

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. OP-0003
of TransCanada Keystone Pipeline,)
L.P., Calgary, Alberta, seeking) ORDER DENYING REQUEST FOR
approval for Route Approval of the) DECLARATORY RULING
Keystone XL Pipeline Project)
Pursuant to the Major Oil Pipeline)
Siting Act.) Entered: July 12, 2017

BY THE HEARING OFFICER:

On February 16, 2017, TransCanada Keystone Pipeline, L.P., of Calgary, Alberta, ("TransCanada" or "Applicant") filed an Application with the Nebraska Public Service Commission ("Commission") seeking approval of a route for the Keystone XL Pipeline Project pursuant to the Major Oil Pipeline Siting Act, *Neb. Rev. Stat. §§ 57-1401 - 57-1413* ("Siting Act").

On March 31, 2017, the Hearing Officer entered an order granting petitions for formal intervention in the above-captioned proceeding ("Intervention Order") to Bold Alliance, the Sierra Club Nebraska Chapter ("Sierra Club"), the Ponca Tribe of Nebraska, and the Yankton Sioux Tribe, subject to certain reasonable limitations to issues of particular interest as stated by the petitioners.

On July 6, 2017, Bold Alliance, the Sierra Club, The Ponca Tribe of Nebraska, and the Yankton Sioux Tribe (jointly, "Petitioners"), filed a Petition for Declaratory Ruling seeking clarification regarding the applicability of Legislative Bill 263 [2017]¹ to their client's intervention in the above-captioned proceeding and an explanation of the weight the Commission intends to give certain portions of the record in the same proceeding.

The Administrative Procedures Act ("APA"), to which the Commission is subject, is the underlying authorizing legislation for the administrative rules of procedure of the Commission. LB 263, which became law on April 27, 2017, provides, in pertinent part, that the Commission is exempt from *Neb. Rev. Stat. § 84-912.02* "[f]or purposes of granting or denying a petition for intervention" under the APA."² It should be noted, LB 263 did not exempt the Commission from the entirety of *Neb. Rev. Stat. § 84-912.02*.

Declaratory Order/Ruling petitions are subject to the provisions of *Neb. Rev. Stat. § 84-912.01* and Commission rules. *Neb. Rev. Stat. § 84-912.01(4)(c)*, gives an agency the option of declining to issue a ruling and stating the reasons for the action.

¹ LB 263, 105th Leg., 1st Sess. (Neb. 2017).

² *Id.* at Section 80

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The Hearing Officer hereby declines to rule on the Petition for the reasons set out below.

As stated above, intervention was granted to Petitioners on March 31, 2017. LB 263 did not become law until April 27, 2017. Intervention having already been granted to Petitioners before April 27, 2017, LB263 has no effect on the Petitioners' status as intervenors. Moreover, even if LB 263 had been law at the time the Intervention Order was entered, the provisions of LB 263 would not have had any effect on the grant of the formal intervention status to the Petitioners.

Petitioners further request that the Commission explain how public comment will be recorded and weighed. The Commission does not consider such a request to be the proper subject of a Declaratory Ruling, because it does not ask that the Commission apply a statute, rule, regulation, or order to a specific circumstance.³

It should be noted, however, that the Siting Act directs the Commission to include public input as part of the record.⁴ To this end, comments received at all public meetings have been or will be transcribed for inclusion in the record. The Commission is also maintaining copies of public comments submitted in writing for inclusion in the record. As with the record as a whole, the Commission will determine the relative weight to be given such commentary as part of the deliberative process when determining whether the proposed route of the major oil pipeline is in the public interest under the Siting Act.

Therefore, based upon the reasons stated above, the Petition for Declaratory Ruling is denied.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Petition for Declaratory Ruling is hereby denied.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 12th day of July, 2017.

BY:



Tim Schram
HEARING OFFICER

³ Neb. Rev. Stat. § 84-912.01.

⁴ See Neb. Rev. Stat. § 57-1407(2).