

## Applications under the Major Oil Pipeline Siting Act

*Disclaimer: The following description is for informational purposes only, and if any difference between this description and any law, regulation or case law exists, then such law, regulation or case law shall control. Portions of the Major Oil Pipeline Siting Act are currently on appeal.*

*The Commission has also requested an Attorney General Opinion regarding its jurisdiction to process an Application pending resolution of the appeal.*

A pipeline carrier seeking approval from the Nebraska Public Service Commission for a route within, through or across Nebraska must file an application with the Commission.

### **Application Timeline**

State law provides that the Commission has sixty (60) days after an Application is filed to schedule a hearing

The Commission must enter an order denying or approving an Application **within seven (7) months** after it is filed. For just cause, the time to enter an order may be extended an **additional five (5) months**. However, no extension can exceed eight (8) months after the issuance of a presidential permit authorizing construction.

The Commission has established a preliminary procedural schedule for use in a major oil pipeline siting application. The standard schedule is listed below but could be modified to fit individual circumstances.

<b>Deadline</b>	<b>Event</b>
Filing Date	Application Filed
Publication Date (w/in 3 business days of filing)	Notice of Application Published in Daily Record
30 days after publication	Deadline for agencies to notify Commission of issues and identify budget; Intervention Deadline
w/in 35 days of filing date	Planning Conference
45 days after publication	Deadline for Commission to request reports from agencies
60 days after filing date	Final date for discovery requests to be served by Intervenors on Applicant
10 days after service of final discovery requests	All discovery responses from Applicant due to Intervenors
5 days after due date for responses to Intervenor discovery requests	Deadline for Motions to Compel Responses by Applicant
15 days after deadline for responses to discovery requests	All Intervenors file direct testimony, exhibits, workpapers, and witness lists
Day 110 - 20 days after deadline for filing of Inter-	Final date for discovery requests to be served by Applicant on Intervenors;

venors' direct testimony	Agency reports filed with Commission
10 days after service of final discovery requests	All discovery responses from Intervenor due Applicant
5 days after due date for responses to Applicant discovery requests	Deadline for Motions to Compel Responses from Intervenor
15 days after responses to discovery requests	All rebuttal testimony and exhibits filed by Applicant
5 days after filing of rebuttal testimony	Written objections/Prehearing Motions; Parties to file any corrections to staff's list of disputed issues.
w/in 5 days of objections	Prehearing Conference/Any Oral Argument on Objections or Motions; Parties to file consolidated exhibit list.
150 days after filing date	Hearing
w/in 5 days of the conclusion of the hearing	Deadline for receiving expedited transcript
10 days after hearing, transcript is available	Post Hearing Briefs Due
5 days after post hearing briefs	Reply Briefs Due
210 days after filing date	Final Order

### **Hearing and Public Comment**

The Commission's review would include a hearing and may also include public meetings for the purpose of receiving input from the public at locations as close as practicable to the proposed route of the major oil pipeline. The Commission must make the public input part of the record. Within 60 days of receiving an application, the Commission must determine the date for the hearing.

### **Public Information**

The Commission is governed by the Public Records Act. The Application and other documents related to Applications will be made available to the public unless considered proprietary or otherwise confidential under Neb. Rev. Stat. § 84-712.05. To the extent possible, documents will be posted on the Commission's website. Individuals requesting hard copies may incur costs associated with the copies consistent with the Public Records Act.

### **Agency Reports**

The Commission may accept reports on the proposed project from the following agencies:

- Department of Environmental Quality;
- Department of Natural Resources;

- Department of Revenue
- Department of Roads
- Game and Parks Commission
- Nebraska Oil and Gas Conservation Commission
- Nebraska State Historical Society
- State Fire Marshal
- Board of Educational Lands and Funds

### **Content of Application and Considerations**

The information that must be included in an application can be found in the Commission's Natural Gas and Pipeline Rules and Regulations in Rule 023, and includes:

- The name and address of the pipeline carrier;
- A description of the nature and proposed route of the major oil pipeline including a map of the proposed route and evidence of consideration of alternative routes;
- A statement of the reasons for the selection of the proposed route of the major oil pipeline;
- A list of the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located;
- A description of the product or material to be transported through the major oil; The requirement can be satisfied through the filing of a representative Safety Data Sheet;
- The person who will own the major oil pipe-line;
- The person who will manage the major oil pipeline;
- A plan to comply with the Oil Pipeline Reclamation Act;
- A list of planned methods to minimize or mitigate the potential impacts of the major oil pipe-line to land areas and connected natural resources other than with respect to oil spills.
- For informational purposes only, a description of the method for state agencies and emergency response personnel to obtain current Safety Data Sheet(s) for the product(s) or material(s) being transported through the pipeline in the event of an incident.

### **Evaluation of the Application**

The pipeline carrier shall have the burden to establish that the proposed route of the major oil pipeline would serve the public interest. In determining whether the pipeline carrier has met its burden, the

Commission shall **not** evaluate safety considerations, including the risk or impact of spills or leaks from the major oil pipeline, but the Commission shall evaluate:

Whether the pipeline carrier has demonstrated compliance with all applicable state statutes, rules, and regulations and local ordinances;

Evidence of the impact due to intrusion upon natural resources and not due to safety of the proposed route of the major oil pipeline to the natural resources of Nebraska, including:

- an environmental impact study;
- a comprehensive soil permeability study;
- a distance-to-groundwater survey;
- evidence regarding the impact of the pipeline on wildlife; and
- evidence regarding the impact of the pipeline on plants located within and surrounding the proposed route.

- Evidence of methods to minimize or mitigate the potential impacts of the major oil pipeline to natural resources;

Evidence regarding the economic and social impacts of the major oil pipeline, including estimates regarding tax paid by the carrier to local and state government along the route of the proposed pipeline and information regarding impact on employment in Nebraska;

Whether any other utility corridor exists that could feasibly and beneficially be used for the route of the major oil pipeline;

The impact of the major oil pipeline on the orderly development of the area around the proposed route of the major oil pipeline;

The reports of the agencies filed pursuant to sub-section 023.05; and

The views of the governing bodies of the counties and municipalities in the area around the proposed route of the major oil pipeline.

### **Right to Amend Application**

If the Commission denies an Application, the pipeline carrier has sixty (60) days from the date of the order to amend its Application and the Commission has an additional sixty (60) days to approve or deny the amended application.

### **Appeal of Commission Decision**

Any party may appeal the Commission's decision to the Court of Appeals.