would be our position that in order to have authority for an acquisition, you'd have to have some sort of permit. Merely saying that you're a pipeline company and that you're seeking authority to have a pipeline operate in the United States, would

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not be a statement of authority. Secondly,... [LB3]

SENATOR ASHFORD: Do you have any authority for that, Ken? [LB3]

KEN WINSTON: Well, I guess I'm just trying to... [LB3]

SENATOR ASHFORD: Okay. [LB3]

KEN WINSTON: I mean, the statute says that. So I guess the fact that a statement of authority...what would be a statement of authority? In order to have...I mean, the fact that you filed to get a pipeline in the state of Nebraska, is that...in the United States? And you don't have a permit? How does that grant you authority? It doesn't grant you authority to do anything in the state of Nebraska... [LB3]

SENATOR ASHFORD: Okay. [LB3]

KEN WINSTON: ...at this point. That would be...and then secondly, subsection (7) says, "If approval of any other agency is required, the condemnor should set forth the approval in writing of such agency." There's no approval of any agency, particularly the State Department. So I think those are important provisions. I guess one of the other things I'd like to point out, there's been some confusion about when and where eminent domain can be used. Statute 76-710.04 specifically outlaws the use of eminent domain for private economic development purposes, except, and then there's an exception for pipeline companies and some other entities. So I just wanted to make those statements and get that into the record. [LB3]

SENATOR ASHFORD: Any questions of Ken? Yes, Senator Council. [LB3]

SENATOR COUNCIL: I just have one question. I'm intrigued by your argument, Ken. And I guess my question is, the way 57-1101 currently reads, that the opening paragraph doesn't satisfy the authority requirement? [LB3]

KEN WINSTON: Well, what is a pipeline company, Senator? I mean, I'm asking that rhetorically. [LB3]

SENATOR COUNCIL: I mean, it...well, I mean, and that's...and I guess that's the issue. But reading the Chapter 76 language, it says you have to establish that you have the authority. And my question is, does not 57-1101 satisfy that requirement? Grant that authority? Any person engaged in dah-dah, dah-dah, dah-dah, desiring or requiring right of way may exercise eminent domain. Is that... [LB3]

KEN WINSTON: Well, here's the way I look at it. I hope that I'm right and that Mr. Domina is wrong. But if Mr. Domina is correct, then that means that a pipeline company

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in Saudi Arabia or Iran could come to Nebraska and say: We're going to condemn your land because we're a pipeline company. [LB3]

SENATOR COUNCIL: Well, I think...I think they'd be able to do it under the current state of the law. [LB3]

KEN WINSTON: Okay. Well, I guess I'm trying to state a position that I...I want to state a position that in the event that Senator Avery's bill is not enacted, that there's a position for landowners to protect themselves. [LB3]

SENATOR COUNCIL: I understand. Thank you. [LB3]

SENATOR ASHFORD: Thanks, Ken. Next proponent of LB3. How many proponents do we have here today? Okay. Good morning. [LB3]

KRISTA SHELLY CLARK: (Exhibit 5) Good morning. My name is Krista Shelly Clark, spelled K-r-i-s-t-a S-h-e-l-l-y C-l-a-r-k. I'm here on behalf of myself. I'm not a lawyer, so I'm going to speak in more general terms. Thank you, Senators, for this opportunity today to testify. I commend Senator Avery for giving us this opportunity to examine the eminent domain issue. I am currently a resident of Omaha; however, I was born and raised and lived over four decades in southwestern Nebraska. I am the great-great-granddaughter of homesteaders. Since the 1880s, all of my grandmothers and grandfathers and my father, brother, my mother, and now my nephew, were and are farmers and ranchers, every single one, for five generations counting my nephew. This is to say my connection to the land, my love for this state and its people and resources, run deep. I am here as a citizen who supports rerouting, at the very least, the tar sands pipeline away from its current proposed route through the Sandhills. But more specifically today, on a related issue, I'm here to testify in support of Senator Avery's eminent domain bill, LB3, to amend Sections 57-1101 and 57-1103, which would change provisions relating to eminent domain and easements for pipelines in our state, and to repeal the original sections and declare an emergency. This controversial XL pipeline issue has given us this important and unique opportunity to examine and to thoughtfully consider our current eminent domain law in the state of Nebraska, and furthermore, to take this opportunity to strengthen this law to further protect the citizens of the state and the valuable natural resources of this state that we live in and care so deeply for. It is an easy study to look around this nation and find story after story of landowners and homeowners who have been subjected to broad interpretations of their states' eminent domain laws. It is sad to hear their stories of how their citizens' rights were violated with no recourse because, lo and behold, their states' domain laws were lax and too broad. Their lawmakers were sleeping at the wheel, so to speak. Obviously, the need and the importance of eminent domain for the public good is a necessary and valuable law. However, as a state we have the right to shape this law in a way that gives companies and the government the access they need to provide services such as

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gas, oil, and electricity, etcetera. But also the law can be at the same time designed to protect the citizens of this state from abuses of using eminent domain in this destructive and unfair way. For example, I have heard story after story of the intimidation tactics many citizens have felt when dealing with TransCanada and the XL pipeline issue. Many have wondered, why does a foreign corporation have carte blanche to come into our state, even before a State Department permit is issued, and use it in its broadest sense, Nebraska's current eminent domain law, as their protection for taking the landowners property? I believe the reason is because we currently have a very weak and broad, far too broad, eminent domain law. Finally, you as a committee have the power, indeed the responsibility at this point, to bring this bill out of committee so the Legislature can debate this issue of eminent domain and take this extremely valuable opportunity to improve our eminent domain laws to further protect the state and its citizens. We know that as a state we have the power to condition what we give in the matter of eminent domain. We also have the power to treat takings for publicly owned projects such as roads, sewers, differently from takings for privately owned projects such as oil pipelines. If we put... [LB3]

SENATOR ASHFORD: Krista, you're doing a great job. [LB3]

KRISTA SHELLY CLARK: Oh, I'm sorry. I'm so sorry. [LB3]

SENATOR ASHFORD: But if I don't say your name after three minutes,... [LB3]

KRISTA SHELLY CLARK: I didn't even look at the light. (Laugh) [LB3]

SENATOR ASHFORD: ...then everybody else... [LB3]

KRISTA SHELLY CLARK: I was on a roll. Sorry. Thank you. [LB3]

SENATOR ASHFORD: Yes, okay. No, that's fine. And we're going to...there may be some questions and you can finish up. Do you want to just...I don't believe there are any. But would you... [LB3]

KRISTA SHELLY CLARK: Okay, thank you. [LB3]

SENATOR ASHFORD: Thank you. And would you, if you have comments that you'd like us to consider all of, just get a copy to the page and we can get them copied. And make sure to fill out a form. [LB3]

KRISTA SHELLY CLARK: Got it. Thank you. [LB3]

SENATOR ASHFORD: Thanks. [LB3]

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AMY SCHAFFER: Good morning. My name is Amy Schaffer, S-c-h-a-f-f-e-r. I'm a daughter of a landowner. My family has ranches in both Rock and Holt County. I'm in favor of Senator Avery's bill to protect landowners so that they do not have to go through what they have gone through by being solicited, eminent domain, before a federal permit was issued. We should stick up for the landowners in Nebraska, not corporations. [LB3]

SENATOR ASHFORD: Thank you. Any comments or questions? Thank you. Thank you. Next proponent. [LB3]

BRIAN VANDEVENTER: (Exhibit 6) I am Brian Vandeventer, V-a-n-d-e-v-e-n-t-e-r, from Omaha. My ancestors homesteaded in Nebraska. They lost land to eminent domain and followed the profit and commerce of eminent domain with the railroads. I can trace my roots to the "Brownville versus Omaha" territorial capital dispute. I grew up in Box Butte County, where one town absconded with the courthouse from another. But I come to be heard today from Douglas County: Bob Krist, are you in the house? I'm here to make clear and concise one message--the right of eminent domain in Nebraska should not extend to any foreign entity. The right of eminent domain and its use in Nebraska should be up to Nebraskans in discussion with one another. If I'm to believe the ads currently running in our newspapers, radios, and televisions--and thank you for that bit of commerce, by the way--the Keystone XL pipeline is the safest sieve ever designed. Let's get beyond the rhetoric from each side, as Nebraskans, and protect ourselves. Fortunately, common sense is a gift most of us share. Bring on the pipeline, but assure it follows established routes already designated for pipelines. The company says it's too costly to divert this route. Nonsense. The pipeline company has valued this project in the billions. Let them. This is a drop in the bucket and they will still have profits on their horizon. The established route would require more study and crosses more waterways. Good. Study and be sure, then build it in the established lane. It is the safest ever designed. We'll help you study it. We'll help them build it in the established lane. Senators, keep this simple. Take the initiative to protect Nebraska for Nebraskans, whether it's LB3, LB4, or an amended combination of either. Abandon any consideration of crossing the Sandhills or the aquifer. And I beat the red light. Thanks. [LB3]

SENATOR ASHFORD: Thank you, Brian. Any questions of Brian? Yes. Brian, could you...yeah. [LB3]

SENATOR COUNCIL: I just have a question. Thank you for appearing today. And one of the statements that you made emphatically was: I'm here to make clear and concise one message, the right of eminent domain in Nebraska should not extend to any foreign entity. Is there anything in LB3 that accomplishes that result? [LB3]

BRIAN VANDEVENTER: You know, after listening to all of this so far this morning, no, I don't believe so; it doesn't. And that's why I think the voice of every Nebraskan is

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important. And hopefully you're hearing that, that we get something out of this special session that defines eminent domain to protect all of us, by all of us. Sorry, I can't help you with the widgets there. [LB3]

SENATOR COUNCIL: Okay. Thank you. I just want to be sure that, you know, that no one goes away from here with a misunderstanding of what LB3 does or does not do. And there is nothing in LB3 that limits eminent domain to just domestic corporations, so. [LB3]

BRIAN VANDEVENTER: But it was the first place to start, right? [LB3]

SENATOR COUNCIL: Pardon? [LB3]

BRIAN VANDEVENTER: It was the only place to start today, right? [LB3]

SENATOR COUNCIL: LB3 is the only place to start, yes. [LB3]

BRIAN VANDEVENTER: Okay. [LB3]

SENATOR COUNCIL: Thanks. [LB3]

SENATOR ASHFORD: Thanks, Brian. Senator...Brian, Brian, Brian... [LB3]

SENATOR LATHROP: Just one other comment. [LB3]

SENATOR ASHFORD: Could you sit on the...yeah. [LB3]

SENATOR LATHROP: Just one other comment. Senator Krist would not be here because he doesn't serve on this committee. Okay? I don't want you think because he isn't here... [LB3]

BRIAN VANDEVENTER: Oh, I stopped in his office. [LB3]

SENATOR LATHROP: Okay. He's a thoughtful guy, but he doesn't serve on this committee. [LB3]

BRIAN VANDEVENTER: We'll talk. [LB3]

SENATOR ASHFORD: And I think (inaudible) that was good. Okay, thanks, Brian. Next proponent. Good morning. [LB3]

DONNA ROLLER: (Exhibits 7, 8) Hi. My name is Donna Roller, D-o-n-n-a R-o-l-l-e-r. I appreciate the opportunity to speak with all of you. I have no experience in this. I grew

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up on a farm and I own land in York County. And in the handouts, I was listening to your discussion before and you were arguing the legalese between...that those letters were legal under our laws. I'm not a lawyer. But I want you...it gave me the idea. I want you to look at that picture of my dad in 1971. He didn't know how to read. Now, obviously, everybody in the Sandhills that have been threatened with eminent domain now do know how to read. But I'm thinking farmers have their head in the dirt, and we need to make sure that we are protected, no matter how you do it. Argue the legalese, but make it right. And I'm not speaking on my testimony that I have written, but I will skip over the front three paragraphs and I will go on to the one about what happened to my landowner. Our land is rented to Keith and Anne Peters. I went to church with them. I knew their parents. I went to school with them. My dad rented it to him in late 1970, and he's been on our farm for 30 years. His wife, Anne, was approached by a friend and said, there was a meeting in York and they had room for more people, and you would get \$100. She didn't know in advance what that meeting was about. There were 12 people at the meeting. The man who conducted the meeting acted as though he didn't know anything about the pipeline. He said they were being watched by a hidden camera, but he wouldn't say who. He instigated a discussion about the aquifer and the pipeline. He showed pictures and advertisements for and against the pipeline and played TV ads. They were to fill out forms, which ones they liked and ones they didn't. Then when Anne brought up a newspaper article about this oil being shipped to China, the man got defensive and asked, who wrote this article? And Anne said, I don't know. He said, you believe that, even though you don't know who wrote it? And then she realized the purpose of this meeting was how to present themselves to Nebraska public and to sway Nebraska people in favor of TransCanada pipeline. So this man did know a lot about the pipeline and went so far as to say they were already many pipelines over the aquifer. And this we know is not true. I support LB3 or whatever revisions you make to it, but make it right, and bring it to the floor because we need protection. And if I...I am out of time. But I have a personal story that is very important. Can I say it? No? [LB3]

SENATOR ASHFORD: It's not that we don't want to hear it, Donna. It's that...but what you can most certainly do is come up and talk to us afterwards, if you like. [LB3]

DONNA ROLLER: Okay. I hope this was helpful to you. And I thank you, all of you, for working so hard. [LB3]

SENATOR ASHFORD: Thank you for being here. Next proponent. [LB3]

BRUCE BOETTCHER: Bruce Boettcher, B-r-u-c-e B-o-e-t-t-c-h-e-r, I support LB3 simply for the future of Nebraska citizens so they don't have to live with the current eminent domain laws over the past in the present. [LB3]

SENATOR ASHFORD: Thank you. Thanks for your comments. Next proponent. Mark,

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are you next? [LB3]

MARK WELSCH: Yes. Where do we leave these? [LB3]

MAGGIE GORGEN: I can take it. [LB3]

SENATOR ASHFORD: Maggie will take it. Thanks. [LB3]

MARK WELSCH: There's usually a box where I go. Good morning, Chairman Ashford and committee members. My name is Mark Welsch. I live at 5611 Howard Street in Omaha, Nebraska, and I'm here today representing Nebraskans for Peace. Nebraskans for Peace does support the passage of LB3. I'm just curious, isn't there any law against taking property from landowners? Could TransCanada get permission to build, maybe through eminent domain, and then start to actually build before the federal State Department approves their permit? I think it is very irresponsible for NPPD or any rural electric association to think about spending a dime building electric transmission lines to service pumping stations that may not ever be built. If they are planned, the electric lines, and built, I hope that they will be built with the capacity to move power from all windfarms that will be built near those new power lines. Because we must stop global warming caused by burning fossil fuels, I believe this pipeline may become obsolete within 30 years. If we don't, the Pentagon has said they are concerned for our security in and out of this country due to global warming and the climate changes that it will cause. Some people think the third world war will be fought over water because of global warming and climate change. Thank you very much. [LB3]

SENATOR ASHFORD: Thanks, Mark. Questions of Mark? Seeing none, thank you. Next proponent. [LB3]

LARA SKINNER: (Exhibit 9) Chairman Ashford, members of the committee, thank you for the opportunity to speak today. My name is Dr. Lara Skinner, L-a-r-a S-k-i-n-n-e-r. I'm with Cornell University's Global Labor Institute, the School of Industrial and Labor Relations. Cornell released a report in September examining the job claims made by TransCanada Corporation. TransCanada claims Keystone XL is a \$7 billion project and will create 20,000 direct construction and manufacturing jobs and 119,000 indirect jobs. However, Cornell's analysis of Keystone XL has found that TransCanada's numbers are unsubstantiated and that the project will produce far fewer jobs than they claim. TransCanada's unsubstantiated and misleading job claims demonstrate the need for the state to have a process in place that gives Nebraska a say in who puts a pipe where, including tightening the eminent domain statutes to stop big corporations from scare tactics to coerce Nebraska landowners into selling to the lowest bidder. I want to underscore four main points that explain how TransCanada has misled the public on the jobs and economic impacts of the pipeline. First, TransCanada claims that Keystone XL is a \$7 billion project. Actually, Keystone XL's U.S. project budget is \$3.3 billion. They've

inflated the U.S. project budget by including \$1.6 billion that will be spent in Canada and approximately \$2.6 billion that has already been spent or committed to the project. In reality, Keystone XL's U.S. project budget is less than half what they claim, and that means a lot less jobs will be created. Second, the steel pipe is the main material input for Keystone XL. To date, TransCanada has manufactured almost 50 percent of the pipe outside of the U.S., even though they claim Keystone XL will create 7,000 manufacturing jobs in the U.S. TransCanada has made a significant investment in the pipe for Keystone XL that is largely generating economic activity and job creation outside of the U.S. Third, according to TransCanada's own data supplied to the State Department, the project will create no more than 2,500 to 4,650 temporary, direct construction jobs for two years. Only 10 to 15 percent of the total Keystone XL work force will be hired locally. For example, in Nebraska we estimate only 100 to 248 temporary construction jobs that will be created, and only 10 to 15 percent of these will go to locals. That's 10 to 25 jobs. Fourth, because of the pipeline, Midwest consumers will pay 10 to 20 cents more per gallon of gas and fuel, totaling \$2 billion to \$4 billion in additional costs to Midwest economies. Just one year of fuel price increases as a result of the pipeline diverting oil from Midwest refineries to Gulf Coast refineries would cancel out some or all of the jobs created by the project. TransCanada has failed to consider the negative employment and economic implications that could result from construction of the pipeline. Put simply, inland spills, spills into freshwater supplies like the Ogallala aquifer, and increases in greenhouse gases and other pollutants incur huge health costs and economic costs and job loss. To finish, I'm here to support any increase in the state's input on who puts a pipe where and allows Nebraska to vet companies coming into your state, because as my testimony on the job impacts of the pipeline demonstrates, TransCanada cannot be trusted to protect the livelihoods and economy of Nebraska. Thanks. [LB3]

SENATOR ASHFORD: Thank you. Any questions of Dr. Skinner? Yes, Senator Lathrop and then Senator Council. [LB3]

SENATOR LATHROP: You're at Cornell? [LB3]

LARA SKINNER: Uh-huh. [LB3]

SENATOR LATHROP: And what's your interest in the pipeline? [LB3]

LARA SKINNER: Cornell University supported me coming to this hearing and undertaking the study because we work directly with labor unions and workers' organizations on employment issues, and about six months ago we realized that there was a debate roiling within the labor movement about whether they should support the Keystone XL pipeline or not. And we felt that it was important to examine the actual job creation potential or potential job loss with the pipeline to be able to inform the people that we work with about what the actual employment impacts of the pipeline would be.

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[LB3]

SENATOR LATHROP: And without going into the long division too far, is there a standard process for evaluating the jobs that are created by a particular project? [LB3]

LARA SKINNER: Yeah, the... [LB3]

SENATOR LATHROP: Here's the question. [LB3]

LARA SKINNER: Yeah. [LB3]

SENATOR LATHROP: Why should we believe you instead of the representations of TransCanada? [LB3]

LARA SKINNER: Well, yes, typically... [LB3]

SENATOR LATHROP: Or why should we accept your estimate versus the estimate of TransCanada? [LB3]

LARA SKINNER: Well, I mean first of all, say the estimates that it will create 2,500 to 4,650 jobs, that's based on TransCanada's own data that they supplied to the State Department, so, I mean, that's not us coming up with our own numbers. Second of all, the numbers on the overall project budget, yeah, typically you can look at like, okay, you know a pipeline project, for every million spent, will create this many jobs, you know? Enbridge has had to do it for the pipeline that they're creating in Canada, and their numbers are significantly lower than the numbers that TransCanada is putting forth down here. But, yeah, so it's important, you know, to know what the overall project budget is to determine the number of jobs that we created. So them saying that it's a \$7 billion project and it actually being \$3.3 billion U.S. project budget, that's really important in determining the number of jobs that will be created. [LB3]

SENATOR LATHROP: Is that what you used to come up with your estimates? [LB3]

LARA SKINNER: Yeah, that's part of what we use in terms of indirect and induced jobs, but again, the estimate of the 2,500 to 4,650, that's based on TransCanada's own data that they supply to the State Department on how many workers would be needed for pipe links, for constructing pipe stations, and all of the different parts of constructing a pipeline. [LB3]

SENATOR LATHROP: And you, essentially, just backed out the part of their budget that includes work done in Canada... [LB3]

LARA SKINNER: Yes. [LB3]

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SENATOR LATHROP: ...to get to what...how many of those are going to be created in the United States. [LB3]

LARA SKINNER: Yes, and, yeah, money that's already been spent. [LB3]

SENATOR LATHROP: You've said that only 15 percent of those jobs would actually go to locals. What's the basis for that? [LB3]

LARA SKINNER: Yeah, it's 10 to 15 percent and, again, that is also the State Department's determination that only 10 to 15 percent of jobs would go to locals, and that's also borne true in Phase I and Phase II of the pipeline. [LB3]

SENATOR LATHROP: Okay. Thank you. [LB3]

SENATOR ASHFORD: Senator Council. [LB3]

SENATOR COUNCIL: Yes, thank you, Dr. Skinner. Senator Lathrop asked one of the two questions. I was just curious as to what prompted Cornell University's involvement in this matter. But secondly, I'm looking over your prepared statement and listening to you, I just have a question. Your fourth point was because of the pipeline, Midwest consumers will pay 10 to 20 cents more per gallon of gas and fuel. What's the basis of that? [LB3]

LARA SKINNER: Well, first of all, I will say that I am not an energy economist, however, we worked with an energy economist to do this analysis of the overall economic impact. And I think...I mean basically, and probably a lot of you have heard this, is that there's a glut in the crude oil market in the Midwest, and refineries in Texas have been upgraded to be able to handle crude oil so that doesn't matter. They can handle crude oil, you know, whether it's from the tar sands in Alberta or whether it's from Venezuela. So basically, the overall impact that we have is that crude oil is being put into the global energy system, right? A larger amount of crude oil will be able to be put into the global energy system, and at the end of the day, you know, we can argue about whether TransCanada is saying the oil is going to be exported or not, but there's going to be more crude oil overall put into the energy system. And this is an export strategy and it will allow these companies to sell their product on the world market for a higher price, which will then lead to higher prices in the Midwest. I think it's no coincidence that the fastest growing investment pool in the tar sands is from China's state-owned oil company. [LB3]

SENATOR COUNCIL: Right. You know, I appreciate that but I still don't understand how you get to 10 to 20 cents more per gallon. And one of the concerns I have about this entire debate is that both sides, whether intentional or unintentional, we start engaging

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in the exaggerations and inflations and then we get these countercharges back and forth. And, I mean, to make a statement that we'll pay 10 to 20 cents more per gallon of gas, I would think there would be more of a basis in that...and what I got out of what you said was essentially this: Because they'll make more money by selling their product overseas, that that inflates the price of fuel to us in the United States. [LB3]

LARA SKINNER: Yeah. I mean basically they will have access to a global market, and what I'm saying is, you know, we can argue about whether the oil through the Keystone XL pipeline is going to be exported or consumed in the U.S., but the overall effect is that there's more crude oil that now can be put onto the world market and they can get a higher price for it, and that's... [LB3]

SENATOR COUNCIL: So... [LB3]

LARA SKINNER: This is an export strategy at its fundamental core. [LB3]

SENATOR COUNCIL: Okay. So my economics is backwards then because my economics says to me that if there's more out there, prices go down. Is that...I mean am...and maybe... [LB3]

LARA SKINNER: Yeah. [LB3]

SENATOR COUNCIL: ...and maybe my economics is backwards, I will confess that much, but that's...I mean supply and demand, the more supply generally affects the cost, so if there's more out there...and these... [LB3]

LARA SKINNER: Yeah. The problem is, is that there... [LB3]

SENATOR COUNCIL: ...my economics tells me prices should go down rather than go up. I don't want to... [LB3]

LARA SKINNER: Yeah, the problem is, is that they need access to markets right now. [LB3]

SENATOR COUNCIL: Okay. Okay. [LB3]

LARA SKINNER: There's a glut in crude oil here in the U.S., and they need access to world markets, and this pipeline would help get to that place. But I would be happy to put you in touch with the energy economist that we worked with. [LB3]

SENATOR COUNCIL: Okay. I would appreciate that because I'm just not following that. And, like I said, it may be my failure. [LB3]

SENATOR ASHFORD: This is interesting stuff. Senator Larson. [LB3]

SENATOR LARSON: Yes, I appreciate you guys doing the study and you bringing this in. I think both Senator Council and Senator Lathrop touched on it, Senator Lathrop, what makes...what should...you know, why should we believe you over TransCanada's numbers. Do you have either a paper or a dissertation over the exact processes you took to get these figures and the analysis from those figures, because, I mean, we heard numbers from both sides that this is the number, this is the number. What processes did you take? I mean we have a prepared statement but we don't know how you got to these figures, and I think that's what they're looking for--how do we get to these figures? What is your overall analysis, because...and I think that's where we are having a hard time or I, myself, am having a hard time because it's just a piece of paper with numbers on it. How did you get those numbers? What were the processes you took? [LB3]

LARA SKINNER: Yeah. [LB3]

SENATOR LARSON: Because I know most academic studies, when they offer...I mean I'm not that far out obviously of the university, so I mean when we wrote papers we had to back it up, offer the processes. [LB3]

LARA SKINNER: Yeah, everything. [LB3]

SENATOR LARSON: So do you have that analysis for us? Can you present that to us? [LB3]

LARA SKINNER: Yes. We, like I said at the beginning, we did a much longer report. You know, I'm just hitting the main sort of points of the report, but we did a full report which is, you know, totally methodologically sound and explained in the report, and I believe that that report was e-mailed to you this morning or is being e-mailed to you. And if you'd like me to get hard copies to you today, I can do that. [LB3]

SENATOR LARSON: That would be great. [LB3]

SENATOR ASHFORD: Let me...could I just, I have a couple...just...I'm not going to belabor the points that you're making at all because, as Senator Larson suggests, they're as valid as anybody else's, I mean, but basically this. Let me understand this. The spot market price for oil, which is what we see on the squawk box every morning or if we watch the squawk box, is \$95 a barrel. [LB3]

LARA SKINNER: Uh-huh. [LB3]

SENATOR ASHFORD: The Brent cost or the finer grade Brent market is at \$125 a

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barrel, so it's \$30 more per barrel. Do you know the difference between those prices and how there's...is it because the oil that is \$125 a barrel is more refined or oil that's more in demand or is it because of the lack of...the amount of demand globally? Do you know that or is that something outside your scope? [LB3]

LARA SKINNER: I think that's probably outside my scope. But again, I would just emphasize that, you know, at this point there's a glut of crude oil here because it's landlocked and can't get to export markets. [LB3]

SENATOR ASHFORD: And is it your point...is it... [LB3]

LARA SKINNER: And China and India, for example, right, their demand for oil is hugely increasing... [LB3]

SENATOR ASHFORD: Right. Right. [LB3]

LARA SKINNER: ...and most companies are focused on getting oil to them. [LB3]

SENATOR ASHFORD: Right, and your point is that even though there's a glut of oil in the...or product... [LB3]

LARA SKINNER: It's a glut because it can't get anywhere. [LB3]

SENATOR ASHFORD: ...there's a glut of product in the Midwest, that the prices, though moderated over the summer and fall, are spiking again and that that spiking in price is dictated primarily by global forces, not by forces in the Midwest,... [LB3]

LARA SKINNER: Uh-huh. Exactly. [LB3]

SENATOR ASHFORD: ...because logically there would be a decrease in oil. [LB3]

LARA SKINNER: Exactly. [LB3]

SENATOR ASHFORD: I think I see that. And there is no guarantee, of course, where. This oil is going to go where it goes and so forth and so on. But the other, the larger point, which is that this oil is potentially for the export market to India or China or wherever, Indonesia, which is a big oil producer as well,... [LB3]

LARA SKINNER: Uh-huh. [LB3]

SENATOR ASHFORD: ...that...is that really relevant? Because I mean we...it may be relevant in the larger sense that we have a product going through our country that comes from another country, it's oil, and it's already doing...we're already getting...that's

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happening already through the other pipeline,... [LB3]

LARA SKINNER: Uh-huh. [LB3]

SENATOR ASHFORD: ...and that we have a national interest in ensuring that if we're going to do that, if we're going to allow someone to go through with a major pipeline, that it has some positive impact on our country. And I assume that's really what the State Department is trying to evaluate on the national level. [LB3]

LARA SKINNER: Uh-huh. [LB3]

SENATOR ASHFORD: Would that be generally correct? I mean that's what they're looking at, is does this serve the national interest as well as is it consistent with our relationships with Canada and so forth. [LB3]

LARA SKINNER: Right. [LB3]

SENATOR ASHFORD: Those are some of the criteria. [LB3]

LARA SKINNER: Yeah. [LB3]

SENATOR ASHFORD: But we...the railroads are a major part of our economy in Nebraska, the Union Pacific Railroad. There wouldn't have been a Nebraska probably without the Union Pacific Railroad, at least when it occurred. Many of the towns that we're talking about in our state happened because of the railroad's decision to go a particular way, certainly Omaha was one. They carry product that's exported or imported from China. I mean one could make the argument that product that comes from China that, at least over the last 30 or 40 years, produced at a very low cost and certainly just until recently the Chinese government didn't seem to care about workers' rights or how these people were paid or whatever, but we still imported that, those goods, because the consumer wanted to pay lower prices at Walmart, and it created a whole industry in our country. But we didn't stop railroads from transporting product from China. Maybe it's not the same thing,... [LB3]

LARA SKINNER: Well,... [LB3]

SENATOR ASHFORD: ...but I mean it's the same sort of policy. We don't know, I don't know whether oil prices will go up or down, to your point. They may go down and they may go up, depending upon the world market. But haven't we already crossed that bridge in the 1880s and '70s or '90s when we decided to do the transcontinental railroad and allow for relatively cheap transportation of what have become cheap goods so that we can satisfy the consumers in our...? Is there a difference? And if there is, tell me what it is. [LB3]

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LARA SKINNER: You know, I don't know if I'm going to speak directly to whether there's a difference. I think that my larger point is that neither TransCanada nor the State Department have considered the potential negative employment and economic impacts of this pipeline, you know. And our report doesn't speak specifically to Nebraska, right? We're looking at the whole pipeline route. In some parts we look at the individual states, we look at what are the direct construction jobs that will be created in each state. But you know, I mean I feel like this is the larger point, is, you know, you all need to really think through what are the potential negative... [LB3]

SENATOR ASHFORD: Well, my question is, and then I will leave this because there are a lot of people who want to speak, but I think it gets to the larger point because we, as a nation--and tell me where I'm wrong--as a nation we have policies that have created a flow of goods into this country from other countries that manufacture those goods at, in many cases for many years, a slave labor price. But we accept those goods and we bring them in here... [LB3]

LARA SKINNER: Uh-huh. [LB3]

SENATOR ASHFORD: ...because our consumers want to pay less. Now it could be because we want to enhance global trade. There could be lots of reasons for doing that. [LB3]

LARA SKINNER: Right. [LB3]

SENATOR ASHFORD: But is your larger point the same thing or is it different? [LB3]

LARA SKINNER: I think that there's a more direct link between fuel prices in the Midwest and the Keystone XL pipeline being built than in your example. Currently, Midwest fuel prices are suppressed because there's a glut, and by building a pipeline, you know, through your state and, you know, five other states, it will then have access to a global market where they'll be able to get a higher price and will then charge a higher price within the U.S. and in the Midwest specifically, where the price has been suppressed. [LB3]

SENATOR ASHFORD: Okay. And then my last question, and thank you for your candor in your answers because I think it's an interesting question, because certainly national policy changes depending upon who the President is or who controls Congress or who writes the regulations. But we certainly have had in many, over the years, an open border when it comes to consumer goods... [LB3]

LARA SKINNER: Uh-huh. [LB3]

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SENATOR ASHFORD: ...at a very cheap price, transported by railroads... [LB3]

LARA SKINNER: Yep. [LB3]

SENATOR ASHFORD: ...that emit all sorts of things into the air. [LB3]

LARA SKINNER: Right. [LB3]

SENATOR ASHFORD: But the (laugh)...I'm sorry. The railroads are wonderful but there certainly are environmental issues. I guess my last, my last...for the record, railroads are wonderful. (Laughter) My last point, my last question, though, is in your study at Cornell, and it is a great institution in labor law, I understand that, what would...very, very briefly, what would the state's ability to give preference to Nebraska workers in a project like this, how would that...would that offend the commerce clause or...in your opinion? Could we, by state law, give preference to the hiring of Nebraska workers in the construction of an interstate pipeline? [LB3]

LARA SKINNER: I don't know the answer to that question, but I could definitely put you in touch with someone who could answer it for you. [LB3]

SENATOR ASHFORD: I'd really like to know that, whether there are...it's permissible under federal law or constitutional law to be able to do that. [LB3]

LARA SKINNER: That's a good question. [LB3]

SENATOR ASHFORD: Thank you for your comments. [LB3]

LARA SKINNER: Yes, thank you. [LB3]

SENATOR ASHFORD: Next proponent. [LB3]

LIAM PURDON: (Exhibit 10) My name is Liam O. Purdon, that's L-i-a-m O. P-u-r-d-o-n. I'm here to speak in favor of LB3. It only makes sense to require any company, corporation, or association to have all permits in hand before exercising eminent domain. However, LB3's language, like that of all other bills being advanced during the current special session, is not as concise as it must be if the proposed law is to be fair to all parties concerned. The first of LB3's emendations states: Prior to having the rights set forth in this section, any company, corporation, or association formed or created for the purpose of transporting or conveying crude oil in interstate commerce or across the state of Nebraska, etcetera. The transporting or conveying of crude oil is not what TransCanada's Keystone XL pipeline is designed to do, once operational. This pipeline will be conveying or transporting diluted bitumen, or dilbit crude oil--an unstable mixture of light, gaseous condensate, such as carcinogenic benzene or naphtha, and thick,

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heavy bitumen. Dilbit is a potentially hazardous substance for a number of reasons. First, it is more acidic, thick, and sulfuric than conventional crude oil. This sulfur content can lead to the weakening or embrittlement of pipelines. What's more, dilbit's high concentrations of chloride salts can lead to chloride stress corrosion in high-temperature pipelines. Worse still, when subjected to high temperature and pressure variations in the pipeline, dilbit's instability can lead to pressure spiking, its liquefied gaseous condensate returning to a gas form before collapsing and releasing bursts of high pressure that can deform and eventually rupture pipeline metal. Conventional wisdom has it that the Department of Transportation, Pipeline Hazardous Material Safety Administration does not distinguish between dilbit and conventional crude. This is nonsense. PHMSA has not yet conducted a study of the potential risks of dilbit crude. Until it is known how dangerous dilbit crude is, no permit should be issued permitting conveyance or transportation of this oil slurry across the state. While the current special session may not be the right time and place to call for studies of this substance's risks, lawmakers need to go on record identifying this substance as dilbit. [LB3]

SENATOR ASHFORD: I don't see any questions. Thank you. [LB3]

LIAM PURDON: Thank you. [LB3]

SENATOR ASHFORD: Next proponent. [LB3]

SUSAN DUNAVAN: My name is Susan Dunavan, S-u-s-a-n D-u-n-a-v-a-n, and I'm a resident of York County, Nebraska, and I'm also a recipient of two letters threatening eminent domain condemnation that we received from TransCanada. And I don't have a prepared statement today because I wasn't really planning on speaking, but I do want to express to you a little bit what it feels like to be a landowner, to have the FedEx truck come up your driveway and to be handed letters threatening eminent domain condemnation when you don't know what your rights are. And the letters do insist that within 30 days they will start the eminent domain proceeding. It's just very difficult to go month after month and week after week and not knowing, every time you see the FedEx truck come, is it going to serve papers to you. And also I want to make an issue about these papers also say that they're...that TransCanada, if we do not acquire this property through negotiations, so I wanted to address the issue of negotiation, what is negotiation. We have written certified letters to TransCanada time and time again stating our issues we have with easements that they have given us that they want us to sign, and they refuse to write us back. And so what is negotiation? Can they say that you are failing to negotiate when you write letter after letter and try to get contact with the company? They have absolutely no response at all. They do not respect the landowners at all and then they send you these letters. And that's basically what I want to say. [LB3]

SENATOR ASHFORD: Thank you, Susan. [LB3]

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SUSAN DUNAVAN: It's very intimidating,... [LB3]

SENATOR ASHFORD: Yeah. [LB3]

SUSAN DUNAVAN: ...very, very intimidating. [LB3]

SENATOR ASHFORD: Yeah. Thank you. Thanks for your points. We'll take one more person and then we will go to lunch. [LB3]

JANE KLEEB: Good afternoon, Chairman Ashford and members of the committee. Jane Kleeb, J-a-n-e K-l-e-e-b, 1010 North Denver Avenue, Hastings, Nebraska. I'm here representing Bold Nebraska, which is an advocacy group in our state, as well as Frank LaMere, which many of you know could not be here today and asked that I read a portion of his statement that he has submitted to the committee so that it is fully on record. Before I get to... [LB3]

SENATOR ASHFORD: Jane, what we'll do, what we'll do on that, we don't do that but what I will do is take his statement. We'll make it part of the record. We don't...that's just something we've done in the committee so it's not (laugh)...no reflection, but we're going to do it that way. So if you give us the comments... [LB3]

JANE KLEEB: Okay. I'm here actually...I'm definitely not a lawyer, nor will I play one ever on TV, but I am a citizen who has worked very closely with landowners over the past almost two years on this issue. And while I think the legal arguments can be made on both sides of this issue, there is a very clearly emotional side as well, and I have seen the stress that this process has put on landowners. And while the words may be threatening of eminent domain and a piece of paper may be seen as other pieces of paper that credit agencies or other lawyers may send to folks, this land has typically been in the ranchers' and farmers' hands for more than 100 years, and that when they get a letter threatening eminent domain and have no legal background whatsoever, it is a major problem that they have no state agency, no one to turn to, to answer the fundamental questions of whether or not that letter is legal and what their next steps should be. And so whether Senator Avery's bill is the perfect solution or whether another bill needs to come up, I think all of us are just asking that eminent domain process gets clear and that there are clearly defined ways that landowners also understand the process where they can also get help, because it is just not a fair process when you have a multinational company up against folks in rural areas who don't have access to those resources. Thank you. [LB3]

SENATOR ASHFORD: Thank you. Any questions? Seeing none, that concludes the testimony for the morning. And how many more proponents do we have? Two. Is there only two more here? Why don't we go ahead...three (laugh), three more, one, two,

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three. So why don't we just finish that. Yeah. [LB3]

RICHARD HEDRICK: I'm Richard Hedrick. I'm for LB3. My question is this should be under the body of eminent domain 77, so forth. Socialists in the Sandhills are not the only property owners abused by eminent domain. Pipelines pay a pittance: the size of a pipe 1 inch times the length, 36 inches, times links. Nebraska law states "or damaged." Nebraska landowners can't get damage for laying the pipe. Landowners in other states, I do not know if they have this. Property owners take offer. Faced with pay attorney fees of \$40,000 or \$50,000 to go to court, they cave in. Should attorney fees be required to be paid by the condemnors? I believe they should be. My property was taken by eminent domain. I don't want to go into this at this time. We don't have that much time. Thank you. [LB3]

SENATOR ASHFORD: Thank you, Richard. Any questions of Richard? Seeing none, thanks. We have a young, very young witness back there, testifier, I believe the youngest one of the day by far actually. [LB3]

CAROL REED: Hello. [LB3]

SENATOR ASHFORD: Hello. [LB3]

CAROL REED: Thank you very much for allowing me to speak and for being patient with my little one, if he's noisy now and then. My name is Carol Reed, R-e-e-d, and I am the granddaughter of farmers and I have owned land in Nebraska. At the moment, I live in Lincoln, in Senator Avery's district, and I want to thank him for bringing this bill forward. I want to encourage you, please, to pass it on so that the rest of the whole Legislature can debate it. I think that the farmers and ranchers deserve to be treated with fairness and respect and that eminent domain should be used only in the case where it is for the public good. And I think that it should not be being threatened unless they actually have the permits in hand to do what they need to be doing. I don't need to take a lot more of your time. I'm certainly not a lawyer. But I definitely think that the pipeline should be in a safer location. It's not your purview at this moment. But I understand that it's probably going to come through and I'm a realist and understand that, but I think it would be safer if it would come through eastern Nebraska where we have heavier clay soils and a further distance to the aquifer. So I ask you to please do what you can to enact strong legislation to protect the farmers and ranchers and landowners of Nebraska and to protect our natural resources, our water, our fragile Sandhills, and the rights of people like this for the future to enjoy a clean Nebraska and a safe Nebraska. I was the last of the grandchildren of my line and the only one that my grandfather didn't get to teach to drive the tractor because he lost his farm. So please allow future generations to have their right. Thank you. [LB3]

SENATOR ASHFORD: I understand. Thank you. I think that... [LB3]

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SENATOR COUNCIL: Oh, you have one. [LB3]

SENATOR ASHFORD: Sorry. Sorry. [LB3]

WILLIAM DUNAVAN: I think it's good afternoon now. [LB3]

SENATOR ASHFORD: Yeah, good afternoon now. [LB3]

WILLIAM DUNAVAN: (Exhibit 11) Senator Bill Avery and Chairman Brad Ashford and all the members of the Judiciary Committee, my name is William F. Dunavan. I am a landowner in York County, Nebraska, and the property where I live lies in the direct path of the Keystone XL proposed route. I'm in favor of your bill, LB3, which would prohibit pipeline companies from pursuing eminent domain against Nebraska landowners before all the proper permits have been received. Twice I've been served with letters from TransCanada regarding this project. These letters threaten condemnation with a 30-day deadline. Brought some samples, if you don't have enough already. This has been a major source of worry and apprehension. It amazes me that they can do this. Perhaps you also grew up to respect the genius of the U.S. Constitution with its Fifth Amendment and Fourteenth Amendments guaranteeing private property rights. Somehow I missed the passage of that new amendment which cancels out these rights and gives away our citizens' property to the whims of a foreign corporation. Do you really want the constitution to be twisted like this during your years of service in the Legislature? Here are five other questions to consider seriously. Where is the headquarters of the TransCanada corporation? Would Canadian farmers and landholders expect companies from the U.S.A. to assume the power to take or disfigure Canadian land? Are the oil products made from this Canadian crude contracted solely for the use of the people of the U.S.A. or are they bound for Europe, Latin America, and Asia? Are there data gaps in the toxicological reports on this bitumen-type oil as well as on the solvents that are combined with it? Was there a glaring conflict of interest or severe bias in the State Department's environmental review, since it was likely written by one of TransCanada's chief contractors? Careful work, which the Unicameral is famous for, can get to the bottom of these important questions. There's no luxury of ignorance for those entrusted with decisions for the people. Once built, a pipeline operating at 1,400 psi will not give anyone near it the precious time to react. In conclusion, I have several suggestions for your bill. First, mention who will enforce these provisions. Second, include a penalty, and I see that was added as an amendment, wasn't on the bill that I read beforehand. Thirdly, make it retroactive to 2008, which I presume is not legal but I sure wish you could do this. TransCanada's executives should have known better. Thank you. [LB3]

SENATOR ASHFORD: Thank you, Mr. Dunavan. Any questions? Seeing none, we'll break for lunch. [LB3]

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BREAK

SENATOR ASHFORD: How many more proponents do we have? So there...how about proponents? Proponents, four? [LB3]

ERNIE CHAMBERS: You said proponents. [LB3]

SENATOR ASHFORD: Proponents. [LB3]

ERNIE CHAMBERS: Uh-huh. [LB3]

SENATOR ASHFORD: There's one, two. Don, are you a proponent? Okay. Two more. All right. We have two proponents and then we'll go to the opponents. So, Ernie, welcome. [LB3]

ERNIE CHAMBERS: Thank you. Mr. Chairman, I'm Ernie Chambers. I'm from Omaha, Nebraska. My representative is the distinguished Senator Council. I came down here today because of the seriousness of the issue, and the issue is that pipeline. Now Shakespeare said how wonderful it is to have the strength of a giant but it is tyrannical to use it like a giant; and when you have a giant running roughshod over people who are virtually representationless, then something has to be said about it and sometimes public action is the only thing that will work. I came here today to use words, not that anybody's mind will be changed but to go on the record clearly and unequivocally. If there was anything I could do to hinder, delay, cripple, stop, or alter the route of that pipeline, that's what I would do. And I think of it more as an alimentary canal--not elementary; alimentary--and that's a part of a person's internal plumbing. I think all of the bills that are being presented during this special session fall within the realm of a state's police power and, for the record, that is an inherent, fundamental, plenary power of a state which is essential to government. That power enables a state to pass any and all proper and necessary laws to advance, to preserve the public health, safety, and welfare. One of the most essential elements to society's welfare would be fresh, clean water, and anything that threatens that water is a fit subject for the state to consider acting on under its police power. I know there are all kind of theories here, there are all kind of theories there. There have been threats of lawsuits by the giant, and the giant, as I see it, is that Canadian company. Bullying is what big, strong people do. It happens in a classroom setting. It happens on the playground. And when a big company, whose only aim is to make money, sees a state which has a Governor who has no steel in his spine, a Legislature which is not going to be assertive and protect the rights of the people, it's going to run roughshod. And although from a moral or ethical standpoint I blame TransCanada or whatever they call themselves, in the realm of politics and making money I can't blame them. If you find a sucker, bump his head. Now I know what the rules are. What I have to say will take longer than the time I have, so I had to make those few comments at least so my position is crystal-clear. I believe the state

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has a compelling interest in protecting its water. I believe the state has the right, the authority, and the obligation to do all it can to provide that protection. You get one shot at this. And they can talk all they want to about how much care, how much technology is being used to build this pipeline. If anything goes wrong, as the blowout in the Gulf of Mexico, it's over, and you know that they are going to say everything is all right. The state should have stood up sooner but it didn't. Late is better than never. [LB3]

SENATOR ASHFORD: Thank you, Ernie. Any questions? Seeing none, thank you. [LB3]

ERNIE CHAMBERS: I took a long trip for a very short time. Thank you. [LB3]

SENATOR ASHFORD: I believe this is the last proponent, one more, and then we are going to go to the opponents after the next one. [LB3]

PAUL BLACKBURN: Chairman Ashford, members of the committee, my name is Paul Blackburn, it's P-a-u-l B-l-a-c-k-b-u-r-n. I live in Minneapolis, Minnesota. I'm an attorney and I represent Bold Nebraska today. I also represented the landowners in South Dakota, represented Dakota Rural Action in South Dakota in the South Dakota PUC hearing, so I have some direct, on-the-ground experience with a lot of the concerns that landowners have in this kind of process, including concerns related to eminent domain and the entire process of acquiring easements, and so I speak from that experience there. In listening to people here, the complaints are somewhat similar. I have a number of suggestions for the bill. I think that it has a useful component to it but there are other things that could be done. Probably the cheapest and easiest thing that the Legislature could do, and this shouldn't be controversial at all, is to have a law that requires that the Attorney General or Secretary of State or some agency do a handbook, have a Web page, do something that describes the eminent domain process and the land process and the rights of landowners, because, you know, that...I spent a lot of time as an attorney trying to explain that to people in South Dakota and I expect that landowners here, when they get one of the letters or the process starts, you know, they have no place to turn except to attorneys. And in the sense that, you know, they could go to attorneys but that's expensive, to some people it's intimidating, and even if they go to attorneys, having a handbook, sort of like FERC does but maybe not that complicated, just to guide for landowner rights would be extremely helpful. It would cost almost nothing. It would resolve a lot of the conflicts. It would help people express the rights they actually have now more efficiently, you know, and it would be easy and it shouldn't be controversial. So that's the easiest thing you can do. I suggest that the Legislature consider requiring that, and other states in fact do that. You know, states like California, in their power line siting process, require that the proponent send a letter to each of the affected landowners that describes their rights, and that letter is approved by the Public Utility Commission in California. So that would be a simple thing to do. Also, as Mr. Domina said earlier, the state gives away its right to take property; therefore, it can

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condition that right any way it sees fit. And there are a number of things that could happen in the judicial process for eminent domain that would be an improvement. Particularly, you know, if property is being taken for a true public benefit, a road, something that's clearly just public, a road or a school or something like that, you know, then that is very...that's part of the nature of government action. When property is being taken for a profit-making entity, for the benefit of a profit-making entity, and, yes, in every, you know, productive economic activity in theory has a profit-making component to it...or has a public interest component to it, still, there's a lot of money at stake here and the state can condition grants of eminent domain for a more private purpose, where there's more of a private component to it, where (inaudible) profit being made, to allow judges to be more generous in assessing damages and in protecting the citizens. And finally, I think there's the criminal and civil components that have been discussed already. And if you like, I can also make a few comments on oil price, I know it was discussed earlier, to try to help explain a little bit of that. And thank you for your time today. [LB3]

SENATOR ASHFORD: I do have one question and then maybe I do have a question about oil prices. But can...you indicated that the court could judicially impose sanctions, not sanctions, but civil damages for enhanced damages in a case where there's a private company involved and utilizing eminent domain as a remedy. Is that something that you have seen done? [LB3]

PAUL BLACKBURN: Different states...I'm not an expert in eminent domain law but what I understand is that different states have a slightly different standard. So in some states it would be just the value of the property; in other states they may also have incidental reduction in value of adjoining properties, that kind of element, so... [LB3]

SENATOR ASHFORD: Well, what about legislatively in defining...if you have a direct benefit to the state of the Nebraska, you have a road that goes through the state that provides transportation for farm...the farm economy, and we do that all the time here, obviously, as we build roads and we enhance roads and so forth and we use eminent domain to do that and the public purpose is direct. [LB3]

PAUL BLACKBURN: Uh-huh. [LB3]

SENATOR ASHFORD: If the public purpose is not direct but is, in effect, indirect or not as direct as building a road, I don't know how to define it, but can...in your experience, have you see legislative responses that build into the legislative response certain criteria to establish whether or not there's a public purpose on a statewide basis? [LB3]

PAUL BLACKBURN: My understanding is there is and, for example, in Montana I believe that judges can determine independently whether there's a need for a particular project, and the reason for that is that sometimes even governments, you know, city

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governments will seek to do a project that really makes no sense or to take property for incorrect reasons, you know, because they want somebody...they don't like somebody, they want somebody's property. Heaven knows in small towns that people, sometimes for completely, you know, improper reasons, will try to take somebody's property. And so judges have sort of a backstop authority, my understanding is, in Montana to confirm that there is truly a public need so that there isn't abuse of the statute. [LB3]

SENATOR ASHFORD: So are there standards in Montana statute, and we can look at it obviously, but are there standards which enhance that burden or increase that burden in cases where the benefit may not be as direct as a road or library or something like that? [LB3]

PAUL BLACKBURN: I don't believe the Montana statute does that, no. It's just to make sure that there is a public...that there is a benefit that's legitimate. [LB3]

SENATOR ASHFORD: So it sets some sort of standard. [LB3]

PAUL BLACKBURN: Yeah. And, to tell you the truth, I wasn't...I didn't...haven't read that for a while and I wasn't planning to talk about it today. I can certainly look up that standard for you again and discuss, you know, what the state of Montana has. I'm just saying that the state has discretion to treat, you know, different kinds of eminent domain grants to different entities in different ways. You know, it's completely at the state's discretion in how to do that. And I think there's some very reasonable policy, you know, arguments and positions that where a project is for a private company that's going to make a large amount of profit that they treat...that they, you know, have additional conditions on eminent domain, on the use of eminent domain, because after all for a road or a school, you know, people are taking...getting disadvantaged, but it's truly for all their neighbors and all the public good in a very immediate sense. [LB3]

SENATOR ASHFORD: Well, for example, in Nebraska I think the argument has been positioned this way, at least listening to yesterday's testimony. One is that water is a direct benefit to Nebraskans. We use...80 percent of our water comes from the Ogallala aquifer, some percentage, so that's a direct benefit to Nebraskans. [LB3]

PAUL BLACKBURN: Uh-huh. [LB3]

SENATOR ASHFORD: And if that availability to access water is disrupted, we have a special interest or a real interest in making sure that that water flows. And then there's an argument on whether or not this pipeline actually will damage that. And then on the other side we have the interest...some other interest that the pipeline serves and which may impact Nebraska, it may create jobs or it may lower oil prices, but I think the argument that I'm hearing more of is that there's more of a national interest to be independent of foreign oil and to have a pipeline in Canada rather than the Middle East.

So you have an indirect, which may be direct, but you have a...it's not as direct as water. It's not as direct as a road. And then you have a pipeline, which does serve a purpose, obviously, because we have pipelines running throughout the state, but the interest is maybe less direct. I don't know if you have... [LB3]

PAUL BLACKBURN: And I'd also add that everybody talks about the degree of public interest, but also there's the degree of private interest. And in something like a road, you know, the government owns it. It's for anybody who wants to drive on it. You know, the benefits that accrue from that road can go to a large number of people in a large number of ways and it's unrestricted, for the most part. And on the other hand, with something like an oil pipeline, there's also a very large component of private interest, which you know we are a capitalist country that makes money but, at the same time, you know, when there's such a large private component and such a large profit associated with pipelines, such a stable profit associated with pipelines too, you know, that... [LB3]

SENATOR ASHFORD: Okay. And I don't think my issue is not with them making money. My issue is trying to define...is trying to define interest and how do you legitimately do that. I guess the last question, you were going to make a comment on oil prices. I would just ask this. I mean if this may or may not have a...this pipeline may or may not have an impact on oil prices. I know today the WTI price is \$97 a barrel. We have an abundance of oil in the Midwest now so obviously the demand, it's inelastic, as one would say. The demand is not conditional on supply...or the price is not conditional on supply, at least in the Midwest, because we're in a global market. Is that what you were going to comment on? [LB3]

PAUL BLACKBURN: Uh-huh. Yes. I think that, you know, getting back to one of the questions that Senator Council made about oil prices and about how economics works, it's important to distinguish between global oil prices and regional oil prices, because they can be significantly different. So in something...so a single pipeline, for example, could increase regional prices while, in theory, decreasing local price...or international prices. But with international oil pricing the most important thing to remember is that something like this pipeline is going to be an extremely small factor in the price of global internationally and that's because, as we all know, international oil prices fluctuate wildly. And what causes it? Geopolitical, you know, actions and activities about which none of us have control and, most importantly, the global economy, so we see these huge swings in oil prices. You know, whatever effect that TransCanada's pipeline is going to have on that is going to be so lost in the noise called by geopolitics in the world economy that it, you know, nobody is going to be able to determine... [LB3]

SENATOR ASHFORD: And that doesn't... [LB3]

PAUL BLACKBURN: ...that except for in theory, and even then there's going to be a lot

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of arguments. [LB3]

SENATOR ASHFORD: And that doesn't necessarily make it a bad thing. But when you start to think about the competing interests of the state, of this state, and how we get into the issue of eminent domain and how do we draw up, this committee, if we were to do so, how would we amend the current eminent domain statutes to address these issues, you have to look at all those interests. And if there isn't...and there are experts on all sides that can say it will have an effect on price, but at least... [LB3]

PAUL BLACKBURN: Regionally it will definitely have an effect on price; internationally, in global oil prices, not so much, I mean not above the noise. And regionally, you know, the industry itself argues a lot about exactly how oil...regional oil pricing will work and, you know, all the different effects, but suffice it to say that, you know, as everybody said, there's a glut in the Midwest right now; therefore, there's lots of supply and a limited demand,... [LB3]

SENATOR ASHFORD: But prices are going up, not down, right now. [LB3]

PAUL BLACKBURN: ...limited demand, so that means that for a long time now the Midwest has cheaper fuel prices. When you go to the Coast, it's more expensive and it's largely because of... [LB3]

SENATOR ASHFORD: Well, there are other factors. There are taxes involved and... [LB3]

PAUL BLACKBURN: There are taxes involved but... [LB3]

SENATOR ASHFORD: And then California has environmental issues. [LB3]

PAUL BLACKBURN: Right. [LB3]

SENATOR ASHFORD: I get the point. [LB3]

PAUL BLACKBURN: Yeah. Yeah. [LB3]

SENATOR ASHFORD: I just...I think we're being charged to look at a statute or a law that is rather vague in looking at eminent domain as it relates to pipelines and how do you assess these different, varying issues. And I think it's a good issue, so thank you very... [LB3]

PAUL BLACKBURN: Well, I appreciate it. Thank you for... [LB3]

SENATOR ASHFORD: Yeah, Senator Council. [LB3]

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PAUL BLACKBURN: Uh-huh. [LB3]

SENATOR COUNCIL: Yes, and thank you, Mr. Blackburn, for addressing the question that I posed, but again I'm just not...I'm not quite following the logic. [LB3]

PAUL BLACKBURN: Okay. [LB3]

SENATOR COUNCIL: The Cornell professor indicated that the projected increase in gas prices in the Midwest would be due to the fact that the oil being shipped through the proposed TransCanada pipeline would be shipped to China or other ports and the resultant effect on global availability of crude would be the cause of increases in gas prices in the Midwest. You just said the exact opposite so... [LB3]

PAUL BLACKBURN: Well, you know, I'm not sure I agree with her. I've been working on oil issues for about a decade now and, you know, I'm not sure that's exactly her logic but I didn't follow it that closely when she was testifying. [LB3]

SENATOR COUNCIL: Okay. So...and what is the basis for your opinion that, despite what goes on globally, the TransCanada pipeline could have an impact on Midwest fuel prices to the extent that we could see increases? [LB3]

PAUL BLACKBURN: Right. [LB3]

SENATOR COUNCIL: What would be the cause of that? [LB3]

PAUL BLACKBURN: Right now there's a glut of crude oil in the Midwest. [LB3]

SENATOR COUNCIL: Okay. Uh-huh. [LB3]

PAUL BLACKBURN: It's hard to move that oil out of the Midwest and that's the primary...one of the primary reasons why TransCanada wants to build a pipeline from Cushing, Oklahoma, to the Gulf Coast, because that allows other markets to buy that oil and reduces the glut. When there's a glut of oil, like a glut of any supply, then demand...and a fixed demand, you know, increased supply, fixed demand means that the price will be suppressed on that oil. If you have many buyers for the same product, the price will go up. The oil industry right now has a limited pool of buyers in the Midwest for a large amount of its oil, so therefore the oil prices in the Midwest are lower for that reason. The industry is very interested, including TransCanada, in increasing the ability to export oil from the Midwest of the United States. Once that happens then the prices for oil in the Midwest will increase because we'll be competing with the Gulf Coast for that oil essentially. Does that make sense? I mean if you've got a glut now, we get export capacity out of the Midwest then there's no longer a glut here so there's not

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excess supplies of oil, so people are going to have to pay more because they're competing with the Gulf Coast for that oil. [LB3]

SENATOR COUNCIL: Right. Okay. It makes sense. [LB3]

PAUL BLACKBURN: That's... [LB3]

SENATOR COUNCIL: I mean that makes...when you have... [LB3]

PAUL BLACKBURN: And you should ask TransCanada because that's not my theory. That's the way the whole industry thinks of it. [LB3]

SENATOR COUNCIL: No, but it makes a little more sense than what was said this morning. And essentially what you're saying is now you have a market for this abundance of crude oil and once you develop this new market for...you begin to then compete against that new market. [LB3]

PAUL BLACKBURN: Yes. Yes, ma'am. [LB3]

SENATOR COUNCIL: That makes sense. What was said this morning made no sense, so I appreciate you trying to enlighten me in that regard, I mean, and I have my suggestions for what could be done, and that would be build some refineries in the Midwest. But thank you. [LB3]

SENATOR ASHFORD: Yeah, if I might, if I might just... [LB3]

PAUL BLACKBURN: Uh-huh. [LB3]

SENATOR ASHFORD: ...but that price that does fluctuate, and it fluctuates every day, whether it's the Brent price or the WTI price and the price at the pump, those things are all...those prices are all fluctuating on a daily basis. The price at the pump may not change quite as quickly but it does reflect the price, WTI price and the Brent price. [LB3]

PAUL BLACKBURN: Uh-huh. [LB3]

SENATOR ASHFORD: So if the...I guess my question is, in trying to assess or look at the interests of the state of Nebraska here, we have a water interest, which I think no one could dispute, and then we have an interest in keeping oil prices fair and reasonable to our Nebraska citizens. And this pipeline may or may not...and I don't think that TransCanada is even claiming this, that those prices, the price to Nebraska citizens may or may not go up or down depending upon this pipeline being built. There are other factors that go into that, that price. [LB3]

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PAUL BLACKBURN: It's the price relative to other regions. And remember also, my understanding is that oil is bought and sold at particular locations and Cushing is one of those. It's why the Cushing price of oil, the West Texas Intermediate price, which is priced at certain valves in Cushing essentially, that...that those...that that price is then additional things that are added on to the price of crude oil at that location. For example, the cost of using a pipeline is added on to the price that you buy that at Cushing, the cost of shipping it to your refinery, basically; the cost of refining it, including the environmental costs of refining or other sorts of costs. [LB3]

SENATOR ASHFORD: Okay. [LB3]

PAUL BLACKBURN: And so that there are a lot of regional factors that do affect the price that Midwesterners will pay. You know, truth be told, if we wanted to keep oil prices as low as possible in the Midwest, then we'd maintain a glut of oil in the Midwest because prices would be suppressed here over the long term relative to other parts of the country, you know. [LB3]

SENATOR ASHFORD: Okay. [LB3]

PAUL BLACKBURN: And if the United States wants to maintain, you know, more secure energy supplies and lower prices for the entire country, then restricting tar sands exports to China by not having, well, you can't control this, but not having Canadians build a pipeline to the Pacific Coast would also, according to like the DOE EnSys report, would tend to keep oil coming into the United States, limit the market for all that oil. We'd have cheaper, you know, and larger supplies of oil if a pipeline isn't built to China. You know, that would seem to be more in the national interest than a lot of other things. [LB3]

SENATOR ASHFORD: Okay. [LB3]

PAUL BLACKBURN: Anyway... [LB3]

SENATOR ASHFORD: Thank you. Thank you, Paul. I appreciate your... [LB3]

PAUL BLACKBURN: Yeah. I'd love to talk about it all day but I know... [LB3]

SENATOR ASHFORD: No, I know, but that's fine. Thank you very much. [LB3]

PAUL BLACKBURN: Thank you very much. [LB3]

SENATOR ASHFORD: I appreciate you clarifying that point. I think we're done with the pro. One more, one more, then we'll move to the opponents. [LB3]

BEN GOTSCHALL: (Exhibits 12 and 13) Thank you, Senator Ashford and members of the Judiciary Committee. My name is Ben Gotschall, that's B-e-n G-o-t-s-c-h-a-l-l. Though I currently live in Lincoln, I consider Lincoln to be my second home. I grew up in the Sandhills of Nebraska in southwest Holt County, southwest of Atkinson. My family still has a ranch there. I still have a cattle business there and I try to spend as much time there as possible. But my work on this pipeline issue kind of requires that I live here. I wasn't planning to testify on some of the things that I'm going to bring up. I will submit for the record some written comments that I won't elaborate upon. I'll just submit those for the record for you to look at. I don't know how many copies you need. I have several, but I'll just set those there. If you need more I might be able to spare a couple more. I do want to echo some of the things that were said earlier by Lara Skinner, not in regards to gas prices, so I'm not going to try to open that can of worms, but in regards to her jobs claims, which I think was probably her strongest argument. I want to also submit for the record "TransCanada's Statement on Forward-Looking Information," which if it doesn't accompany all of their statements on jobs claims, it accompanies all that I've seen, and I've tried to read them all. And so I would encourage you, when you are listening to comments about jobs numbers today, if it happens again, or later, to ask yourself if this may...if this information that's being presented to you may be forward-looking information, particularly because, and I've highlighted the area that I'm going to focus on here, the last paragraph in that statement that says, "Readers are cautioned not to place undue reliance on this forward-looking information, which is given as of the date it is expressed in this news release or otherwise, and to not use future-oriented information or financial outlooks for anything other than their intended purpose. TransCanada undertakes no obligation to update publicly or revise any forward-looking information, whether as a result of new information, future events or otherwise, except as required by law." So regarding jobs claims made by TransCanada that are forward-looking information, one of the senators, I don't know if it was Senator Lathrop or...I can't remember who it was, asked, I was watching it on the stream so...asked what's the difference between TransCanada's jobs numbers and Cornell University's numbers. Well, I would say one major difference is that most of TransCanada's jobs numbers are accompanied by this statement, basically a disclaimer saying that they don't have to clarify the truth or validity of any of those statements based on any new research that may have come about by themselves or independent or federal or otherwise. So I'd say that's a major difference between those jobs numbers, and I think that there's been some significant research done and some significant findings that would call into question a lot of TransCanada's jobs claims. And so I just ask you to consider that. [LB3]

SENATOR ASHFORD: Thank you. I think we're done. Do we have any questions of this gentleman? I don't see any. Thank you. [LB3]

BEN GOTSCHALL: All right. Thank you. [LB3]

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SENATOR ASHFORD: Let's go to the opponents to LB3. Do we have neutral testifiers today? Okay, so the opponents are...good afternoon. [LB3]

ROBERT JONES: (Exhibits 14-16) Good afternoon. Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Robert Jones, J-o-n-e-s, representing TransCanada Keystone Pipeline LP, a U.S. company headquartered in Houston, Texas, with U.S. field operations here in Omaha, Nebraska. I'm responsible for the implementation and development of the Keystone pipeline system. Prior to construction of the Keystone pipeline in 2009, Keystone reached voluntary easements for more than 98 percent of Nebraska landowners. We are proud of this record. And on Keystone XL, we have reached voluntary agreements with 91 percent of Nebraska landowners. We have reached agreement with 95 percent of landowners in the Sandhills. We continue to work towards resolution of the remaining issues with the others. TransCanada's policy is to treat all landowners with respect and fairness. We have easements with more than 60,000 landowners across North America. Our easement acquisition offers are based on market value of the parcel. The competition is paid for an easement that allows us to construct and operate the pipeline below ground, across the landowner's property, while the landowner retains ownership of the property and is able to farm and run livestock across the easement area. We also offer compensation for the temporary use of additional land for construction. In addition to these payments, we offer compensation for loss of land use based on the value of the crops that would have been grown on or the value of the land for grazing during time it is impacted by construction and reclamation activities. Our offer of payment for lost productivity includes appropriate indirect effects, such as the difference in productive value for a quarter that may not be able to be irrigated during construction or the need to provide a temporary supply of water for livestock when construction makes the normal water supply unavailable. Restoration work following construction of the initial Keystone pipeline has been very successful and landowners are seeing land return to full productivity, as Keystone anticipated. Nevertheless, we remain responsible for any impacts caused by the pipeline going forward, including any reduced productivity. Easements acquired through voluntary negotiations reflect the strength of our effort to compensate landowners fairly, to treat landowners with respect, and to work through concerns and issues. While maintaining access to the right of domain is critically important to linear projects that serve the public interest, our policy, backed by our track record, is to use eminent domain statutes only as a last resort. Where good faith efforts to achieve amicable resolution of easement negotiations have not succeeded, eminent domain provides a necessary judicial process to ensure fair compensation. I'd like to introduce two substantive comments to your bill. One, like other bills in the special session, as a company this bill presents legal concerns that is specially targeted at Keystone and it is vague regarding... [LB3]

SENATOR ASHFORD: Here's what we're going to do. (Laugh) We're going to ask you a couple questions so let's stop there. Does anyone have any questions at this point?

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Yes, Senator Coash. [LB3]

SENATOR COASH: Thank you, Senator Ashford. Mr. Jones, have you...in my mind, there's a difference between communicating to a property owner that eminent domain is a legal avenue that is able to be exercised and communicating to that landowner you are now exercising that process. I think you, in your testimony, referred to it as a judicial process... [LB3]

ROBERT JONES: Uh-huh. [LB3]

SENATOR COASH: ...because there's... [LB3]

ROBERT JONES: Yeah. [LB3]

SENATOR COASH: ...which is why it's, I assume, this committee, because we look at those things. So with regard to this project, obviously we've gotten copies of letters that indicate eminent domain as an option as to occur between TransCanada and the property owner, but have you exercised eminent domain with any property owner in the state? [LB3]

ROBERT JONES: For the Keystone XL project the answer is no; for the Keystone project the answer is yes. Senator, can I walk through the process? Would that be helpful if I walk through how we acquire easements? [LB3]

SENATOR COASH: I'll leave that to my Chair. [LB3]

SENATOR ASHFORD: Sure. Try to keep it... [LB3]

ROBERT JONES: Sure. It's a few step process. [LB3]

SENATOR ASHFORD: ...straight at the issue. Okay. [LB3]

ROBERT JONES: Okay. First of all you need to hire land agents. They're specialized in their field. They have experience with railways, pipe, hydro lines, power lines, and so when you have these land agents with this experience they need to then, in Nebraska, have a real estate license. And then we give them TransCanada's values: responsibility, integrity, collaboration, and innovation. Okay, so they get trained in those values and we instruct them to treat our landowners with fairness and respect. They go out and approach the various landowners and we have to do that as part of the NEPA process. You have to have to consult them prior to building the pipeline. I can tell you that every time that I've been involved in any one of these things the question of eminent domain is brought up within the first hour. You can't sit down, have a cup of coffee and explain the process and then not come up with the issue of whether or not...so it is totally

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inappropriate for us not to say that we don't have the right of eminent domain. We have the right in Nebraska under state statute. Pipelines, common carrier pipelines like this one, do have that right and we heard that this morning clearly in testimony. Under NEPA, you know, we must show that we have consulted with our stakeholders, and that includes not only just landowners but we have public open houses, and so because if there becomes new information that we need to move the pipeline route prior to our FEIS, then there may be other landowners that are impacted as well. Other landowners just want to know what's going on. Commissioners want to know what needs...they need to be able to answer questions and so that's why we have all these open houses. And our land agents are always available. We have Web sites, we have 1-800 numbers, and that's how we communicate with these folks. So before that letter goes out, there are numerous touches with, either by phone or in person or in public open meetings, and, by the way, we document all those touches so we have that information for you. I hope that's helpful. [LB3]

SENATOR ASHFORD: Yes, Senator Harr. I'm sorry, Senator Coash, do you...? Senator Harr, then Senator Council. [LB3]

SENATOR HARR: Thank you, Senator Ashford. Now I listened to your speech and, except for the last minute where I heard you object to special legislation, although I see people from Black Hills Energy here, so I'm thinking they're going to say this applies to them, too, so it may not be special legislation, but let's just put that aside. The actual wording in the bill, what do you object to? [LB3]

ROBERT JONES: What I never got to finish was... [LB3]

SENATOR ASHFORD: Well, I was going to ask you that, (laughter) what you didn't get to finish. [LB3]

ROBERT JONES: I was just getting to the gist of your question so if I...literally, it's two sentences. [LB3]

SENATOR ASHFORD: Go ahead and go into that. I mean if that answers Senator Harr's question, feel free to... [LB3]

ROBERT JONES: Thank you. Like other bills in this session, as a company this bill presents legal concerns. We think it's specifically targeted to Keystone and is vague regarding the prerequisites that are required to be met. I will let legal counsel address these concerns because I'm a professional pipeline engineer. TransCanada cannot...what I do know though is, as that engineer and as the lead engineer for this project, I cannot start construction until we have all our required permits and they're in hand. So until that happens, even if I have the easement, I can't, whether they're voluntary or through eminent domain, I can't start construction. And the landowners that

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I have given the payment to, they get to keep it regardless of whether or not the project is constructed or not. So your specific question I will let my legal counsel direct that one on the wording because I'm not... [LB3]

SENATOR HARR: So then let me ask you, you're against this legislation because you think it's special legislation and that's it. [LB3]

ROBERT JONES: And I'm against any legislation that will cause a delay to this project. After three years of incredible environmental review, we have provided...we have followed every state's requirements, the national requirements. We have satisfied each state and federal, including Nebraska, and we have a final environmental impact statement. [LB3]

SENATOR HARR: And how would this bill unnecessarily delay your right of eminent domain? [LB3]

ROBERT JONES: Because it would suggest that we would have to wait until we have all the permits, and that's ambiguous, in my mind. So we need to get going as soon as we get the permit because of all these delays. We have the contracts in place. We have the right of way selected. We are down to the last five landowners in the Sandhills and I can't remember how many in the state but not that many, and so we need to proceed quickly. And most of those landowners have told us, and we respect this, but don't come talk to us until you get your Presidential Permit. So... [LB3]

SENATOR HARR: Okay. And to the best of your knowledge, have you begun eminent domain proceedings against any of these final five landholders? [LB3]

ROBERT JONES: No. [LB3]

SENATOR HARR: And why have you not? [LB3]

ROBERT JONES: Because we have time. We are still...we still have time within Nebraska state statutes to go through the process before construction is scheduled to start in the spring. [LB3]

SENATOR HARR: And how long does an eminent domain procedure take? [LB3]

ROBERT JONES: Again, that would best be answered by my legal counsel. [LB3]

SENATOR HARR: Okay. [LB3]

ROBERT JONES: I don't know. [LB3]

SENATOR HARR: Thank you very much. I appreciate your time. [LB3]

ROBERT JONES: You bet. [LB3]

SENATOR ASHFORD: Senator Council is next. [LB3]

SENATOR COUNCIL: And thank you, Mr. Jones, for appearing today. I have a couple of questions. There's a lot of talk about permit, and I guess that's going to be a question that's going to be ultimately decided through some form of legislation. But when we talk about LB3 potentially being vague or ambiguous when it speaks to permit, I think the assumption, and I don't want to speak out of order for my colleague Senator Avery, but I assume he's talking about the permitting that's encompassed in another piece of proposed legislation. But my question is during this three-year process have there been other state of Nebraska approvals or permits that TransCanada has had to obtain or secure in order to proceed with this project? [LB3]

ROBERT JONES: Because we are a common carrier pipeline and we provide this utility function that a pipeline shall perform a utility role and, therefore, they're in the common good, and as a common carrier pipeline we have the right of eminent domain and we also have the right then to proceed with the project. So there isn't a formal process but through NEPA, the National Environmental Policy Act, through trying to (inaudible) the FEIS, various Nebraska state agencies participated in the NEPA process. And so we got the permission from the state through the NEPA process. [LB3]

SENATOR COUNCIL: Okay. And I guess that's what I'm trying to understand. I'm trying to understand because when we're talking about the language of a bill and it says have the appropriate permit, I mean that could be various permits. Now I've heard that the Nebraska Department of Environmental Quality has been involved in this process. [LB3]

ROBERT JONES: That's correct. [LB3]

SENATOR COUNCIL: Did they have to have...did they have to provide some kind of sign-off on any portion of the application process? [LB3]

ROBERT JONES: No, not that I'm aware of, not a formal sign-off. [LB3]

SENATOR COUNCIL: Okay. So if they did, they've...and that's what I'm trying to understand, what are those processes. And you may not be in a position where you could answer that question. But arguably, if there was some action, if there was some requirement for you to present some plan to NDEQ and get their agreement to it or failure to get an objection from them goes toward the ultimate State Department approval process. [LB3]

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ROBERT JONES: Right. And that's exactly what happened. [LB3]

SENATOR COUNCIL: So arguably, that could be considered a permit. I mean someone can say that that's a permit. [LB3]

ROBERT JONES: Well, in fact, Senator, we would say that that is the process. That is the routing process here in Nebraska is these agencies did participate, none of them objected to the State Department who issued the final environmental impact statement which addresses the routing of the pipeline. And so you're right, by...and if they did object then that would have been included in the FEIS, and so that's where it's being captured. [LB3]

SENATOR COUNCIL: Okay. Now the other question I have... [LB3]

ROBERT JONES: And by the way, there's more than DEQ. There were like numerous state agencies that participated in the process. [LB3]

SENATOR COUNCIL: My other question goes to this debate that ensued after the professor from Cornell on the oil and gas prices, and I don't want to belabor that point but I do want, for the record, to acknowledge that at least one of the viewers then e-mailed me some handouts regarding gas prices, and I'm sorry I didn't jot your name down but thank you for such a quick response. But I'm going to read to you, Mr. Jones, from...I guess this is published by Global Warming Solutions and it has an indication of the National Wildlife Federation may be involved as well. But the heading is "Manipulating Supply to Raise U.S. Gas Prices," and I'm going to read a section to you verbatim and ask you to comment on the voracity of this statement: "TransCanada actually wants to build the additional Keystone XL pipeline in order to reroute Canadian tar sands crude around Midwestern refineries to the Gulf Coast. As stated in its application documents to the Canadian government, bypassing these refineries will allow the company to withhold supply from the American refineries in the Midwest until they are willing to pay the same higher prices for Canadian heavy crude as for imported crude." Is there any truth to that statement? [LB3]

ROBERT JONES: No, there isn't, but I think what they are doing is they're taking out of context the net back discussion that happened indicating regulatory prices. So there was quite a bit of debate on the national interest also in Canada for exporting oil out of the country. And Mr. Blackburn I would say was partially right, in my opinion, and as a lawyer I think he actually clearly said that, you know, he understood but, you know, he wasn't an expert in pricing. But what this discussion is, and let me describe, because we've heard it before, why is WTI at \$95 and Brent is \$120? There is a pipeline restriction from Cushing to the Gulf Coast and the cost that...the net back, that delta, is because of the extra transportation costs. So the glut in Cushing is moving but it's moving on the next marginal cost, which is railway and trucks. And so you look at that

spread and that's how much it costs to move it on railways and trucks to get it to market, so it's still moving. Believe me, it's not sitting there growing and growing at Cushing. It's just that it is a bottleneck because the efficient flow of energy isn't occurring because there's a bottleneck, there's a lack of pipeline capacity. Now if you go back into the Dakotas, and what's also lost here is this...I must remind everybody that we're going to move American oil from not only Cushing but also we're going to move American oil from Montana and North Dakota, and there is huge discounts going on there too. In fact, there's huge discounts going here in Nebraska. The western part of the state where we produce oil is also not getting \$95 or even \$120 a barrel. They're getting significantly less, and that, again, is because of the transportation bottleneck. So now if you're in North Dakota, you got to put it on a railcar and get it all the way to market, and so right now that's why the producers in the Midwest, in Alberta are saying, look, we get this pipeline, our crude oil prices will increase, and that is the context of that statement about crude oil prices increasing for producers. But refiners, of course, set it on the world price so our gasoline price, you know, they can buy oil from...and they do, they buy it from Saudi Arabia, Mexico, Venezuela right now, and so that's set on a world price or marked off Brent or Arabian light or wherever that price may be. And because of that then the gasoline price is more reflective of a world price. Now, (laugh) what does this pipeline have to do with pricing? You know, if you bring a million-barrel pipeline into the United States, you reduce our reliability of foreign sources of oil. And that is where the marketers price. There's a volatility price. I mean the actual price to produce a barrel of oil and turn it into gasoline is higher now because of the instability of the world markets, and so how do you reduce that volatility? You reduce that volatility by having more domestic supply, so you're not relying on OPEC, and you reduce demand. Well, you know, the demand question is, as much as we're trying, all of us as a nation, to reduce our footprint on our environment, it's going to stay flat. I mean the energy administration shows that till 2035 basically that remain flat. But what we can change is our domestic and continental energy oil supply and by doing that you reduce the volatility, and the volatility is what's going to change. I don't think anybody can predict a 5 cents or 10 cents price change because there are, as Mr. Blackburn said, so many changes. But I would suggest overall, if we can reduce that volatility, you will lower the price of fuel here in Nebraska. [LB3]

SENATOR COUNCIL: Okay. And my final question goes to the concern that I see and hear underlying this piece of legislation and it suggests that, despite your opening comments about your land agents and how they're trained, that there is coercion and threats and duress used in your process. I mean it's great to say that 95 percent of the landowners who would be affected by the pipeline in Nebraska have signed voluntary agreements. I think the undercurrent issue is, how did you achieve those voluntary agreements? I mean it's one thing to say you just walked in, made the offer, the person signed. That's a voluntary agreement. It's another thing to say I browbeat this person and threatened eminent domain and told them, one of the earlier testifiers said, misled them into believing that they could come out of eminent domain with nothing, which

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everybody in this room knows to be untrue. So I mean these land agents, where do they come from? [LB3]

ROBERT JONES: Well, you know, it's a specialized field, so they come from across America. Some are local but most I would suggest aren't from Nebraska,... [LB3]

SENATOR COUNCIL: Okay. [LB3]

ROBERT JONES: ...because there's not a lot of 36-inch crude oil pipelines coming through Nebraska. That being said, I really believe--and I empathize with them--I believe that the delay is causing this frustration. I mean, we wouldn't have approached them four years ago if we thought we were going to get the permit today. We would have approached them two years. When we started this process, we were expecting an 18-month to 24-month process. But this project has been delayed twice, and I think that is really the fundamental core behind the frustration, and I empathize with that. [LB3]

SENATOR COUNCIL: Okay. [LB3]

SENATOR ASHFORD: Yes, Senator Coash. [LB3]

SENATOR COASH: Thank you. I want to ask you about your process of negotiating with landowners. Within that process, do you ever provide the landowner with, "Here are your rights, here's what your rights are, here's what our rights are under the law," as the framework for your negotiation? [LB3]

ROBERT JONES: I would suggest that that's probably not...like the handbook that Mr. Blackburn talked about? No, I would suggest that's not the case. What we typically do is we give them some information about the purpose and need; you know, why it's in the public good, why it's in the national interest. We give them an example of an easement. We don't discourage them from seeking legal counsel. A fair number of the landowners in Nebraska actually joined a group called Landowners for Fairness, and they've collectively worked together. It was a very collaborative process, very innovative, and it was very successful. That's how come we got to where we are today. [LB3]

SENATOR COASH: Are you...I don't want to put you on the spot here, but are you opposed to providing that kind of information in the future to landowners just so that they understand their rights and...? [LB3]

ROBERT JONES: I think clarity is always good. I mean, I think that's why it's so important to understand our rights, too, because I actually think the worse thing to do is to not say anything about it and then when you need it you say, okay, I have the right of eminent domain; you have 30 days. I mean, to me, that's bait and switch. You know, that's not fair. [LB3]

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SENATOR COASH: Okay, all right. Thank you. [LB3]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB3]

SENATOR LATHROP: I have a couple of questions. Did you just say that you expected this process to take 18 to 24 months? [LB3]

ROBERT JONES: That's correct. The first one, the first Keystone we were around 24 months. [LB3]

SENATOR LATHROP: Did that include the environmental impact study? [LB3]

ROBERT JONES: Yes. [LB3]

SENATOR LATHROP: So while the process has taken three years, when you started this you thought you could get through the environmental impact study within a year and a half to two. [LB3]

ROBERT JONES: That's correct. [LB3]

SENATOR LATHROP: Do you have an estimate on what the length of time would be to make a change to the environmental impact study to accommodate some reroute? [LB3]

ROBERT JONES: It's pretty hard to figure that out now. I mean if we would have thought 18 to 24 months for before and now we're in month 39, we were told by the State Department it will be month 40 before they make a decision, a supplement...I just...I am really at a loss of what that time would be. [LB3]

SENATOR LATHROP: You don't know if it's going to...if it would take, for example, if we said reroute around Holt County, you don't know if that would take 12 months to complete the environmental impact study or longer. [LB3]

ROBERT JONES: No. That really would be up to the scope. There's so many moving parts. You know, what is the scope of that? What are they looking for? I mean I think if you can...if the State Department could get that down to an extremely narrow, saying, hey, we take absolutely everything, you just got to go notify the stakeholders or something, then obviously it's down there. But they're going to make sure that it can withstand a legal challenge. And so up to, like I said, because of those concerns they've had up to this point, that's why this process has virtually doubled. [LB3]

SENATOR LATHROP: But it could be as few as 12 months. [LB3]

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ROBERT JONES: I don't...that's totally speculative. [LB3]

SENATOR LATHROP: All right. You've suggested that there were state agencies that participated in this process. What was the participation of the state of Nebraska in the process? [LB3]

ROBERT JONES: I have it written down. Give me just a minute to try and find it because I knew that that might be a question. Here we go. The Nebraska state agencies and offices consulted in the routing and review process as part of the Keystone XL NEPA process: Nebraska Department of Natural Resources; Nebraska Department of Environmental Quality; Nebraska Game and Parks Commission; Nebraska State Historical Society; the Natural Resources Conservation Service, specifically Holt County; Nebraska Department of Roads; Natural Resources Conservation Services easement programs in Lincoln; the Nebraska natural resources districts; the NRCS in York County; Nebraska Department of Agriculture; the Saline County Extension Service; the Nebraska Board of Education; Wheeler County Weed Control Authority and other weed boards. [LB3]

SENATOR LATHROP: Did any of these...was their role...can you tell us generally what their role is... [LB3]

ROBERT JONES: Their role would have been... [LB3]

SENATOR LATHROP: ...if you can group them all together? [LB3]

ROBERT JONES: Absolutely. Very high level, very general because different managers, either with...either the consultants for the Department of State or within TransCanada would have solicited their information and asked for some feedback. [LB3]

SENATOR LATHROP: But were any of these agencies you just described asked to bless this project? [LB3]

ROBERT JONES: No. [LB3]

SENATOR LATHROP: So you didn't get a, yeah, it's okay or, no, this route is not okay with any one of those groups that you've just listed. [LB3]

ROBERT JONES: No. They were asked to provide information and...now I can't speak for the State Department and their consultants. [LB3]

SENATOR LATHROP: All right. Did you or to your knowledge did anybody from

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TransCanada have meetings with people from the state of Nebraska that did say this route was okay? [LB3]

ROBERT JONES: I can't comment on that. I don't know that. [LB3]

SENATOR LATHROP: So to this point you had no input in terms of having any official from the state of Nebraska say this route was okay or not okay to this point in time. [LB3]

ROBERT JONES: I don't believe the question was ever posed like that. I mean they were allowed to comment on...they were allowed...everybody was allowed to comment on the draft environmental impact statement. So not only were the agencies encouraged to provide comments to the State Department but so were all the Nebraskans. And so I guess the answer is, yes, they did because they were allowed to provide that, you know, do you prefer this route (inaudible). And I believe they got a lot of letters that said they didn't. But I think they also got a lot of letters saying they did. And so but when you say... [LB3]

SENATOR LATHROP: What do you mean did and didn't? [LB3]

ROBERT JONES: Well, because the State Department accepted letters from agencies, individuals, landowners, and so they would have had thousands of letters from various participants saying they either approved the route or didn't approve it. [LB3]

SENATOR LATHROP: But to this point in time no one representing the state of Nebraska in their official capacity in meetings with you or anybody else from TransCanada has said this route is okay with us. [LB3]

ROBERT JONES: You know, they may have but it wouldn't be an official part. When I say official part, it's part of the process for them to comment. I just can't tell you which official that would have been because they would have had the opportunity in the process to do that and they did. [LB3]

SENATOR LATHROP: Okay. That's all the questions I have. [LB3]

SENATOR ASHFORD: Yes, Senator Larson. [LB3]

SENATOR LARSON: Thank you, Mr. Jones. I just have a quick question. Let's say the state of Nebraska can't decide where it comes into our state and it comes out at Keya Paha County where it's supposed to now and, assuming that one of the other bills passes, we say that it has to go over to the existing corridor over in Cedar County. Would there just have to be a new EIS study done from where it came in to where it's going to meet up with the first corridor or would you have to do a completely new EIS

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study of the existing corridor? Do you get the question that I'm asking? Is it just from point A, where it comes in, to point B, where it hits the new corridor, is my first question? [LB3]

ROBERT JONES: The answer is, no, absolutely not. It has to be...the entire impact would have to be redone. [LB3]

SENATOR LARSON: The entire impact. [LB3]

ROBERT JONES: You bet. [LB3]

SENATOR LARSON: So even though you've done it on one existing corridor, you'd have to do another one, even though you have a pipeline. And then my second question is--I have a lot of landowners in Cedar County as well--would they...would you have to widen the existing corridor and pay them more easements or do you still own the easement rights for their corridor from the first one? And would you have to, like, repurchase the easement or widen the easement or do you own the easements to put a pipeline into that corridor now? [LB3]

ROBERT JONES: Yeah, very good question. Yes, we have to go back, even if they have an easement, even if the easement says multiline rights, you need to go back and renegotiate temporary use of the land if you had multiline rights. By the way, in most cases we don't and so, yes, you'd also have to get another easement and temporary use for construction. [LB3]

SENATOR LARSON: Temporary use. Okay. Those were my questions. Thank you. [LB3]

ROBERT JONES: Thank you. [LB3]

SENATOR ASHFORD: Yes, Senator Harr. [LB3]

SENATOR HARR: Thank you, Senator Ashford. And thank you, Mr. Jones. Earlier last month, Senator Dubas, Speaker Flood, and Senator Langemeier met with TransCanadian officials. And in response, I believe, and I will butcher his name, Alex... [LB3]

ROBERT JONES: Pourbaix. [LB3]

SENATOR HARR: ...Pourbaix on October 18 wrote a letter to the lawmakers with an offer, among those, a \$100 million bond, putting concrete around sensitive areas. I think you're familiar with the letter, correct? [LB3]

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ROBERT JONES: Yes, I was actually part of the discussions in Norfolk. [LB3]

SENATOR HARR: Okay. To the best of your knowledge, is anyone from the...are you working with anyone with the state of Nebraska to...on that agreement to put pen to paper? [LB3]

ROBERT JONES: I think absolutely not. Once the Governor called special session I think our efforts in Norfolk were really put into question, so nothing has happened since. [LB3]

SENATOR HARR: Nothing. And has your offer been withdrawn? [LB3]

ROBERT JONES: No. [LB3]

SENATOR HARR: But no one from the Governor's Office or anyone else has contacted you? [LB3]

ROBERT JONES: Correct. [LB3]

SENATOR HARR: Okay. Thank you. [LB3]

SENATOR ASHFORD: And just for the record, the two...the delays were federal permitting delays? [LB3]

ROBERT JONES: That's correct, yes. [LB3]

SENATOR ASHFORD: And when did those occur... [LB3]

ROBERT JONES: Well, the real...I... [LB3]

SENATOR ASHFORD: ...or generally? [LB3]

ROBERT JONES: Generally, the announcement of a supplemental drafting (inaudible) statement I think was about 18 months ago and then we never really knew about the timing, so, you know, you kind of expect them to happen within a few months and, you know, it was quite a bit longer than that, so... [LB3]

SENATOR ASHFORD: Okay. And the five landowners that have yet to reach an agreement, are those...they're located in Nebraska for this pipeline route, correct? [LB3]

ROBERT JONES: That's specific to the Sandhills. And we group them so it would be a family of landowners that are negotiating as one. And so, for example, there's five families that we're negotiating... [LB3]

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SENATOR ASHFORD: And that's it, I mean essentially, in Nebraska? [LB3]

ROBERT JONES: In the Sandhills, that's correct. [LB3]

SENATOR ASHFORD: Otherwise, you have reached agreement on...with everyone else? [LB3]

ROBERT JONES: Only...I'm only talking about the Sandhills region. [LB3]

SENATOR ASHFORD: Okay. [LB3]

ROBERT JONES: Yeah. No, we've only got 92 percent, 91 percent. So we have 92 percent in the entire pipeline routing from Montana to Texas. We have 91... [LB3]

SENATOR ASHFORD: Okay. But in Nebraska... [LB3]

ROBERT JONES: ...91 percent in Nebraska. [LB3]

SENATOR ASHFORD: Ninety-one in Nebraska, okay, without...you don't necessarily have to tell me how many people that is but... [LB3]

ROBERT JONES: I actually don't know how many people that is. [LB3]

SENATOR ASHFORD: And in any event, if you were to receive a permit on December 1 or whatever to proceed, you would...what would you do vis-a-vis those landowners? Would you proceed or would you continue to... [LB3]

ROBERT JONES: No, because...yeah, that's a great question, because what happens, let's...so on November 25 is the earliest the President...that we could be issued what they call a record of decision. That's still not a Presidential Permit. It's a record of decision. Then there's a statutory 15-day period for agencies to have one more look at the record of decision. We, though, at that time would start to approach the landowners. Now many of them said don't talk to us until they get a Presidential Permit. I mean we would still give them a phone call and say, listen, we've got a record of decision, can we start talking? For sure we'll do that once we receive a Presidential Permit. And then if we still can't, because most of them I really believe will negotiate with us, they just don't believe we're going to get the permit. So if you don't believe we're going to get the permit, you just don't want to talk to us. And then we'll start talking. If we recognize, and I think it will be very quickly, whether or not we can come to an agreement because we've done so many of them... [LB3]

SENATOR ASHFORD: But it's not unusual to...I mean that can happen where someone

doesn't agree and you have to proceed legally to obtain... [LB3]

ROBERT JONES: Yeah. [LB3]

SENATOR ASHFORD: ...a just compensation award and so forth and so on. Is that...? [LB3]

ROBERT JONES: And some of them you have to do it because there's problems with the state...the estate, like so somebody has passed away or there's a dispute about who actually owns the property. And so many of those owners say, please, you have to take us through the judicial process. [LB3]

SENATOR ASHFORD: Okay. Senator Council. [LB3]

SENATOR COUNCIL: Thank you. Senator Harr's question prompted a question as well. On the environmental impact statement and the route, did TransCanada submit only one route to the government for purposes of determining which was going to be accepted or approved? Was the route through the Sandhills the only route considered for this pipeline? [LB3]

ROBERT JONES: No. In fact it is the preferred route. You have to have a preferred route. And then there was 14 alternates considered, 8 specifically to the state of Nebraska: one of them following the existing route where Keystone...the first Keystone pipeline went through; the other one across, paralleling the Platte pipeline, which is a pipeline that moves the same type of oil since...and was built in the '50s and goes across the aquifer and also through some Sandhills. So we looked at those and those are two specific ones that have gotten a lot of attention, but there's also a route that we considered that missed the entire state of Nebraska as well. And each one of those routes would have impacted more farmland, more agricultural land, more wetlands, more forested lands. And so the proposed route was deemed to be the environmentally best route. [LB3]

SENATOR COUNCIL: Okay. So the federal agency that considered the environmental impacts said, okay, you have a preferred route. I mean they could have very easily said, well, TransCanada prefers this route but we believe route B is the more environmentally protective route and you either go forward with that route or you abandon your project. Correct? [LB3]

ROBERT JONES: Right. Well, no, they would have encouraged us. They would have said that route 2 or 3 or, you know, 11, you know, that's the preferred route. And so then we would have changed our preferred route because the science would have told us. We would have recognized it as well. But because the science didn't recognize that...and you've got to look at it from a national perspective. We're talking about coming

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in from the border in Montana to going to the refineries in the Gulf Coast. And you're trying to use efficient use of existing linear infrastructure. And so when they look at the overall environmental process, it's not just what's happening here in the state of Nebraska. It's also what's happening in the other states, what other linear infrastructure. So, for example, in the first pipeline, you know, why does it go along the eastern side, and it...because it needed to get to...it parallels the Platte pipeline right into Wood River, St. Louis. And so when you look at the environmental impact, they wanted to make sure we took advantage of that existing corridor. And so that's why we came down and then at Steele City we head east and parallel the Platte pipeline in terms... [LB3]

SENATOR COUNCIL: Okay. But that same interest doesn't exist with regard to this crude oil pipeline coming down the existing eastern corridor. [LB3]

ROBERT JONES: Right. The fix, this time, the fixed point is still Steele City because when we built Phase II, of course, that really was the first phase of XL so, you know, that's a fixed point. And the point coming from Canada to the United States is a fixed point, so then you try and find, through Montana, South Dakota, Nebraska, the most environmentally responsible route, efficient route to go from those two points. [LB3]

SENATOR COUNCIL: Thank you. [LB3]

ROBERT JONES: And by the way, now we changed theirs. We had to get to Baker, Montana, because working, what evolved over the time was we need to bring on American oil and so now it's not only the border point but it's the point in Baker, Montana, and Steele City, even making the routes in...through Nebraska tighter. [LB3]

SENATOR ASHFORD: Senator...sorry, Senator. [LB3]

SENATOR COUNCIL: And then I just have one question because there was some statements alluding to the question. Why would TransCanada go through the time and expense of obtaining easements when you didn't have a permit? Why? [LB3]

ROBERT JONES: Oh well, so when you develop a project--and we've been doing this...we've been in business for six years so there is a precedent in how to develop linear infrastructure projects--you first acquire the commercial certainty, the need. You need to prove that it's in the national interest. We have an overwhelming commercial need, contracts for over 20-year contracts. So we know that U.S. refineries, and these are U.S. refineries that came (inaudible), then you have three prongs of activity that happen at the same time. You're going through the environmental process for the regulatory, you're acquiring easements, and you're buying long-lead material items, because if you had to do those things one after the other then it would be, I don't know, 12 years before you'd get a pipeline built. And so this way you can be reactive to the market. And we've been doing it...this is very, very common. There is a lot of precedent

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but that's how linear infrastructures are developed in the United States. [LB3]

SENATOR COUNCIL: Okay. Thank you. [LB3]

SENATOR ASHFORD: Senator Lathrop. [LB3]

SENATOR LATHROP: A couple more questions that I just thought of. You said there were 14 routes that were considered going through Nebraska. Did they do an environment... [LB3]

ROBERT JONES: No, sorry. [LB3]

SENATOR LATHROP: Pardon me? [LB3]

ROBERT JONES: Fourteen in total from the border to Texas; only eight, only eight, eight routes that impacted Nebraska. [LB3]

SENATOR LATHROP: Did they do an environmental study on all eight? [LB3]

ROBERT JONES: Yes, there was. It's nowhere near the detail of the FEIS on the preferred route but, yes, they did an environmental assessment on them all. [LB3]

SENATOR LATHROP: Is it done with...can the State Department say, we choose route number...you may have your preferred route that's the subject of a great deal of concern here, but can the State Department choose a different route? [LB3]

ROBERT JONES: I think what they would tell us is that this other route should be your preferred route, and they never advised us of that, so... [LB3]

SENATOR LATHROP: You think that would have happened before now. [LB3]

ROBERT JONES: Yes, it would have happened. Yeah. [LB3]

SENATOR LATHROP: Okay. If the President, who apparently made some comment about waiting until after the election to address this particular pipeline,... [LB3]

ROBERT JONES: He didn't. He didn't make that comment. That's what was reported in the media. The State Department continues to work on providing us a decision by the end of the year. The President did not make that comment. [LB3]

SENATOR LATHROP: All right. If the State Department provides you a decision, do you still need the President's approval? [LB3]

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ROBERT JONES: Yes. Well, sorry. No, no. [LB3]

SENATOR LATHROP: Okay. So he's still...he's still... [LB3]

ROBERT JONES: No, I got that wrong. The President, under the...again, I'm not a lawyer so this is why it's always challenging for me. [LB3]

SENATOR LATHROP: That's okay. [LB3]

ROBERT JONES: The Presidential Permit in this case was...is, under federal jurisdiction, is assigned to the Department of State to manage. If the agencies, the cooperating agencies, don't agree then it goes up to the President. But if the cooperating agencies support the record of decision then the State Department can issue the Presidential Permit. [LB3]

SENATOR LATHROP: Okay. Thank you. [LB3]

SENATOR ASHFORD: Senator Harr. [LB3]

SENATOR HARR: Now I'm confused, and I apologize. I'm not the brightest. So you said there were eight environmental impact statements done. [LB3]

ROBERT JONES: No. No. [LB3]

SENATOR HARR: So explain that to me. [LB3]

ROBERT JONES: No, there's only one environmental impact statement. There were eight routes that were considered, the environmental impacts were considered. There's only one EIS. [LB3]

SENATOR HARR: Okay. So the environment was considered on eight of them, and then how was the determination made on one? [LB3]

ROBERT JONES: Well,... [LB3]

SENATOR HARR: Who made that determination? [LB3]

ROBERT JONES: It...so we recommend a preferred route and then we had...we had to show other alternative routes. [LB3]

SENATOR HARR: And you only did the environmental impact statement on the preferred route. [LB3]

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ROBERT JONES: Well, yes, the environmental impact statement is there's a draft and a supplemental and a final. It's nine volumes long. Part of that is an assessment of alternatives. In this, one...one of those volumes looks at all those alternatives. And so, yes, there is an environmental assessment. An assessment is far less than a full-blown environmental impact. [LB3]

SENATOR HARR: Okay. And again, I appreciate I don't understand. You're a surveyor; I'm not. I'm a lawyer so I don't understand everything. And then I want to follow up on your statements earlier with Senator Larson about the easement, and maybe I need to reserve this for your counsel. But I have a copy in front of me of what appears to be a form easement of TransCanada. Would you agree that you guys generally do form easements? [LB3]

ROBERT JONES: You know, when you're dealing with a landowner group, yes, the easements tend to be very much...well, they are, they're... [LB3]

SENATOR HARR: And that's for simplicity and to save money on your behalf. [LB3]

ROBERT JONES: Well, everybody's, sufficient for everybody. [LB3]

SENATOR HARR: Yeah, exactly. I would agree with you. Well, I'm looking at what appears to be a form easement--and I'm not trying to pay gotcha politics but I just want everything to be clear, I want all the facts out there--and I think you said that you had to get new easements on the properties adjoining or where the old pipeline ran. Is that correct? [LB3]

ROBERT JONES: It all depends whether or not we had linear rights, I'm sorry, single pipeline rights or multiple pipeline rights. [LB3]

SENATOR HARR: Okay. [LB3]

ROBERT JONES: In most cases when we negotiate them, we only got single pipeline rights. [LB3]

SENATOR HARR: Okay. [LB3]

ROBERT JONES: We may ask for multiple pipeline rights but virtually most landowners say, look, if you need to come back here, come back here and we'll talk about it. Now some of them will say, well, if...would you...you know, we negotiate a premium and so they actually get further compensated for multi pipeline rights... [LB3]

SENATOR HARR: Okay. [LB3]

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ROBERT JONES: ...because they say, I don't want you coming back again (laugh) so here you go. [LB3]

SENATOR HARR: Yeah. Okay, because I am looking at a form easement right here and right of way and it specifically allows for multiple pipelines, allows you to go on at any time and/or agents of your company to come on the land at any time, and it allows for a 50-foot-wide width, multi pipes, and it allows for perpetual easement and right of way for the purpose of surveying, laying, constructing, inspecting, maintaining, operating, repairing, replacing, altering, restructuring, removing, and abandoning in place one or more pipelines together with all fittings, cathodic protection equipment I think it is,... [LB3]

ROBERT JONES: Yeah, cathodic protection. [LB3]

SENATOR HARR: ...pipeline markers and all other equipment and apparatus thereto. So you're telling me the majority of the landowners, though, have negotiated this term out, to the best of your knowledge. [LB3]

ROBERT JONES: That's correct. I know they have. [LB3]

SENATOR HARR: Okay. [LB3]

ROBERT JONES: And by the way, there's been many versions of that. The one you've described to me is an older version. [LB3]

SENATOR HARR: Okay. Thank you very much. I appreciate that. [LB3]

ROBERT JONES: You're welcome. [LB3]

SENATOR ASHFORD: Okay. Thank you. I just...let me...the company that would hold this permit is called what now? [LB3]

ROBERT JONES: TransCanada Keystone Pipeline LP, headquarters in Houston. [LB3]

SENATOR ASHFORD: That's a limited...what is it? [LB3]

ROBERT JONES: That's correct. [LB3]

SENATOR ASHFORD: Is it a limited... [LB3]

ROBERT JONES: A limited partnership. [LB3]

SENATOR ASHFORD: Who are the partners? [LB3]

ROBERT JONES: It's a solely owned subsidiary of TransCanada Corporation, a publicly traded company in Canada and New York. [LB3]

SENATOR ASHFORD: It's an ADR. I mean I know it's traded on the Toronto Exchange I believe. Is that right? [LB3]

ROBERT JONES: And the New York Exchange. [LB3]

SENATOR ASHFORD: New York Exchange. And as a whole...it's wholly owned, then it structurally would assume any rights and liabilities and obligations of the underlying LP. Does the LP remain in existence after...? [LB3]

ROBERT JONES: You could sell, the LP I'm sure would get renamed to whatever entity... [LB3]

SENATOR ASHFORD: You could sell the LP? [LB3]

ROBERT JONES: Sure. Pipelines get... [LB3]

SENATOR ASHFORD: Is that done normally in the pipeline business? [LB3]

ROBERT JONES: It's not uncommon. In fact, Kinder Morgan just announced the acquisition of El Paso, which would obviously result in a tremendous number of pipeline changes. We bought numerous pipelines. We're now... [LB3]

SENATOR ASHFORD: Okay. [LB3]

ROBERT JONES: ...as big almost in the United States as we are in Canada. [LB3]

SENATOR ASHFORD: Okay. And any...this is very, very general, but these pipelines are sold subject to all the restrictions, easements, encumbrances that exist? [LB3]

ROBERT JONES: Encumbrances, correct. [LB3]

SENATOR ASHFORD: And that's under treaty, international law, federal law, all the various... [LB3]

ROBERT JONES: Yeah. You have to go through things like Hart-Scott-Rodino. For example, when ConocoPhillips, this project started originally as a merge, was an equal partnership between ConocoPhillips and TransCanada. When ConocoPhillips sold us their interest in it, we actually had to go through a number of federal filings because it is a critical piece of infrastructure and, you know, foreign control and that. We had to

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determine...describe how we were holding it. So it's a critical piece of infrastructure, requires a number of different federal oversights. [LB3]

SENATOR ASHFORD: Thanks, Mr. Jones. Senator Council, though. [LB3]

SENATOR COUNCIL: One...I'm sorry, Mr. Jones. I'm sorry, Chairman Ashford, but you just prompted another question and I meant to ask it when you were describing the alternate routes that were considered. And you mentioned, okay, there's the existing Keystone pipeline... [LB3]

ROBERT JONES: Uh-huh. [LB3]

SENATOR COUNCIL: ...that runs down the eastern...as far as Nebraska, it runs down the eastern part of the state. Does TransCanada or any of its partners or limited partners operate any other crude oil pipeline that runs through Nebraska? [LB3]

ROBERT JONES: No, not anymore. We at one time used to operate the Platte pipeline with a company called AEC, but we sold that to Terasen, which then got bought by Kinder Morgan. [LB3]

SENATOR COUNCIL: Okay. So where does the Platte pipeline run? [LB3]

ROBERT JONES: It parallels the Platte River and it runs through the aquifer, right through the aquifer, as do 3,000 other oil pipelines in Nebraska. [LB3]

SENATOR COUNCIL: All right. Thank you. [LB3]

SENATOR ASHFORD: How many thousand? [LB3]

ROBERT JONES: Three thousand. [LB3]

SENATOR ASHFORD: Oh, three. I thought you said 30,000. [LB3]

ROBERT JONES: No, there's 20,000 pipelines but only 3,000...a little over 20,000 and only 3,000 liquid pipelines. [LB3]

SENATOR ASHFORD: Okay. [LB3]

SENATOR COUNCIL: Thank you. [LB3]

SENATOR ASHFORD: Thanks, Mr. Jones. Next proponent...opponent, I'm sorry. [LB3]

ROBERT JONES: I've got to run over to the Natural Resources Committee so, please,

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my apologies, I'm...it's not a lack of interest. I just...LB4 is happening over there. [LB3]

SENATOR ASHFORD: Okay. [LB3]

ROBERT JONES: I've also got pictures that didn't get handed out. I wanted you to have a look at what a pipeline right of way looks before and afterwards. [LB3]

SENATOR ASHFORD: Thank you. Okay. [LB3]

ROBERT JONES: Thank you. [LB3]

SENATOR ASHFORD: Thank you. [LB3]

LEE HAMANN: (Exhibits 17 and 18) Good afternoon, Chairman Ashford, members of the Judiciary Committee. Thank you for giving us time to speak in opposition to LB3. My name is Lee Hamann, H-a-m-a-n-n. I'm with the McGrath North law firm in Omaha and I represent TransCanada Keystone Pipeline LP. I'm here to make a few comments and I will try to keep them brief. I know this is a long period of time to go through all this on a special session. For the record, I think it's important to understand what you obviously know, but the reason we're here in this special session is principally two things. People have expressed concerns about the safety of the Keystone XL pipeline. There are people that are convinced that it's bad for the Sandhills and bad for the aquifer. We disagree with that, obviously. But that safety concern then has translated into or morphed into an effort to reroute the pipeline. And so this whole special session is directed at the rerouting of the Keystone pipeline because of the... [LB3]

SENATOR ASHFORD: Not this bill. [LB3]

LEE HAMANN: Not this bill, no. No, sir. [LB3]

SENATOR ASHFORD: Okay. So it's not the whole special session. [LB3]

LEE HAMANN: No, and that's probably an overstatement. [LB3]

SENATOR ASHFORD: Okay. (Laugh) [LB3]

LEE HAMANN: But...but...but the... [LB3]

SENATOR ASHFORD: We may not be that special but we're... [LB3]

LEE HAMANN: ...the impetus for it... [LB3]

SENATOR ASHFORD: Yeah. [LB3]

LEE HAMANN: ...was to try to do a rerouting. And what this...this bill does not purport to affect safety but it is aimed at the Keystone pipeline, which I think is important to some of the comments that were made here earlier. So the focus has shifted but there are still some constitutional issues with this thing and I don't...I'm not here to say that any of you are trying to force a reroute of a pipeline but it just sets the stage for the special session. The first concern we have is a special legislation issue and, Senator Harr, I mean you touched on that a little bit. It's not just that this won't impact other pipelines but it does directly impact our pipeline and the fact that, you know, LB...or not LB but Section 57-1101 speaks to things besides just a crude oil pipeline. It talks about petroleum, gases, and other products thereof, so you could talk gasoline, LNG, things like that that could be affected by this bill that are not affected by this bill. So there's a real question about whether there's a rational basis for that distinction and applying it equally across the industry. But the emergency clause specifically targets us and that's one of the concerns. The other issue that's kind of come up and I'd like to touch on is the vagueness of controlling permits. There's a lot of discussion about, you know, what permissions we need from Nebraska; no specific permit, there's a lot of local permits, but it's very vague. How far does that go? I mean a conditional use permit arguably stops a pipeline if you can't build a necessary pump station, so that's a concern. And then we have the commerce clause issue where this is an interstate pipeline and, by directing this at...it really just touches on the interstate pipelines primarily. By this uncertainty over permits, it's a very big burden versus a short pipeline where you don't have very many permits involved. We have, you know, multiple states to cross and too many permits to count to really say what's controlling. So that lack of definition creates a real burden to a major pipeline. So those are three primary points. I would be happy to entertain any questions you might have. [LB3]

SENATOR ASHFORD: Senator Harr. [LB3]

SENATOR HARR: Thank you. Thank you, Mr. Hamann, for coming down here. I want to take exception... [LB3]

LEE HAMANN: Okay. [LB3]

SENATOR HARR: ...to a statement you made. I think we've been very careful to state this is not about safety. I think it's pretty clear that we are preempted by federal law to address the safety issue, so to characterize this as on safety I think is a misnomer. And so I would ask that, you know, and you're entitled to your opinion, but I can tell you as a body we've been very careful not to make this about safety so...and this bill specifically has absolutely zero, zilch, nunca, nada to do with safety. So I want to... [LB3]

LEE HAMANN: I would agree with that. [LB3]

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SENATOR HARR: Okay. And I want to address this bill specifically, since that's what we're here for, and hopefully we won't get too far off the tangent. Eminent domain, is there anything...obviously, you stated you had concern with the controlling permits. If that language were clarified, would you...and I'm more than willing to work with you, obviously, would you be okay with this bill? [LB3]

LEE HAMANN: The controlling permit is an issue but we're also concerned about the fact that it leaves out other types of pipeline projects. [LB3]

SENATOR HARR: That's because of the special session. [LB3]

LEE HAMANN: Exactly. I mean we're... [LB3]

SENATOR HARR: I mean we're limited by scope by what we can do because of the call of the special session, so.... [LB3]

LEE HAMANN: And that's why I made the point about this special session. I'm not trying to...I'm not trying to sound like I'm upset with the committee because you've been dealt a difficult hand. [LB3]

SENATOR HARR: Thank you. [LB3]

LEE HAMANN: And to Senator Council's point earlier today, I mean if you were going to do something in this area you can see things that ought to apply to everybody and not just a petroleum pipeline, and that really...that really is the point. [LB3]

SENATOR HARR: Fair. I'd agree. Okay. [LB3]

LEE HAMANN: And I am very sympathetic to the difficult position you find yourself in. [LB3]

SENATOR HARR: Okay, and I appreciate it. Thank you. And then let me ask you, have eminent domain proceedings begun on any landowners yet, to the best of your knowledge? [LB3]

LEE HAMANN: In...on the KXL project, the Keystone XL, this particular project? [LB3]

SENATOR HARR: Yeah, this... [LB3]

LEE HAMANN: No, there have not in the state of Nebraska. [LB3]

SENATOR HARR: And do you know why? [LB3]

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LEE HAMANN: Because we haven't gone forward. We...there's been testimony that letters were sent out two different times to people for final offers and that is following the standard procedure in Nebraska. The statute...the statutory procedure for eminent domain leaves some gaps as to really what you do, timing and things like that, but there's case law that kind of fills in the gaps to some extent. But, you know, you have to negotiate in good faith and then part of that, by Nebraska judicial decision, is to make a final offer. Those were sent out. In one case we were...and this was before the first delay that came along, we were prepared to move forward, because we're trying to keep the project on track, and we were asked to delay action on that. And so we did delay action on that. There's been a lot of attention to this project. We've, you know, tried very hard to be responsive to both political leaders, landowners, and, you know, our own company's obligations and ride that balance, but I think that's the simplest way to say why we didn't go forward. I mean we've been trying to work through these issues with people. We try to do the same thing with landowners. [LB3]

SENATOR HARR: Okay. Thank you very much. I appreciate your time. [LB3]

SENATOR ASHFORD: Thanks, Lee. I don't think there are any other questions. [LB3]

LEE HAMANN: Thank you very much for your time. [LB3]

SENATOR ASHFORD: Next proponent...opponent. I don't know. Sorry I keep saying that. [LB3]

JOHN KUEHN: (Exhibit 19) Good afternoon, Senator Ashford and members of the Judiciary Committee. I'm going to take the discussion in a little bit different turn here, a little bit more locally. I'm Dr. John Kuehn, J-o-h-n K-u-e-h-n, and I am secretary of the board of directors of Southern Public Power, headquartered in Grand Island, Nebraska, spanning seven counties and the largest rural public power district in Nebraska. I'm here today to discuss LB3 and our board's concerns and opposition to the bill as it utilizes in this special session to make some statutory changes to the process of eminent domain. Any utility that requires either complete control of property or the construction of infrastructure requiring an easement recognizes the challenges that are posed in acquisition. Utilities such as pipelines, transmission lines for electrical infrastructure is all similar. While in a perfect world all of these acquisitions would be voluntarily negotiated buyer and seller agreements, in practice we recognize, even at the local level among neighbors, this simply is not the case. Differences over the perceived value versus market value of the property, a misunderstanding of what is involved in the easement and the rights of the landowner following the construction, or simple opposition to the project complicate this acquisition process. As such, we also recognize that eminent domain and its use is a last resort. It is both costly to the utility and it does present an emotionally charged process for both the landowner and members of the utility. However, it is an essential component of what is done and essentially no major

utility project would be able to accomplish their goals without it. The changes proposed to Nebraska's eminent domain statutes under this particular bill concern us in two areas. First, as an issue which has already been identified and which Senator Council addressed early this morning, we're somewhat concerned about the singling out of one particular type of infrastructure, in this case oil pipelines. It begs the question of should we be creating statutory differences and classes of utilities, and it concerns us, as an electrical utility, about the logic behind those distinctions and creates a sense of unpredictability going to the future. Second, I would just like to state that the concern over eminent domain in much of the discussion here today has perpetuated the stigma around the appropriate use of eminent domain and really pointed out much of the misinformation and misunderstanding about eminent domain and its use. The fair and equal treatment of landowners is always a challenge in this process and the condemnation and court-mediated valuation process is really designed to protect the rights of the landowner. This is not a technique for utilities to strong-arm a landowner; rather, it is to protect their individual rights and the value of their property by creating a review process judicially which takes both interested parties out of the system and makes it objective. In my experience, most citizens misperceive the term "condemnation" and assume that it means the value of the property is zero, and that simply is not the case. Many seem to assume that eminent domain means an offer of lowest taking, and that's not simply the case. In some cases, the actual payment is greater than what may have been offered initially during a voluntary process. And we do have concerns that perpetuating a pejorative viewpoint of eminent domain tends to have a negative impact on all utility projects going forward, not simply the Keystone XL project. So as this committee considers LB3, we do ask that you take into account potential unintended and long-term consequences of this legislation, not only just in the Keystone XL issue but for all utilities operating in the state of Nebraska as a whole. With that, I appreciate and welcome any questions you may have. [LB3]

SENATOR ASHFORD: Senator Council. [LB3]

SENATOR COUNCIL: Let me boil your point down... [LB3]

JOHN KUEHN: Okay. [LB3]

SENATOR COUNCIL: ...into its lowest form. Your concern is if the language of LB3 becomes law, that the next...your expectation or your concern is that as it relates to other public utilities... [LB3]

JOHN KUEHN: Correct. [LB3]

SENATOR COUNCIL: ...there will be a push to restrict their usage of eminent domain. [LB3]

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JOHN KUEHN: Could, and it also creates a series of very complicated factors. Southern is serving a pumping station in Merrick County in Central City, and I do believe that Senator Larson brought up a very important and a critical issue that legislation, such as proposed in LB3, brings to us as a utility or NPPD, for example, as they may be constructing transmission infrastructure to serve that pumping station, is where do our rights of eminent domain to build the infrastructure needed to support this project lie when there's all of this other ambiguity that surrounds crude oil pipelines? And so the pipeline itself does not operate in isolate in the utility structure in the state of Nebraska. The electrical infrastructure to support it is a critical piece of that. And so that uncertainty creates a lot of moving parts that's very difficult and potentially costly not only to Keystone XL but very costly, potentially, to our public power district and ultimately to our ratepayers. [LB3]

SENATOR COUNCIL: But, quite frankly, doesn't LB3 kind of remove uncertainty from the public utility's standpoint? Because as I understand,... [LB3]

JOHN KUEHN: Uh-huh. [LB3]

SENATOR COUNCIL: ...based on what Senator Larson said this morning, as a public utility you have to be prepared to provide... [LB3]

JOHN KUEHN: Right. [LB3]

SENATOR COUNCIL: ...that utility service when that entity needs it. [LB3]

JOHN KUEHN: Right. [LB3]

SENATOR COUNCIL: Okay. So if Keystone isn't permitted to construct,... [LB3]

JOHN KUEHN: Uh-huh. [LB3]

SENATOR COUNCIL: ...then you have no obligation to serve. [LB3]

JOHN KUEHN: We have no obligation to serve but in order to meet the demands and be efficient for our ratepayers, it's not simply a matter of once the construction of the pipeline comes through then or the Presidential Permit is offered that we begin our process of acquisition or begin the process of building the infrastructure to serve it. It's a multiphase process in which all moving parts are moving in conjunction. So, for example, tomorrow Southern has a board meeting and, as stated on our agenda, we're considering bids relative to the transformers for our pumping station. So how...the stage process by which we acquire, for example, transformers, which in some cases can have a 12- to 15-month lead time to purchase, those are moving parts in which we are investing our ratepayers' money to provide that service. In the event, for example, that

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we have delays in an eminent domain proceeding as to whether or not we can even build that infrastructure, it further complicates a process and potentially passes those costs on to our ratepayers, which is ultimately our concern in this issue. Our dog in the fight here is the concern of our ratepayers under the public power structure. And so understanding the multiple moving parts of the utility infrastructure in the state, which I think is being dramatically overlooked over this debate of water versus foreign companies, there are very real Nebraskans here who have very real effects from this pipeline in a lot of variety of levels. And I think it's important to make this committee aware that it's much more than a matter of how one company, in this case, may or may not be dealing with landowners in eminent domain but that that has further consequences which may not potentially be examined or even thought of by this body as contemplating this bill. [LB3]

SENATOR COUNCIL: But as far as the risks to your ratepayers, your board agenda tomorrow, you're going to either... [LB3]

JOHN KUEHN: Uh-huh, correct. [LB3]

SENATOR COUNCIL: ...your board is going to approve your going forward with the purchase of the materials for the transformer or not. [LB3]

JOHN KUEHN: Uh-huh. Right. Right. [LB3]

SENATOR COUNCIL: And that's going to be a cost that you will not be able to recover if...if Keystone doesn't receive the Presidential Permit. [LB3]

JOHN KUEHN: We would recover the cost as part of our negotiated agreement, because it's also important to recognize that TransCanada is paying for the costs of developing that infrastructure. [LB3]

SENATOR COUNCIL: Ah! Okay. Well, then that's a fact...that's a fact that you did not lay on... [LB3]

JOHN KUEHN: But...but there is still an opportunity cost, there's still an investment cost that has to be paid as that is a five-year contract for our ratepayers. So there's still an opportunity cost associated and a cost of investing, both in terms of our manpower and other costs associated which we still will never recount. [LB3]

SENATOR COUNCIL: Okay. So this is a risk, an economic risk,... [LB3]

JOHN KUEHN: Uh-huh. [LB3]

SENATOR COUNCIL: ...that's being borne by TransCanada. If they're paying for

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everything associated with... [LB3]

JOHN KUEHN: Uh-huh. [LB3]

SENATOR COUNCIL: ...building the infrastructure to enable them to access... [LB3]

JOHN KUEHN: That's correct. [LB3]

SENATOR COUNCIL: ...your power, if they're paying... [LB3]

JOHN KUEHN: Uh-huh. [LB3]

SENATOR COUNCIL: ...for all of that, if their permit doesn't get issued,... [LB3]

JOHN KUEHN: Correct. [LB3]

SENATOR COUNCIL: ...that's their loss. [LB3]

JOHN KUEHN: Correct. [LB3]

SENATOR COUNCIL: Okay. Thank you. [LB3]

SENATOR ASHFORD: Yeah, Senator Lathrop and then Senator Larson. [LB3]

SENATOR LATHROP: I do have a little trouble finding out, and maybe it just got a little clearer, where your dog is in this fight. You started out, and I'm going to finish,... [LB3]

JOHN KUEHN: Okay. [LB3]

SENATOR LATHROP: ...you started out telling us your concern was that we might be perpetuating misunderstandings by the public... [LB3]

JOHN KUEHN: Uh-huh. [LB3]

SENATOR LATHROP: ...on eminent domain. [LB3]

JOHN KUEHN: Uh-huh. [LB3]

SENATOR LATHROP: Right? And then let me suggest something to you. You are public power... [LB3]

JOHN KUEHN: Uh-huh. [LB3]

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SENATOR LATHROP: ...sitting there today and you get elected... [LB3]

JOHN KUEHN: Uh-huh. [LB3]

SENATOR LATHROP: ...and you are responsive to the people who elected you. [LB3]

JOHN KUEHN: Correct. [LB3]

SENATOR LATHROP: And if you abuse eminent domain powers, you're accountable to the people who put you in the director's chair. True? [LB3]

JOHN KUEHN: That is correct. [LB3]

SENATOR LATHROP: And you are a utility, in contrast to a private corporation current statutes give eminent domain authority to,... [LB3]

JOHN KUEHN: You're... [LB3]

SENATOR LATHROP: ...because...because the folks at TransCanada are not accountable to any taxpayer in this state, unlike you from Southern Power District. [LB3]

JOHN KUEHN: You're making...yeah, first, you're making a distinction that the company involved in construction of this pipeline is not a utility. It may be a private utility but it is still a utility. And to make a distinction, this is...so there's two operational levels of which we have concern on this bill. One is the 30,000-foot level relative to eminent domain. There's a very pragmatic one. And backing up the 30,000-foot level here, if you want to start talking about eminent domain and utilities, for example, Nebraska, as a result of not the current session but in the 2010 Session looked at a private wind generation bill which granted the right of eminent domain to private companies for the construction of transmission lines. [LB3]

SENATOR LATHROP: Provided they had an agreement with public power. [LB3]

JOHN KUEHN: Provided...well, provided they had an agreement to export power. It wasn't an agreement with public power. It was to export that power. So in... [LB3]

SENATOR ASHFORD: Well, there's no other way to export. [LB3]

JOHN KUEHN: Pardon? [LB3]

SENATOR ASHFORD: How else would you... [LB3]

JOHN KUEHN: Well, that's the question though, is...but... [LB3]

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SENATOR ASHFORD: How else would you get the power from the wind... [LB3]

JOHN KUEHN: ...but they have the right to build the transmission infrastructure. [LB3]

SENATOR ASHFORD: Okay. [LB3]

JOHN KUEHN: They were granted a power of eminent domain. [LB3]

SENATOR ASHFORD: Okay. Excuse me for interrupting, Senator Lathrop. [LB3]

JOHN KUEHN: So there is already...I mean in that case it was okay to award the powers of eminent domain to a private utility potentially to build a utility infrastructure. So just because Nebraska is unique as a public power state does not mean that utility infrastructure, whether private or public, still does not serve the public good and still does not have the...and should not have the ability to exercise eminent domain to achieve that public good. [LB3]

SENATOR LATHROP: Well, let me ask you this. You are accountable to the taxpayers that put you in the board of directors of Southern Power. True? [LB3]

JOHN KUEHN: I'm accountable to my ratepayers. They're not taxpayers, they're ratepayers. [LB3]

SENATOR LATHROP: And the folks at TransCanada or any other oil company are not. [LB3]

JOHN KUEHN: And the same argument could be made of any private electrical company that wishes to do so and the state didn't have a problem with that case. [LB3]

SENATOR LATHROP: Your answers seem to suggest you have a stake in the matter, which make... [LB3]

JOHN KUEHN: Um... [LB3]

SENATOR LATHROP: ...pardon me, which make it as to the dog you have in this fight. If I understand you correctly, Southern Power District is going to sell electricity... [LB3]

JOHN KUEHN: Correct. [LB3]

SENATOR LATHROP: ...to help power the power stations that pump the oil. [LB3]

JOHN KUEHN: Correct. [LB3]

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SENATOR LATHROP: Is that true? [LB3]

JOHN KUEHN: Correct. [LB3]

SENATOR LATHROP: That's all I got. Thank you. [LB3]

JOHN KUEHN: But to follow up to that, there's an assumption that Southern Power then, quote unquote, has something to gain. What is gained then is a reduction in the overall...and we looked at some studies relative to rate pressure, and it is our ratepayers. That's the public power system. So to characterize an organization in public power as having a motive to profit is antithetical to the entire system. And so it's... [LB3]

SENATOR LATHROP: I understand. [LB3]

JOHN KUEHN: ...as Southern Power, it's ratepayers. [LB3]

SENATOR ASHFORD: I don't...Doctor, Doctor, hold it. [LB3]

SENATOR LATHROP: I understand the point about public power... [LB3]

JOHN KUEHN: Right. [LB3]

SENATOR LATHROP: ...and its function in this state. [LB3]

JOHN KUEHN: Uh-huh. [LB3]

SENATOR LATHROP: As long as we're at 30,000 feet, you were talking about this bill perpetuating misconceptions about condemnation and eminent domain. [LB3]

JOHN KUEHN: Uh-huh. Correct. [LB3]

SENATOR LATHROP: Can we agree that the public has problems fully understanding the process of eminent domain and condemnation? [LB3]

JOHN KUEHN: I would agree and I would agree that... [LB3]

SENATOR LATHROP: And it would be fair for us to clarify that with legislation. [LB3]

JOHN KUEHN: Certainly. Certainly, but I don't see this legislation as clarifying that process. The legislation as proposed is... [LB3]

SENATOR LATHROP: Well, this isn't the final version, I suspect. [LB3]

JOHN KUEHN: But we're discussing what's proposed and what is proposed in LB3, at this point in time, does nothing to clarify that process. [LB3]

SENATOR ASHFORD: Well, of course it does because it puts a point in time, whether we agree or don't agree, it puts...in how...what the final version is to Senator Avery's bill, it does put a clear point in time which does not now exist. Now the confusion, Doctor, is that nobody knows when this process starts and when it ends, and I think...and I think that's confusing to...it seems to me that it's confusing...I get your point but this is very confusing to lots of our citizens. So it's incumbent upon this committee to look at what we have out there and to think about what is not going to be confusing... [LB3]

JOHN KUEHN: Right. [LB3]

SENATOR ASHFORD: ...to our citizens in the future. That's why we're here. [LB3]

JOHN KUEHN: But it's also confusing at the local level. You know, having dealt with these issues on the local level, even at a local level people do not understand eminent domain. So the misconception of eminent domain... [LB3]

SENATOR ASHFORD: That's a fair comment. [LB3]

JOHN KUEHN: ...isn't unique to this. [LB3]

SENATOR ASHFORD: That is a fair comment. Senator Larson. [LB3]

SENATOR LARSON: Just a real quick question because, I mean, I brought this issue up early. [LB3]

JOHN KUEHN: Uh-huh. [LB3]

SENATOR LARSON: You're right...or you've stated in...the REAs or the public power districts are compensated by TransCanada for all the money you spend to build and eminent domain and everything that you do. [LB3]

JOHN KUEHN: Correct. [LB3]

SENATOR LARSON: And I just wanted to clarify the loss to the public power structures, such as Southern or Niobrara Valley, which will have to deal with it in my district, is essentially, you know, the manpower loss that could be going to other projects. [LB3]

JOHN KUEHN: Opportunity costs, you bet. [LB3]

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SENATOR LARSON: Opportunities. And I had a grandfather who was an engineer at Niobrara Valley for 46 years, so it's essentially they're...even though technically they're paying for him to be doing that project currently,... [LB3]

JOHN KUEHN: Right. [LB3]

SENATOR LARSON: ...it's the fact that he can't be doing another project to your other ratepayers. [LB3]

JOHN KUEHN: Right. We're not updating distribution infrastructure, etcetera. Correct. [LB3]

SENATOR LARSON: And how much have you...I guess I could ask Niobrara Valley. How much man-hours or opportunity cost has Southern... [LB3]

JOHN KUEHN: I can't answer that accurately, but I can tell you, you know, over the period of time in terms of engineering, commitment of engineering resources and high-tech resources, it's not trivial. [LB3]

SENATOR ASHFORD: Okay. Thanks, Senator Larson. Thanks, Doctor. [LB3]

JOHN KUEHN: Thank you. [LB3]

SENATOR ASHFORD: Next opponent. I got that right. Good afternoon. [LB3]

MARK WHITEHEAD: Good afternoon, Senator Ashford. For the record, my name is Mark Whitehead, that's W-h-i-t-e-h-e-a-d. I am the president for the Nebraska Petroleum Marketers and Convenience Store Association. September, we passed a resolution in favor of the TransCanada Keystone XL pipeline. It's something we didn't do very lightly. We fully recognize that we have customers on both sides of this issue and it's an extremely sensitive issue. But at the same...and we survive as individual companies but by the grace of our customers. So, you know, regardless of which way, it will be my fault. To the extent that you're a customer of ours, thank you very much. But one of the things that we have found through this process is some of the ignorance of some of the different things that do, in fact, impact our particular industry. You know, there are many aspects of our industry that 98 percent of our customers don't understand. We are fortunate...if we are fortunate enough to be the first choice of one of our customers who pull up to one of our locations, say, and swipe their card in the dispenser and they expect the fuel to be there, it's not their position to understand the complexities of how exactly that fuel got there, and there are many aspects that in fact don't...that don't come to that. We are, to the extent that we have supported this, we have because we understand that it is critical to have a safe, stable, and economic supply of fuel to each one of our customers, and the economic portion of it, that's been addressed a couple of

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times as well. In the long view of economics, this in fact will drive lower costs into our locations, which in fact serves our customers, and that is in fact one of the principal reasons that we endorse it. Again, we fully understand that this isn't going to have a direct impact on our bottom line as individual marketers and retailers, but at the same time we fully understand the long view of this is that it will provide a more stable and economic supply of fuel, and that's why we fully endorse it. And to the extent, specifically on this particular bill, to the eminent domain, it is critical to the safety and national security of our country to have a safe and stable supply delivered and that's why we're involved. I'd be glad to answer any kind of questions you might have. [LB3]

SENATOR ASHFORD: All I would say is your family has been around for a long time and has been a significant contributor to Nebraska, so thank you for that. [LB3]

MARK WHITEHEAD: Well, thank you. And again, to the extent if any of you are customers, thank you very much. [LB3]

SENATOR ASHFORD: Not necessarily you but your family. I mean you have...(laughter)...you're not that... [LB3]

MARK WHITEHEAD: Oh, I...oh, thank you for that qualification. Thank you very much, Senator. [LB3]

SENATOR ASHFORD: Right. All right. (Laugh) Thank you. [LB3]

MARK WHITEHEAD: (Laugh) All right. Thank you. [LB3]

SENATOR ASHFORD: Thanks. Let's go to the next...yes, sir. [LB3]

RON KAMINSKI: Good afternoon. Thank you for allowing me to speak. My name is Ron Kaminski, last name spelled K-a-m-i-n-s-k-i. I'm a resident of Omaha, Nebraska, born and raised in Nebraska and have lived here my whole life. I am here today to oppose LB3. I represent Laborers International Union of North America and our over half a million members and also our local members of the Laborers Union here in town, in the state of Nebraska, and 11 counties in southwestern Iowa. The issue we have with this bill, although we are in full support of looking at things that make pipelines safer and better for our state so everybody has input, but the problem we have with this bill is that it is so late in the game. After three years of review, after committee hearing after committee hearing, after debate, it is so late that it is...the fear is that this is going to be...this project would be stopped. Our members have constructed pipelines for years here in the state of Nebraska, most recently the Keystone pipeline that we completed under budget, in time, without any major issues, which runs through the aquifer. We also completed the Rockies Express pipeline that runs east to west through the aquifer. With those pipelines and our training capabilities, we have been able to open up a new

training facility that we train pipeline workers not only here in the state of Nebraska but also in South Dakota and southwestern Iowa, and our vision is to make Nebraska a regional training facility for pipeline workers throughout the whole Midwest. Our members are struggling at this point in time. Construction unemployment is very heavy at this point, some areas from 20 to 40 percent unemployment. Our members cannot continue to wait for this project to be approved to start construction on it. Our members are losing their homes, losing their cars and are struggling to put food on the table if they're able to even receive unemployment through the state of Nebraska. We urge you and this committee to look at down the road at other possible pipelines but not to apply this bill to the Keystone XL pipeline. Thank you. [LB3]

SENATOR ASHFORD: I don't see any questions but, Senator Lathrop. [LB3]

SENATOR LATHROP: I don't have a question for Mr. Kaminski, but I do have a comment and it's not relative to the testimony we just heard but it goes back to what Mr. Hamann said, from McGrath North. I have a lot of great lawyers, a lot of great lawyers at McGrath North and good friends. But as I look at, and I'm trying to leaf through this because you gave it to us as we are going through the testimony today, and I want to make a comment. This committee and the process that we undertake is to hear a particular bill and then we work on it, and your memo will be helpful and instructive on many of the issues that we would have to address in crafting an amendment. The one thing I do want to comment on, though, or however, is your suggestion that this...that our meeting today and this special session is focused on one pipeline, TransCanada XL, and that we are here to change or do something to a particular pipeline. I think if that were our only objective then it would be special legislation. Our goal here is to look at these issues relating to oil pipelines and to address them not just with a particular pipeline but with all pipelines that would come afterwards, and I think that makes this not subject to the criticism that it is special legislation. And I don't want the record to reflect that I agreed with your remark that this was all about one pipeline because that is not necessarily the case. So... [LB3]

RON KAMINSKI: Can I... [LB3]

SENATOR LATHROP: ...well, that wasn't a question. [LB3]

RON KAMINSKI: Yeah. Can I make one other point? There was a question raised by this committee to the young lady from Cornell that did the study. I was...our local organization was never contacted about that study. That study was paid for by two unions that aren't involved in the construction field and their study is severely flawed. I don't know how they came up with their numbers but I can guarantee you when a contractor comes into the area under this type of situation, for example, with the Keystone line, same company, they hire their people directly from our organization. So that study or whatever you want to call it is severely flawed. [LB3]

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SENATOR ASHFORD: You know, Ron, I'm hopeful that your members will be employed in this and other pipelines that come through the state. I think it is...Senator Lathrop's comments need to be underlined and heard by everyone. We in this Legislature, we're a citizen Legislature. We work. When issues come before us that we need to address, Senator Lathrop and I and the other members of this committee have worked on a variety of issues that have become, for a variety of reasons, crises or difficult issues or issues needing a resolution. And it's been the tradition of this committee and every member of this committee who have worked diligently on a number of very, very difficult bills and to address extremely difficult issues, it is a tradition of this committee to try not to go to the moon with these issues and go to these ultimate issues that we talk about in the press or on advertisements that run on TV... [LB3]

RON KAMINSKI: Uh-huh. [LB3]

SENATOR ASHFORD: ...and makes claims that somehow we're going to do something to stop jobs in Nebraska, which of course is...and certainly Senator Avery, there is no greater advocate of working people in this state than Senator Avery, in my view, and he has had a consistent record throughout his career of supporting working people, as have the other members of this committee, bar none. So what I'm hearing is that...here today is that there is a process that has been undertaken that has resulted in 91 percent of the landowners in the area having agreed to sell an easement to TransCanada's limited partnership. There are a number of others who have yet to agree but are waiting, ostensibly, waiting to see what happens with the permitting process. Should we...and I'm not saying what we're going to do because I'll guarantee you that this committee has individuals who are individuals and they are all going to have opinions on this and we're going to take our time to sort through this and not knee-jerk it. But I can tell you that I'm not hearing here today anybody saying that if we address the issue of eminent domain for pipelines going forward that we are going to unreasonably interfere with this particular pipeline. That's not going to be the intent or effort of this committee. That's not why we're here. We're here because of the concern that has been raised to us, and I think in a very proper way by Senator Avery, a concern raised by citizens of Nebraska, many of whom may be...some of whom may be members of your union, some may not, who are out...many may not, but who have been concerned about the process. It's incumbent upon us to look at this process, not to interfere with your ability to have your workers working. We want your workers to work and we support your workers and we support your members. So I just...I think following on with what Senator Lathrop said, I think for the record we have to be very clear when we think about, you know, who's doing what to whom, because what we're really trying to do is to balance the interests of our citizens, our taxpayers, the people that produce the products that feed the world... [LB3]

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RON KAMINSKI: Uh-huh. [LB3]

SENATOR ASHFORD: ...and I think it's important that we listen to that. (Cell phone ringing) But I appreciate your point, Ron. [LB3]

RON KAMINSKI: Okay. [LB3]

SENATOR ASHFORD: I think it's important that your workers are out there working, but... [LB3]

RON KAMINSKI: And, Senator, Chairman, I appreciate everybody here. I appreciate people coming together to come up with common-sense solutions. I think the big overall problem here with this situation is everything...(cell phone ringing) [LB3]

SENATOR ASHFORD: I'm really tolerant on those issues but I think at some point we got to say turn off your cell phone. Go ahead. [LB3]

RON KAMINSKI: I guess...I appreciate that, sir. I think what the problem is, Senator, is that you have everybody eyeing Nebraska right now. It's not...if we could have talked about this two years ago and came up with a... [LB3]

SENATOR ASHFORD: I think we did. [LB3]

RON KAMINSKI: Well, came up with a common-sense solution that people could agree upon at that point, I think things would have been a lot smoother. The problem is, is that this...it seems like it's so late in the game. And I made reference to it yesterday in Natural Resources Committee. I would have loved to have been down here on Saturday to be able to go out on the field in the third quarter and say give us another 15 minutes so we can win this game. [LB3]

SENATOR ASHFORD: Well, you know, Ron, I get your point. I think enough said. I just...we are moving on a bill that's presented to this committee, whether it's too late or too early or at halftime. We're going to give it due consideration and we're going to give it a thorough consideration, and that's our job and that's what we're going to do, and we're not going to...not to try to disadvantage your workers, any company, any TransCanada or anybody else. We're looking at the four corners of what Senator Avery has presented to us. So I think enough said, but I appreciate your comments. [LB3]

RON KAMINSKI: Okay. Appreciate it. [LB3]

SENATOR ASHFORD: I don't see any other comments. [LB3]

RON KAMINSKI: All right. Thank you. Appreciate it. [LB3]

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SENATOR ASHFORD: Okay. How many more of you are there? Two or three, four more, okay. [LB3]

WILLIAM SYDOW: (Exhibit 20) Good afternoon. My name is Bill Sydow. My last name is spelled S-y-d-o-w, and thank you for the opportunity, Mr. Chairman and members of the committee, to be here. I live in Sidney, Nebraska. I serve as the director of our Nebraska Oil and Gas Conservation Commission in Sidney and our commission is a noncode, cash-funded state agency that regulates the exploration of oil and gas in the state of Nebraska. Our commission is opposed to the changes that LB3 would make to the current legislation. The current legislation has been there for a long time and, in fact, I believe that the current law, if we went back, was maybe put in place to help build the Platte pipeline system way back in the beginning of oil and gas in the Denver-Julesburg Basin. LB3 is pointedly directed toward oil pipelines, and that's really our biggest problem. It discriminates against oil pipelines and our commission is opposed to the addition of the language. In our opinion, crude oil pipelines are very benign compared to the other pipelines carrying products in our state and all over our country. We do not feel there is a compelling safety issue or an environmental issue which would allow pipelines to be acted toward pipelines in the process of acquiring right of way. I believe that right of way should be able to be acquired by any person or company at their discretion and their sole risk, and I believe that's the way most of them operate. We believe that there should not be a limitation preventing a party who has the legal standing as a utility to pursue the legal process. LB3, in my opinion and the way I understand it, would do just that. You know, oil and gas and their products, such as diesel and jet fuels, gasolines, dry natural gas itself, and natural gas liquids, are currently pipelined across our state. We include a number of attachments for you today that we have, and if you just looked at the very first one, I won't go with the other ones, but I obtained this. This was our Nebraska Energy Office put this out there in 1994. It shows oil lines, it shows natural gas liquid lines, as well as refined petroleum products. It doesn't show the new TransCanada...the Keystone line that came down actually across the Dakota aquifer but over on the east side of the state. But oil and gas is important in Nebraska. The Platte pipeline was built in 1952. It's been there for nearly 60 years without any hazardous activity to the environment. In the...this particular map does not show natural gas lines. There's ones there, but in western Nebraska, since 1990s, we built two major pipelines that are big inch pipelines, 36- or 42-inch lines. There was Trailblazer, there was Rockies Express pipeline, there's Pony Express pipeline, pretty much those pipelines go right south of Sidney where I live, right at the border. The Gurley pump station of Platte is about 15 miles away. So we have constructed natural gas pipelines and my fear would be that this bill, since it does not...it only speaks to oil, is unfair to pipelines of other kind if...just discriminates. I'll just say that pipelines are the lifeline of our state and our country. We import all of our refined products. Pipelines carry vital natural resources and their products to our citizens in Nebraska and I believe that they're absolutely in the public interest. And so for these

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reasons we would ask this committee would not advance LB3. Thank you. [LB3]

SENATOR ASHFORD: Let me just...how much of our...is it 16 percent of our oil is produced--I'm throwing these numbers out--produced, and I don't really know, produced within the borders of the United States and that it's something like that? I don't know if somebody here knows the answer to that. [LB3]

WILLIAM SYDOW: I read the other day that our consumption is around 20 million barrels a day. [LB3]

SENATOR ASHFORD: How much of that is... [LB3]

WILLIAM SYDOW: Domestically, I would say we're at 25 percent. [LB3]

SENATOR ASHFORD: It's 25. [LB3]

WILLIAM SYDOW: We're about 5.1 million barrels per day. [LB3]

SENATOR ASHFORD: And then how much is imported from Canada today? [LB3]

WILLIAM SYDOW: Canada is our largest importing country and I would believe that we are close to 2 million barrels a day from Canada. Then... [LB3]

SENATOR ASHFORD: So that would be what percentage? [LB3]

WILLIAM SYDOW: So that would be 7, 7.5. We... [LB3]

SENATOR ASHFORD: Are they our largest...is that our largest... [LB3]

WILLIAM SYDOW: Yes. [LB3]

SENATOR ASHFORD: Canada is our largest importer, I think. Okay. And so U.S. production is around 16 percent and 7 percent is from Canada. Is that...or I'm sorry, 25 percent... [LB3]

WILLIAM SYDOW: Twenty-five, yes. [LB3]

SENATOR ASHFORD: ...and 7 percent is from Canada. [LB3]

WILLIAM SYDOW: Yeah, if that would be the 2, or 10,... [LB3]

SENATOR ASHFORD: Or something like that? [LB3]

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WILLIAM SYDOW: ...something like that, yes. [LB3]

SENATOR ASHFORD: Okay. And so okay. Any other questions, comments? Great. Thank you, sir. [LB3]

WILLIAM SYDOW: Thank you very much. [LB3]

JILL BECKER: Good afternoon, Chairman Ashford and members of the Judiciary Committee. I'm Jill Becker. I'm a registered lobbyist for Black Hills Energy, and I just wanted to make two comments primarily on LB3 and the proposed amendment from Senator Avery. And I guess speaking first to the amendment, we would be opposed to the language that would insert "petroleum, gases, and other products thereof," which would basically add those industries to the provisions of LB3. We think that by adding those industries we would be beyond the call of the Governor. And then my second comments really go to the language in LB3. If we add the language from the proposed amendment, the provisions set out in LB3 are not what we as a company follow. While we do receive approval from the Public Service Commission as a company to acquire a certificate of public convenience and necessity, we don't do that for a project. And really, what that language in the proposed bill would do is basically require preapproval of our project, and currently our statutes don't give that authority to our Public Service Commission. So while not all entities fall under the jurisdiction of the Public Service Commission, I just... [LB3]

SENATOR ASHFORD: Are we talking about LB3 or... [LB3]

JILL BECKER: We're talking about LB3... [LB3]

SENATOR ASHFORD: Okay. [LB3]

JILL BECKER: ...because what this would require is a permit before you start the pipeline and we don't do things that way right now. We would put in... [LB3]

SENATOR ASHFORD: You start the pipeline before you get the permit? [LB3]

JILL BECKER: Well, number one, I guess I should say we don't do...we don't have a specific permit that says if we want to put in a new line to somewhere that we have to get permission. [LB3]

SENATOR ASHFORD: Oh. [LB3]

JILL BECKER: It is looked at after the fact. When we go into the commission, they do a review of all our capital expenditure projects but... [LB3]

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SENATOR ASHFORD: What pipelines are we talking? I mean I'm trying to understand, what pipelines are we talking about? [LB3]

SENATOR LARSON: Gas pipelines. [LB3]

SENATOR ASHFORD: Okay. [LB3]

JILL BECKER: This would be natural gas pipeline. [LB3]

SENATOR ASHFORD: This is natural gas, okay. Okay. [LB3]

JILL BECKER: The inter, the interstate, yeah, interstate. So while I understand that's a very technical distinction, I just wanted to let you know that if you pull us in under this statute, it's not the current statutory framework that we operate under. We don't get that permit first. [LB3]

SENATOR LATHROP: Got it. [LB3]

JILL BECKER: I'd be happy to answer any questions. [LB3]

SENATOR ASHFORD: Okay. [LB3]

JILL BECKER: Okay. Thank you. [LB3]

SENATOR ASHFORD: You learn. You learn stuff, yeah. [LB3]

MICHAEL WHATLEY: (Exhibits 21 and 22) Afternoon, Chairman Ashford, committee. My name is Michael Whatley, W-h-a-t-l-e-y, and I'm the executive vice president of the Consumer Energy Alliance. CEA is made up of more than 300,000 individuals and 170 different affiliate organizations that represent every sector of the U.S. economy, including truckers, highway users, shippers, manufacturers, iron and steel producers, farmers, chemical manufacturers, truck stop operators, convenience store operators, refiners, and energy producers. Basically, we represent everybody who gets fuel to a pump and everybody who takes a pump and puts it in a tank. CEA strongly supports Keystone XL pipeline because of the economic benefits that it will provide for both Nebraska and the entire United States, endorses the State Department's finding that the project poses no significant risk to the environment. And our concern with LB3, as introduced, because we believe that it would be unfair to change state law in such a way that it would affect an ongoing regulatory process. Keystone XL will bring enormous benefits to both Nebraska and the country. It will create more than 120,000 jobs across the United States, including 7,500 here in Nebraska. These job numbers come from a highly respected economist named Ray Perryman, and I have submitted a copy of this study to the committee. It will generate hundreds of millions in federal, state, and local

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taxes; create \$20 billion in economic growth nationwide; and generate more than \$150 million in government receipts for the state of Nebraska. That's a lot of money that will go to improving public schools, roads, hospitals. It will also strengthen international energy security and it will lower gas and diesel prices. The 700,000 barrels of oil per day that this pipeline will bring to Gulf Coast refineries will be coming from places like Oklahoma, Texas, Montana, the Dakotas, and Canada, our neighbor, our closest ally and our largest trading partner. As of this morning, the United States has imported 2.95 billion barrels of oil since January 1 at a total cost of over \$313.5 billion. This equates to more than 11 million barrels per day out of the 19 million barrels a day that we consume as a nation. To suggest that the oil from the Keystone XL pipeline, which is currently discounted between \$25 and \$40 per barrel versus the oil that we import from Venezuela and the Middle East, will cause the United States to become an exporter or will raise gasoline and diesel prices, as some have alleged today, betrays a fundamental lack of understanding of U.S. oil markets and basic economics. CEA urges both the Judiciary Committee and the entire Legislature to cautiously approach any legislation which addresses the eminent domain process for pipelines, particularly legislation such as LB3, as introduced, which would change state law and affect ongoing oil pipeline construction projects such as Keystone XL. Thank you. [LB3]

SENATOR ASHFORD: Thanks for your comments. Any...yes, Senator Council. [LB3]

SENATOR COUNCIL: Yes. Thank you, Mr. Whatley, for appearing. Now just for my own edification, are you based here in Nebraska, the CEA? [LB3]

MICHAEL WHATLEY: No, ma'am. CEA is a nonpartisan, nonprofit organization. We're based in Houston, Texas, and I run all of our government affairs operations out of Washington, D.C. [LB3]

SENATOR COUNCIL: Okay. Now as I understand your objection to LB3, let me make sure that I understand your objection, that if we were considering this legislation in a pristine environment, no ongoing construction projects, would you be as opposed or opposed at all to the state going down this path? [LB3]

MICHAEL WHATLEY: At that point in time we would be certainly happier to sit down and talk with you about that, but I do not think we would have anywhere near the level of concern that we do with the emergency language that's in the bill. [LB3]

SENATOR COUNCIL: Okay, so that's...your objection is principally to the emergency clause. [LB3]

MICHAEL WHATLEY: Yes, ma'am. [LB3]

SENATOR COUNCIL: Okay. Thank you. [LB3]

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SENATOR ASHFORD: And I just...and it's impossible to really discuss but this is obviously a thorough study that's been presented to us. I just, when we talk about revenues, are we...we're talking about what period of time? [LB3]

MICHAEL WHATLEY: That would be over the lifetime of the project in general but... [LB3]

SENATOR ASHFORD: And is that...what is that, 30 years? How... [LB3]

MICHAEL WHATLEY: Yes. [LB3]

SENATOR ASHFORD: Thirty years? [LB3]

MICHAEL WHATLEY: Yes. [LB3]

SENATOR ASHFORD: So, okay, so the conclusion here is over...is that there's a net gain to the state and the nation by having this. Just one oil question again: When the discounted oil that we're talking about, it's discounted at what...where, as it enters the pipeline or is it discounted after the refining process? [LB3]

MICHAEL WHATLEY: The oil is actually discounted. There's a contract that goes between the producer of the oil and... [LB3]

SENATOR ASHFORD: And the refinery. [LB3]

MICHAEL WHATLEY: ...and the refiner of the oil that's going to offtake it. Then they pay a toll to the pipeline company. [LB3]

SENATOR ASHFORD: And how do they pay that? Do they pay that...how do they pay that cost? Do they pay it in a per unit? Do they... [LB3]

MICHAEL WHATLEY: Yeah, it's a per-unit price, it's basically a toll so...that would go through it. And the three principal fields that are going to be delivering oil to the, you know, Gulf Coast refineries through TransCanada through Keystone XL are the Permian Basin in Texas and then...which goes up into Cushing, and then the Bakken oil field, which is Montana, South Dakota, North Dakota, and of course the oil sands up in Alberta. So the oil that is currently there is only getting to market, for the most part, through the glutted pipelines that folks have talked about to the Midwest or through rail. If we can get this pipeline on-line, then that oil will go in there. Now that oil is currently discounted anywhere from \$25 to \$40. What... [LB3]

SENATOR ASHFORD: And is that because of the input cost versus transporting the oil

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here? [LB3]

MICHAEL WHATLEY: Yes, plus the fact that it is landlocked at this point in time. Now there is one study that suggests that it may actually increase wellhead prices by \$3 per barrel because it would give those producers new oil markets. Well, we would argue that the oil coming to the Gulf Coast refineries, instead of being \$24 to \$40 per barrel discount, would be a \$22 to \$37 per barrel discount, is still a substantial discount versus the prices that we're paying for the oil that are coming from Venezuela and the Middle East. [LB3]

SENATOR ASHFORD: And is that oil...what about past experience with the other pipelines? Are we seeing those same discounted pricing units? [LB3]

MICHAEL WHATLEY: I believe that's the case. You know, at this point in time the simple argument is this. We're going to have 700,000 barrels a day that are going to come into the U.S. markets that are going to be discounted heavily versus current pricing, and that that is suppose to raise gasoline and diesel prices just does not make sense. [LB3]

SENATOR ASHFORD: But if...but a refinery is a low-margin operation. That's correct? I mean... [LB3]

MICHAEL WHATLEY: Uh-huh. Correct. [LB3]

SENATOR ASHFORD: So if we can...if by allow...this is maybe a devil's advocate question here,... [LB3]

MICHAEL WHATLEY: Right. [LB3]

SENATOR ASHFORD: ...but if we can...if those refinery costs can be reduced by 25 to 30 percent, am I missing an economic rule here that says they could export or sell at the price that's quoted that day or by contract (inaudible)... [LB3]

MICHAEL WHATLEY: No, you raise a really good point. [LB3]

SENATOR ASHFORD: ...and receive a marginal increase in their profits? [LB3]

MICHAEL WHATLEY: You raise a really good point and when you talk about exports in particular, because the oil from the oil sands right now, there is capacity, both in pipeline and in rail, to get that through a 500-mile trip up to Kitimat on the Pacific Coast, and then it can be loaded into supertankers and taken over to Asia. To suggest that folks are going to pay a 1,700-mile toll, load it onto smaller tankers, take it through the Gulf of Mexico, through the Panama Canal and then over to Asia, which would substantially

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raise the price of the transportation for that oil, does not make any sense whatsoever. Now that being said, in terms of gasoline and diesel prices, the fixed costs that we see in a price of gas are your transportation costs to get it from the wellhead to the refinery, your refinery costs, your transportation costs to get it from the refinery to the rack, and then of course your taxes on it. And over the course of the last 25 to 30 years those costs have been amazingly consistent. So the fact is there is a direct peg between the crude oil price and the gasoline and diesel and jet fuel price that we've seen. We actually went back and ran an analysis on this where we checked the monthly averages for oil, gasoline, and diesel. Every month from 1973 through 2009 there was a .996 statistical correlation. Now there may be some lag, but over time the determining factor in terms of what gasoline and diesel prices are going to be at the pump is what are the oil prices. If we can get this heavily discounted oil out of the fields and into the refineries, we will put significant downward pressure on those prices. [LB3]

SENATOR ASHFORD: Just two related questions (inaudible). These are questions I've had in my mind a while. One is the report that, again, four out of five tanker companies that have contracted with a refinery in Texas are foreign owned tanker companies. Have you heard that? [LB3]

MICHAEL WHATLEY: Yeah, actually the vast majority of the fleets, the tanker fleets, do come...are foreign flagged. [LB3]

SENATOR ASHFORD: Because they're foreign flagged. [LB3]

MICHAEL WHATLEY: Right. [LB3]

SENATOR ASHFORD: ...is that what they're saying, just that they're foreign flagged? [LB3]

MICHAEL WHATLEY: They are foreign flagged. [LB3]

SENATOR ASHFORD: And most shipping is foreign flagged so... [LB3]

MICHAEL WHATLEY: Yes, sir. [LB3]

SENATOR ASHFORD: ...so that's the explanation generally for that? [LB3]

MICHAEL WHATLEY: Yes. [LB3]

SENATOR ASHFORD: And then the second comment is the British Columbia issue where the cost of building or providing adequate refinery and other facilities to move oil through British Columbia and (inaudible) and towards Asia, that...can you comment on that? [LB3]

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MICHAEL WHATLEY: Sure. There currently is at least one pipeline that is taking product out there. Again, it's a 500-mile pipeline. There also is rail capacity through tanker cars to do that. Enbridge is actually trying to build the Western Gateway pipeline, which will be a pretty significant project. They are basically going through their permitting paces, the same way that TransCanada is going through its permitting paces down here. Frankly, in terms of oil going to China, we think it is substantially more likely to go to China if this project is not built than if it is. [LB3]

SENATOR ASHFORD: Any other comments, questions? Thank you, sir. [LB3]

MICHAEL WHATLEY: Yeah. Thank you. [LB3]

SENATOR LATHROP: Well, I have one. [LB3]

MICHAEL WHATLEY: Yes, sir. [LB3]

SENATOR LATHROP: I have one. [LB3]

SENATOR ASHFORD: Senator Lathrop. [LB3]

SENATOR LATHROP: We're talking about ships shipping this stuff somewhere, and whether their flags are Chinese or American is sort of beside the point. If we're moving this stuff through the pipe and then putting it on a ship, it's going somewhere other than Nebraska. [LB3]

MICHAEL WHATLEY: Well, my point is that it will not actually. There are direct offtake agreements where this oil is going to go directly into refineries. It is not going to go to shipping yards. All of the shipping-in points that we have right now, the refinery complex in the Gulf Coast, 8.5 million barrels of oil per day capacity, all right? We are importing 5 million of those barrels; 3.5 million is coming from domestic product, all right? Those refinery or those shipping terminals are off-loading oil that is coming from Venezuela or coming from the Middle East right now. We are not going to add 700,000 barrels a day to that mix and start exporting product. There is one comment that has been made by a Valero statement that they said they expect that they may incrementally increase the amount of diesel product that we send to...from those Houston refineries to Europe, but we are not going to be exporting any crude oil out of that complex whatsoever as a result of this pipeline or any other. [LB3]

SENATOR ASHFORD: So it's not going... [LB3]

SENATOR LATHROP: Wait a minute. [LB3]

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MICHAEL WHATLEY: No, sir. [LB3]

SENATOR LATHROP: There's a difference between the crude oil and the finished product, is there not? [LB3]

MICHAEL WHATLEY: Completely agree, yes, sir. [LB3]

SENATOR LATHROP: So we're not exporting any of it. [LB3]

MICHAEL WHATLEY: Right. [LB3]

SENATOR LATHROP: Not just the oil but the product, the gasoline that... [LB3]

MICHAEL WHATLEY: There is a very small percentage of the refined product, which is diesel, which gets exported to Europe currently right now, but we do not export oil and we will not export oil as a result of this pipeline being built. [LB3]

SENATOR LATHROP: You keep saying oil and I was asking about... [LB3]

MICHAEL WHATLEY: Right. [LB3]

SENATOR LATHROP: ...the product. We end up with...do we end up with gas that you can burn in cars? [LB3]

MICHAEL WHATLEY: Yes, absolutely. [LB3]

SENATOR LATHROP: Okay. And when I ask the question, you take it back to oil not being exported. My question is... [LB3]

MICHAEL WHATLEY: I apologize. [LB3]

SENATOR LATHROP: ...whether we're going to...once we run it through the refineries and we have something we can burn in an automobile, is that going to be exported? [LB3]

MICHAEL WHATLEY: No, sir. [LB3]

SENATOR LATHROP: None of it. [LB3]

MICHAEL WHATLEY: I would have to get you a definitive statement on that, but as of this point all intentions are this oil is refined into products that serves the Texas and the Midwestern markets. Some of it is put on pipelines that go up into the Midwest. A vast amount of it gets put on the Colonial pipeline system and goes up the East Coast all the

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way to New Jersey. This is going to be domestically used. You know, as a nation right now, we import 11 million barrels of oil out of 19 million barrels of oil that we use every single day. This oil that's going to be coming through here is going to be discounted versus what we're already importing, all right? So it goes to...it stands to reason that if the product price going into the refineries is discounted, that the product price coming out of those refineries would be discounted as well. We're not going to turn around and send that overseas and continue to import higher-priced product. [LB3]

SENATOR LATHROP: I have to say--I'm just going to make this comment--the two, what I would consider, ancillary issues, because the issue about labor and the work, while very important to my friends in labor, and the question about who's going to burn this stuff once it has been refined have...you can...we're getting it from both sides: it's all headed to China, and then you sit down and say we're going to burn it all here in the United States. And we have varying estimates on jobs and I'm looking in here real quick. It looks Perryman has been...they have the...TransCanada hired them to make estimates on the jobs, right? [LB3]

MICHAEL WHATLEY: Yeah. [LB3]

SENATOR LATHROP: And TransCanada hired Perryman to do the study that you're here telling us about under the auspices of Consumer Energy Alliance. In fact, it's a study commissioned by TransCanada. [LB3]

MICHAEL WHATLEY: I believe that's correct, yes. [LB3]

SENATOR LATHROP: Okay. Well, it's hard for us to sit here and know what to believe, to be very honest, about either of those two subjects, which really are sort of beside the point, and the point for us in Nebraska is what about this pipe going through the Sandhills and sitting in the water in the aquifer in places like Holt County. And we get no guarantees; we don't get a second chance. If this stuff gets exported to somebody, we don't get to haul you back here or pull this pipe out of the ground. Or if you don't hire all the people, TransCanada doesn't hire all the local people to do the work that they claim in the study that they're going to hire, then we don't get to bring anybody back here and say, wait a minute, you didn't tell us the truth or something changed. [LB3]

MICHAEL WHATLEY: Well, I think that you raise some very good points. I think the flip side is also true. What we have seen over the last seven years is a dramatic decrease in the oil flow into those Houston refineries from Mexico and Venezuela. There's two main reasons. First off, the Venezuelan imports have been cut down by Mr. Chavez because he wants to send them to China and he wants to punish the United States. Also, the Mexican reserves are being depleted. You get an annual 10 percent depletion rate on any given well and they do not have the capacity to increase their wells into the deep water. They just don't have the technical capabilities of it. So what we have seen

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since 2005 is about an 800,000 barrel per oil drop in the level that we're getting into those Houston refineries. Now that oil depletion, which is going to continue to move forward, is going to be filled with oil from the Middle East and that is going to be substantially more expensive than we could get it from here. So if the pipeline is not built, we can expect that we will see significantly higher-priced oil and gasoline and diesel prices moving forward as well. [LB3]

SENATOR LATHROP: Part of the depletion could be a function of the fact that China is willing to pay a lot more and they're getting more and more demand on the world market, right, as they develop? [LB3]

MICHAEL WHATLEY: I think that's absolutely a very legit concern. You know, again, United States' demand has actually leveled off over the last several years due to CAFE increases and then the high price spikes, where people drop down. But world demand is continuing to increase based on Chinese consumption as well as Indian consumption. Even throughout the course of the recession, we have seen increased demand in China and increased demand in Europe. So we do foresee that the oil in the oil sands is going to be produced, whether this pipeline is built or not, and we think that it would be a great thing for America if we could take advantage of the discounted prices. [LB3]

SENATOR LATHROP: Thank you. [LB3]

MICHAEL WHATLEY: Thank you. [LB3]

SENATOR ASHFORD: Senator Harr. [LB3]

SENATOR HARR: No, he answered mine. [LB3]

SENATOR ASHFORD: So in effect then we're...700,000 barrels is a hedge really in a way because, for example, for example, today, oil prices are up to \$97 a barrel primarily because of the geopolitical situation in Iran. At least that's (inaudible). It could be other reasons but that is as it's reported. Just so I fully understand this, if you're going to be providing (inaudible) Canadian oil will be coming through that pipeline at a rate of 700,000 barrels a day against a need of 19 million barrels, and we obtain 25 percent out of that 19 million barrels a day from Canada (inaudible)... [LB3]

MICHAEL WHATLEY: We get about... [LB3]

SENATOR ASHFORD: ...7 percent from Canada... [LB3]

MICHAEL WHATLEY: Yeah, we get about 2 million barrels a day. [LB3]

SENATOR ASHFORD: ...25 percent is domestic...is domestically produced. [LB3]

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MICHAEL WHATLEY: Right. Yeah, we get about 2.2 million barrels per day from Canada at this point. But it's also important to recognize that 25... [LB3]

SENATOR ASHFORD: I'm not...no, I'm just trying follow (inaudible)... [LB3]

MICHAEL WHATLEY: Yeah. No, you're absolutely...yeah. [LB3]

SENATOR ASHFORD: No, you're...I'm not...this isn't a...I mean I'm just trying to understand. So we add...so now we're going to be theoretically and other factors, but we're going to be getting 3 million barrels of oil from Canada every day. It's going to be at a discounted...and it's going to stay here, the 700,000, to Senator Lathrop's point, the 700,000 barrels is going to remain in the U.S. market except for small incremental diesel because of, obviously, the huge demand for diesel in Europe and so forth and so on. So you...we raise our supply by 700,000. That's going to stay here and, because it's discounted, and it's discounted because it's cheaper to get... [LB3]

MICHAEL WHATLEY: Yes, to get it to market. [LB3]

SENATOR ASHFORD: ...to the refinery, the refinery still makes sufficient margin because it's getting this at a cheaper price from TransCanada. Is that right? [LB3]

MICHAEL WHATLEY: Yes, sir. [LB3]

SENATOR ASHFORD: The oil that it ships from the oil sands to...tar sands to British Columbia and Asia, they're going to get more of a return on, and that's... [LB3]

MICHAEL WHATLEY: It's hard to say what that price point would be, candidly. We've... [LB3]

SENATOR ASHFORD: Is it still discounted to... [LB3]

MICHAEL WHATLEY: You know, I would assume so but honestly we've not done an analysis on that. [LB3]

SENATOR ASHFORD: Okay. Thanks. [LB3]

MICHAEL WHATLEY: Thank you, sir. Thank you. [LB3]

KEN MASS: (Exhibit 23) Senator Ashford, members of the committee, my name is Ken Mass. I'm with the Nebraska AFL-CIO and here today in opposition of Senator Avery's bill, LB3. I think you've heard the story, you've heard the importance of jobs that it will create in Nebraska and what it will do to the economy when we get it going. So anything

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to slow up the process, we were talking earlier at lunchtime, we have a dream and the dream is December 23, right before Christmas Eve, they get the permit and everybody has one joyful Christmas and holiday, and after January we start to work. I can tell the committee that you're not alone in Nebraska. As I stated last night in the Urban Affairs meeting, I am part of a 14-state Midwest region conference of AFL-CIO. We have a conference call. There is more interest--you may not understand this--there's more interest outside Nebraska on the pipeline than inside Nebraska on the pipeline. So I can tell you that's there. We oppose this but we support the pipeline and we look forward to working with it. What has been passed out is testimony from John Bourne, who had to go to North Platte, but John is...those were passed out, I believe, right? Okay, testimony of John Bourne of the IBEW. And he's willing to meet with you and discuss his testimony. So that's all I have. Any questions? [LB3]

SENATOR ASHFORD: Seeing none, thanks. [LB3]

KEN MASS: Thank you. [LB3]

SENATOR ASHFORD: Anyone else? [LB3]

DELLA WILSON: (Inaudible) [LB3]

SENATOR ASHFORD: Come on up. Do we have any other...do we have any other testifiers? Okay. [LB3]

DELLA WILSON: Do you need this? [LB3]

SENATOR ASHFORD: Well, sure. [LB3]

DELLA WILSON: My name is Della Wilson, D-e-l-l-a W-i-l-s-o-n. My name is Della Wilson and I am a 13-year-old, 8th grader from Logan Fontenelle Middle School in Bellevue, Nebraska. I'm a second generation native of Nebraska. I won first place in aquifer science in April's Nebraska Science Olympiad State Championship, and I have studied the ways to protect our earth's waterways. I am here today to ask for your support of Senator Avery's bill and for the protection of the Ogallala aquifer. I realize that the issue of the pipeline and the aquifer is complicated. I know that our nation needs oil and jobs and that the promise of both from the pipeline is one that is hard to pass up. But XL has had a past history of leakage. Even one leak in our shallow aquifer can ruin this natural water resource that provides water to millions of people in eight states. I've studied the cost of restoration and it's a lot, and sometimes the leak can't even be cleaned up at all. Many of you have political reasons for being here. You are an environmentalist, a pro-oil person, a Democrat or Republican, and so on, but at 13 years old I don't belong to a clique or party. I just believe that this is wrong. This aquifer was placed here millions of years ago for our use and we have an obligation to be good

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stewards of it. Trading clean water for jobs and oil may seem like the right thing, given this economy, but many of you are at an age where you may not be around to feel the effects of this decision. Your decision on this and other legislation will affect me and my children and grandchildren. Why not move the pipeline to a place where we are able to achieve everyone's goals, secure the jobs, the oil, and protect the aquifer? I came here today because I know this will cause a problem if it's allowed to proceed in its planned spot. According to the water project, over 1 billion people on this earth struggle to find clean, safe water. Oil and jobs are important, but they're not required to sustain life; clean water is. Don't sacrifice it and cause me and my generation to have to suffer the consequences in the future and join the billions of others who struggle to find safe water. Please support Senator Avery's bill and the other bills that give Nebraska a say about where the pipeline is placed. Please save our aquifer because your children and grandchildren will remember your choice. [LB3]

SENATOR HARR: Thank you. [LB3]

SENATOR ASHFORD: Well, thank you, Della. [LB3]

SENATOR COUNCIL: Well done. [LB3]

SENATOR ASHFORD: Very well done. [LB3]

DELLA WILSON: Do you have any questions? [LB3]

SENATOR ASHFORD: How long have you been studying this issue? [LB3]

DELLA WILSON: About a year and a half. [LB3]

SENATOR ASHFORD: Really? What got you interested in it? [LB3]

DELLA WILSON: Science Olympiad. It was one of my events that was chosen. [LB3]

SENATOR ASHFORD: Really? [LB3]

DELLA WILSON: Yes. [LB3]

SENATOR ASHFORD: For the...is it for the science, state science competition? [LB3]

DELLA WILSON: Yeah, it's a science competition and in Awesome Aquifers you essentially study about aquifers and damage done to them...that is done to them, and how to clean it up. [LB3]

SENATOR ASHFORD: Well, that's good work. And it may not seem so sometimes but

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we...everyone in this room is here because of you so...and your friends, so hopefully we all make the right decisions when we have the opportunity to do so. [LB3]

DELLA WILSON: All right. [LB3]

SENATOR ASHFORD: We really appreciate you coming down. [LB3]

DELLA WILSON: All right. Thank you. [LB3]

SENATOR ASHFORD: Did you do this on your own or did you have a partner in your science project? [LB3]

DELLA WILSON: I had a partner but he did not want to testify today. (Laughter) [LB3]

SENATOR ASHFORD: Well, you go back and tell him that you are the star of the day, okay? [LB3]

DELLA WILSON: Thank you. [LB3]

SENATOR ASHFORD: Thank you very much for coming. Thank you. I believe that...is there anyone else that wishes to testify? Senator Avery, do you wish to close? (See also Exhibits 24-30.) [LB3]

SENATOR AVERY: Thank you, Mr. Chair. Just for the record, I had nothing to do with arranging this testimony. I certainly wouldn't have put myself last after that. (Laughter) [LB3]

SENATOR ASHFORD: No. She was terrific. [LB3]

SENATOR AVERY: Yes, she was terrific. [LB3]

SENATOR ASHFORD: That's why we're here, yeah. [LB3]

SENATOR AVERY: When I was a young teenager, I used to have a favorite TV show called American Bandstand where they would play pop music and they'd always have a group of teenagers before the show was over that would evaluate a song. And if the song was bad they almost always said, well, it has a nice beat and it's easy to dance to. You may remember this. If it was a good song then of course it was good music. [LB3]

SENATOR ASHFORD: I can't remember that far back. [LB3]

SENATOR AVERY: Well, (laugh) the testimony we have heard in opposition to LB3 today reminds me of American Bandstand. It has a nice beat and it's easy to dance to,

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but it doesn't make good music, because there was not any testimony I heard directed at LB3 that was a valid critique. To talk about pricing of petroleum and to talk about where it's going to be refined and whether it's going to be shipped to China or not, that doesn't have anything to do with LB3. LB3 is an eminent domain bill. It does not deal with siting. It does not deal with a lot of issues that were discussed. One thing struck me. One of the testifiers, I believe it was Mr. Jones, said that they had some 60,000 landowners that had signed easement contracts. I presume these are 60,000 satisfied landowners. I didn't see a single one of them here today, not one. So where are they? Now if you'll just give me a minute, I'll try to answer a couple of points that were made. One was this was made...this argument was made more than once: This is special legislation. It is not. I think that the questioning that came from this committee made that very clear. It is not special legislation. It deals with all pipelines as defined in the amendment. The amendment specifies that it includes crude oil, petroleum, gases, and other products thereof. It is not directed at one pipeline. It was said that this is vague, that we don't know what you mean by controlling permits. Well, of course you know what we mean by controlling permits. If the Legislature should decide that we want to have a state permitting process, that's a controlling permit. If we do not, there is still the federal controlling permit process, which is what we're waiting to hear about. So what's vague about that? Nothing is vague about that, but it has a nice beat and it's easy to dance to. Third point was made that this would violate the interstate commerce clause, and there is nothing in this bill that places any requirement on any pipeline in Nebraska that will impede interstate commerce. It places no burdens on pipelines that are more onerous than those in neighboring states. In fact, testimony showed that our eminent domain law is the weakest in the region. In fact, I have been told that TransCanada was quite surprised when they started this project to find that Nebraska had no regulatory structure in its laws regulating oil pipelines, and that is something I think we need to be correcting here. So I would ask you, when you get into Executive Session, to take a good hard look at this, take into account the fact that we do not have a very strong regulatory structure, that we have what has been described, I think accurately, as a weak and incomplete eminent domain law and that we need to fix this. This is not asking too much to protect our landowners and I would invite you to help me do that. Thank you. [LB3]

SENATOR ASHFORD: (See also Exhibits 24-30) Thank you, Senator Avery. And thank you, all, for being here and spending the day with us. We're going to go into Exec Session for about five minutes, just a short time, so we'll ask you to... [LB3]