

# NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF ROADS

March 20, 2017



Pete Ricketts, Governor

Mr. Matthew J. Effken  
Legal Counsel  
Nebraska Public Service Commission  
300 The Atrium, 1200 N Street  
PO Box 94927  
Lincoln, NE 68509-4927

Dear Mr. Effken:

On October 5, 2015, TransCanada Keystone Pipeline, L.P. (TransCanada) filed with the Nebraska Public Service Commission (PSC) an application for route approval of the Keystone XL Pipeline Project, pursuant to the Major Oil Pipeline Siting Act. On October 7, 2015, PSC notified the Nebraska Department of Roads (NDOR) that NDOR was required to file with the PSC within 30 days a list of potential issues related to the proposed pipeline route, and an estimated budget for NDOR to complete a report addressing the potential issues. If PSC deems it necessary, NDOR will then be requested to complete a report for PSC to use in its review of the application.

NDOR assumes TransCanada will be responsible for meeting local, state and federal requirements regarding protection of the State's economic, cultural, environmental, historical and archaeological resources.

TransCanada asserts that the Preferred Route for the TransCanada XL Pipeline will cross 26 state and federal highways in four NDOR geographic districts. NDOR has the duty to construct, operate and maintain the highways mentioned by TransCanada, and NDOR has other properties (such as maintenance yards, wetland mitigation sites, etc.) that could be impacted by the proposed pipeline route. (All NDOR properties will be referred to collectively herein as NDOR property or highway property.) The application also mentions generally that there will be portions of the pipeline's Preferred Route co-located with roads in addition to temporary construction access roads and permanent access drives; however, specific locations or the entities with jurisdiction at these locations are not identified in the application. Although the information in the application and GIS Data provide the general location of the Preferred Route and typical width of construction corridors, the permanent easements are not shown. Without knowing the precise location of pipeline crossings, temporary roads and access drives, or the width of the proposed construction corridor and permanent easements in relation to NDOR property, it is difficult for NDOR to determine the full extent of the impact of the Preferred Route on any area within NDOR's jurisdiction.

Section 12.0 of the application states that "Keystone will work with the Nebraska Department of Roads to obtain state road-crossing permits and driveway approach permits where necessary". NDOR has extensive existing requirements for the construction and occupancy of NDOR highway property by persons or entities (see Neb. Reb. Stat §§ 39-1359 (1), 39-1361 and 57 – 1102). When TransCanada submits the detailed information required during the permit application process, NDOR may determine that the route needs to be modified to avoid conflicts with State facilities within the jurisdiction of NDOR.

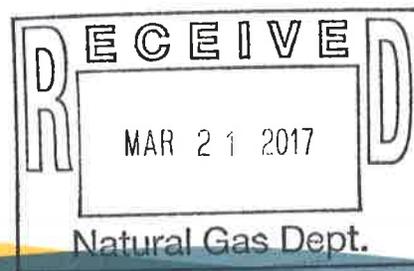
Kyle Schneweis, P.E., Director

Department of Roads

1500 Highway 2  
PO Box 94759  
Lincoln, NE 68509-4759

roads.nebraska.gov

OFFICE 402-471-4567 FAX 402-479-4325  
DOR.ContactUs@nebraska.gov



The following is a preliminary listing of the potential issues and NDOR requirements related to the Preferred Route:

NDOR Permits:

- TransCanada will be required to obtain a permit from NDOR for each crossing, use or occupancy of NDOR property, including but not limited to typical highway crossings, parallel occupancies, access drives or other uses, in order to construct and operate pipeline facilities across or along highway property as shown on the link provided: <http://www.roads.nebraska.gov/media/6872/utilacom.pdf>
- TransCanada will be required to meet all of NDOR's standard permit conditions including paying for performance bonds to secure proper completion of the work for each permitted location.
- TransCanada will be required to obtain insurance protecting the public and NDOR in specified amounts for its pipeline construction contractor, with types and amounts to be specified by NDOR, but likely to be similar to the requirements shown on the link provided: <http://www.roads.nebraska.gov/business-center/contractor/insurance/>
- NDOR will evaluate each permit in detail to determine the impact of the construction, operation and maintenance of the pipeline across or along highway property.
- NDOR will work with TransCanada to establish a consistent permit review process across all NDOR Districts to facilitate the application process and establish a set protocol to protect the State's transportation infrastructure to the fullest extent possible.

Construction and Maintenance:

- NDOR policy and prior decisions require that the pipeline will be buried at least 60" below the surface of the ground and will be directionally bored beneath the highway surface, with no bore pits permitted on highway property (See attached NDOR Typical Cross Section for Pipeline Crossing and the link provided: <http://www.roads.nebraska.gov/business-center/permits/row/>)
- The pipeline will be encased using NDOR approved steel casing from right-of-way line to right-of-way line.
- TransCanada shall provide detailed plans and specifications for each highway use or crossing well in advance of construction and should make reasonable revisions to those plans as required by NDOR.
- TransCanada will be responsible for protecting, repairing or relocating any State-owned drainage facilities and State-owned power, data or other utility type lines or facilities located on highway property.
- Areas disturbed by the construction, operation or maintenance of the pipeline must be seeded on highway property according to NDOR specifications.
- Traffic control during construction and maintenance will be the responsibility of TransCanada and must conform to NDOR requirements and the Manual on Uniform Traffic Control Devices (MUTCD).

Access Requirements:

- No temporary drives will be permitted off Interstate highways, freeways or expressways.
- Drives may not be allowed immediately adjacent to the proposed crossing location if site-specific conditions are not acceptable to NDOR.

Mr. Matthew Effken  
March 20, 2017  
Page 3

- NDOR-approved materials must be used for all approved driveways.

Future Commitments:

- TransCanada will be responsible for all cleanup costs related to any pipeline failure or leakage on or near highway property.
- TransCanada will be required to properly maintain and repair the pipeline in the future and to obtain any necessary future permits for repair, reconstruction, or maintenance of TransCanada facilities located on highway property.
- TransCanada will be required to indemnify, defend and hold the State harmless from any damage of any nature to any person or property which may result from TransCanada's operations on or near highway property. (02.10)
- TransCanada will be held fully responsible for any damage to or defacing of highway property that may be caused by its operations, and will be required to restore the highway to its original condition in a timely manner with minimal disruption of the facilities function. (02.11)
- Should the future construction, reconstruction or maintenance of a highway necessitate the moving or relocation of TransCanada facilities located on highway property, TransCanada shall move or relocate the facilities at TransCanada's own expense and as directed by NDOR. (02.16)

Budget to Prepare Report

NDOR is required to review all applications to occupy highway property and does not collect permit fees from applicants; however, NDOR does require payment of a performance guarantee with each permit application. The work by NDOR to review this application and prepare a report to PSC would be considered preliminary review for the permit application; therefore, a budget has not been developed as additional permit fees would not be charged to TransCanada. The amount of the performance guarantee required for each permit application will be determined by the District Engineer.

If requested, NDOR will complete a report regarding information within our agency's area of expertise relating to the impact of the pipeline for PSC to use in its review of the application submitted by TransCanada Keystone Pipeline, L.P.

Sincerely,



Kyle Schneeweis, P.E.  
Director

KS: KEJ

cc: Khalil Jaber, Deputy Director – Engineering  
Brandie Neemann –Project Development Engineer  
Mick Syslo, Materials, & Research Engineer  
Bob Frickel, ROW Division Manager  
Todd Wicken, Hwy. Property Management Supervisor  
District Engineers, NDOR  
Project File