

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its	)	RULE AND REGULATION NO. 183
own motion, seeking to amend Title 291,	)	
Chapter 9, Natural Gas and Pipeline	)	ORDER ADOPTING AMENDED THIRD SET
Rules and Regulations, to adopt rules	)	OF PROPOSED RULES AND ISSUING
regarding pipelines and to implement	)	AMENDED CERTIFICATE OF ADOPTION
the provisions of the Major Oil Pipe-	)	
line Siting Act.	)	Entered: April 16, 2013

BY THE COMMISSION:

On February 14, 2012, the Commission, on its own motion, opened this proceeding to amend Title 291, Chapter 9, Natural Gas and Pipeline Rules and Regulations, to adopt rules regarding pipelines and to implement the provisions of the Major Oil Pipeline Siting Act (the Act). The Second Set of Proposed Rules was released for comment on April 24, 2012. Written comments were received from several individuals and groups. A hearing was held on June 18, 2012.

Based upon the comments received and the testimony offered during the hearing, the Commission released the third set of proposed rules. Changes included a statement that Commission staff, although not a party to the application, may present evidence at the hearing; the addition of a requirement that a map of the proposed route be filed; that the intended contents of any pipeline be more thoroughly identified or that a Safety Data Sheet be provided; and a description of the method for state agencies and emergency response personnel to obtain updated Safety Data Sheets for any products in the pipeline in the event of incident.

Written comments regarding the third set of proposed rules were filed on behalf of the Association of Oil Pipelines and American Petroleum Institute (the Association); Bold Nebraska and the Clover Cove Ranch.

Hearing on the third set of proposed rules was held on **October 16, 2012**. On November 7, 2012, the Commission entered an order adopting the third set of proposed rules and issuing a certificate of adoption and the proposed rules were forwarded to the Attorney General's office for approval.

On April 8, 2013, the Attorney General's office completed its review of the rules and returned them to the Commission for three (3) modifications. First, section 023.02 must be revised to replace the two references to "section 3, Legislative Bill 4, One Hundred Second Legislature, Second Session, 2012" with "section 57-1503" in order to maintain consistency with Neb. Rev. Stat. 57-1405. Secondly, the Attorney General's office directed the Commission to include in sections 023.02A5 and 023.02A10 the phrase "for informational purposes only" with respect to the filings required. Finally, the Attorney General's office requires that the Commission add language to clarify that the terms set forth in section 023.02A5 could be satisfied by the filing of a "representative" safety data sheet.

The Attorney General's recommended change to section 023.02A5 would have read, in part, "A description of the product or material to be transported through the major oil pipeline including, for informational purposes only, identification of the product or material; hazard(s) identification...." Due to the fact that "identification of the product or material" is central to the description of the product or material required under statute, the Commission has modified the language to read, "A

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description of the product or material to be transported through the major oil pipeline including identification of the product or material; and for informational purposes only hazard(s) identification...."

The Attorney General's office specifically stated that the changes are not substantive, and can be done without further hearing. The Commission finds that the proposed rules as amended, attached hereto as Appendix and incorporated herein by this reference should be adopted and a Certificate of Adoption issued.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that a certificate of adoption for the proposed rules as set forth in the Appendix be, and is hereby, issued.

MADE AND ENTERED at Lincoln, Nebraska, this 16th day of April, 2013.

COMMISSIONERS CONCURRING:

*Tim Schram*

*Paul Jensen*

*Gerald L. Voss*

//s// Frank E. Landis

NEBRASKA PUBLIC SERVICE COMMISSION

*Frank E. Landis*  
Chair

ATTEST:

*Steve Meradith*  
Executive Director

## APPENDIX

- 1) **The following new subsections should be added and all other subsections renumbered accordingly:**

001 GENERAL:

001.01 Definitions: As used in this chapter, unless the context otherwise requires, the following definitions shall be used:

001.01A Affiliate: A person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a jurisdictional utility or competitive natural gas provider. A voting interest of 10 percent or more creates a rebuttable presumption of control.

001.01A1 Shared Resources Affiliate: A person or entity whose primary purpose is to share employees, departments or other physical assets used by the jurisdictional utility.

001.01A2 Affiliate Transaction: The purchase, sale, trade or lease of a good, service, or tangible or intangible asset from the regulated utility to an affiliate, regulated or unregulated other than a shared resources affiliate, or from an affiliate other than a shared resources affiliate to the regulated utility.

001.01B Aggregator: A person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services.

001.01C Competitive Natural Gas Provider or "CNGP": A person who takes title to natural gas and sells it for consumption by a retail end-user in the state of Nebraska, and for purposes of this section also means an aggregator as defined in LB 790 [2003], sec. 48(1). CNGP includes an affiliate of a Nebraska natural gas public utility. CNGP does not include the following:

001.01C1 A jurisdictional utility, as defined in Nebraska Administrative Code, Title 291, Chapter 9, Rule 001.01G;

001.01C2 A city-owned or operated natural gas utility or metropolitan utilities district in areas in which it provides natural gas service through pipes it owns; or

001.01C3 A natural gas public utility that is not subject to LB 790 as provided in LB 790, sec. 3 in areas in which it is providing natural gas service in accordance with LB 790, sec. 3 [2003].

001.01D Consumer Choice Program: A program offered by a jurisdictional utility that allows ratepayers, other than high-volume ratepayers, to purchase their gas supplies from a person other than the local gas utility.

001.01E Extension or Enlargement of a Service Area: The proposed extension or enlargement of a natural gas service area, natural gas mains, or natural gas services by an investor-owned utility or by a metropolitan utilities district.

001.01F Facility: New and existing pipelines, rights-of-way, and any equipment, facility, or building used in the transportation of liquid or gas or in the treatment of gas during the course of transportation.

001.01G Jurisdictional Utility: A natural gas utility subject to the jurisdiction of the Commission. Jurisdictional utility shall not mean a natural gas public utility not subject to the jurisdiction of the Commission pursuant to LB 790, sec. 3 [2003].

001.01H Major Oil Pipeline: For purposes of Section 023, a major oil pipeline shall mean a pipeline which is larger than six inches (6") in inside diameter and which is constructed in Nebraska for the transportation of petroleum, or petroleum components, products, or wastes, including crude oil or any fraction of crude oil, within, through, or across Nebraska, but does not include in-field and gathering lines or major oil pipelines otherwise exempt under the Major Oil Pipeline Siting Act.

001.01I Metropolitan Utilities District: A district constituted by an area as defined in Neb. Rev. Stat. Section 14-2101 (Reissue 1997).

001.01J Natural Gas Public Utility: Any corporation, company, individual, or association of persons or their trustees, lessees, or receivers that owns, controls, operates, or manages, except for private use, any equipment, plant, or machinery, or any part thereof, for the conveyance of natural gas through pipelines in or through any part of this state. Natural gas public utility does not mean a natural gas utility owned or operated by a city or a metropolitan utilities district. Natural gas public utility does not include any activity of an otherwise jurisdictional corporation, company, individual, or association of persons or their trustees, lessees, or receivers as to the marketing or sale of compressed natural gas for end use as motor vehicle fuel. Natural gas public utility does not include any gas gathering system or interstate pipeline.

001.01K Pipeline: For purposes of Section 023, pipeline shall mean a pipe used to transport, transmit, convey, or store liquid or gas for hire in Nebraska intrastate commerce other than a major oil pipeline, a gathering pipeline, distribution pipeline, or service line.

001.01L Pipeline Carrier: For purposes of Section 023, pipeline carrier shall mean a person that engages in owning, operating, or managing a major oil pipeline.

001.01M Prudent: Prudent shall mean that in making a decision a natural gas public utility has acted as any reasonable utility management would have acted in good faith, based upon the facts known or which should have been known at the time the decision was made.

001.01N Retail End-user: Any person or entity, including any manufacturer or producer of any product, purchasing natural gas for its own consumption, and not for resale or consumption by any other person or entity, without restriction based upon volume of gas consumed.

001.01O Safety Data Sheet: Safety data sheet means written or printed material concerning a hazardous chemical that is prepared in accordance with paragraph 29 C.F.R. § 1910.1200(g) as it existed on October 1, 2012.

001.01P Seasonal Disconnection Charge: A charge applied by a jurisdictional utility to a ratepayer who disconnects and re-connects service at the same premises within a twelve-month period requiring the ratepayer to pay in whole or in part charges for the months he or she was disconnected.

001.01Q Test Year: Either a consecutive twelve-month period commencing on the proposed effective date of the rate increase or a base year adjusted for known and measurable changes.

001.01R Supplier: A CNGP that participates in a consumer choice program.

2) Insert the following new section:

023 MAJOR OIL PIPELINES:

023.01 Scope: This section applies only to major oil pipelines. Nothing in Section 023 is intended to regulate safety as to the design, installation, inspection, emergency plans and procedures, testing, construction, extension, operation, replacement, and maintenance of major oil pipelines and pipeline facilities.

023.02 Major Oil Pipeline Application: A pipeline carrier proposing to construct a major oil pipeline to be placed in operation in Nebraska and who has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to **section 57-1503**, shall file an application with the Commission and receive approval prior to beginning construction of the major oil pipeline within Nebraska. A pipeline carrier proposing a substantive change to the route of a major oil pipeline and who has submitted a route for an oil pipeline within, through, or across Nebraska but the route is not approved by the Governor pursuant to **section 57-1503**, shall file an application for the proposed change with the Commission and receive approval prior to beginning construction relating to the proposed change.

023.02A Content of Application: The application shall be accompanied by written agreement to pay expenses assessed pursuant to subsection 023.12 and written testimony and exhibits in support of the application. The application shall include:

023.02A1 The name and address of the pipeline carrier;

023.02A2 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;

023.02A3 A statement of the reasons for the selection of the proposed route of the major oil pipeline;

023.02A4 A list of the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located;

023.02A5 A description of the product or material to be transported through the major oil pipeline including identification of the product or material; and for informational purposes only hazard(s) identification; composition/information on ingredients; first-aid measures; fire-fighting measures; accidental release measures; handling and storage; exposure controls/personal protection; physical and chemical properties; stability and reactivity; toxicological information; ecological information; disposal considerations; transport information; regulatory information. The requirement can be satisfied through the filing of a representative Safety Data Sheet;

023.02A6 The person who will own the major oil pipeline;

023.02A7 The person who will manage the major oil pipeline;

023.02A8 A plan to comply with the Oil Pipeline Reclamation Act; and

023.02A9 A list of planned methods to minimize or mitigate the potential impacts of the major oil pipeline to land areas and connected natural resources other than with respect to oil spills.

023.02A10 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.

023.02A11 An applicant must notify the Commission during the pendency of the application of any material change in the representations and commitments required

by this subsection within fourteen (14) days of such change.

023.02B Filing and Notice: Applications must be filed with the Executive Director at the Nebraska Public Service Commission. Pipeline carriers shall file an original paper copy of the application in addition to an electronic copy and five (5) paper copies.

023.02B1 Pipeline carriers shall also file a copy of the application with the following agencies:

<u>023.02B1(a)</u>	<u>Department of Environmental Quality</u>
<u>023.02B1(b)</u>	<u>Department of Natural Resources</u>
<u>023.02B1(c)</u>	<u>Department of Revenue</u>
<u>023.02B1(d)</u>	<u>Department of Roads</u>
<u>023.02B1(e)</u>	<u>Game and Parks Commission</u>
<u>023.02B1(f)</u>	<u>Nebraska Oil and Gas Conservation Commission</u>
<u>023.02B1(g)</u>	<u>Nebraska State Historical Society</u>
<u>023.02B1(h)</u>	<u>State Fire Marshal, and</u>
<u>023.02B1(i)</u>	<u>Board of Educational Lands and Funds</u>

023.02B2 Notice of Application: The applicant shall publish notice of the application in at least one newspaper of general circulation in each county in which the major oil pipeline is to be constructed and forward a copy of such notice to the Commission. The applicant shall serve notice of the application upon the governing bodies of the counties and municipalities specified pursuant to subdivision through which the proposed route of the major oil pipeline would be located. The Commission may provide additional notice to natural resource districts in the area of the proposed pipeline. The Commission may publish a copy of the application on its website.

023.02C Public Review: Any documents or records relating to a major oil pipeline filed with the Commission shall be made available to the public consistent with the Nebraska public records laws, Neb. Rev. Stat. § 84-712 through 84-712.09 and any applicable federal law.

023.03 After receipt of an application, the Commission shall:

023.03A Schedule a planning conference to establish a procedural schedule for the application;

023.03B Within sixty (60) days of the date of the filing of the application, schedule a public hearing;

023.03C Notify the pipeline carrier of the time, place, and purpose of the public hearing;

023.03D Publish a notice of the time, place, and purpose of the public hearing in at least one newspaper of general circulation in each county in which the major oil pipeline is to be constructed; and

023.03E Serve notice of the public hearing upon the governing bodies of the counties and municipalities through which the proposed route of the major oil pipeline would be located as specified in subsection 023.02B2.

023.04 Public Meetings: The Commission may hold additional 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 shall make the public input part of the record.

023.05 Agency Reports: Within thirty (30) days of the filing of the application, the agencies referenced in subsection 023.02B1 shall file with the Commission a list of potential issues and an estimated budget for the completion of a report addressing those issues. If requested by the Commission, the agencies referenced in subsection 023.02B1 shall file a report with the Commission, prior to the hearing on the application, regarding information within the respective agencies' area of expertise relating to the impact of the major oil pipeline on any area within the respective agencies' jurisdiction, including in such report opinions regarding the advisability of approving, denying, or modifying the location of the proposed route of the major oil pipeline.

023.05A The report shall be filed with the Commission at least ten (10) days prior to the hearing or as required by the Hearing Officer.

023.05B The agencies may submit a request for reimbursement of reasonable and necessary expenses incurred for any consultants hired pursuant to subsection 023.12.

023.06 Petitions for Intervention, Protests and Hearing on the Application: The filing of petitions for intervention and protests and the conduct of the hearing shall be governed by the Rules of Commission Procedure.

023.06A Hearing

023.06A1 Although not a party to the application, the Commission staff may provide evidence during the hearing to ensure a complete record, including but not limited to testimony and/or reports of professionals or experts hired pursuant to Neb. Rev. Stat. sec. 57-1412.

023.07 Burden of Proof: An application under the Major Oil Pipeline Siting Act shall be approved if the proposed route of the major oil pipeline is determined by the Nebraska Public Service Commission to be in the public interest. 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:



023.07A Whether the pipeline carrier has demonstrated compliance with all applicable state statutes, rules, and regulations and local ordinances;

023.07B 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 evidence regarding the irreversible and irretrievable commitments of land areas and connected natural resources and the depletion of beneficial uses of the natural resources. Such evidence may include but not be limited to the following:

0023.07B1 an environmental impact study;

0023.07B2 a comprehensive soil permeability study;

0023.07B3 a distance-to-groundwater survey;

0023.07B4 evidence regarding the impact of the pipeline on wildlife; and

0023.07B5 evidence regarding the impact of the pipeline on plants located within and surrounding the proposed route.

023.07C Evidence of methods to minimize or mitigate the potential impacts of the major oil pipeline to natural resources;

023.07D Evidence regarding the economic and social impacts of the major oil pipeline. Such evidence may include but not be limited to 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;

023.07E Whether any other utility corridor exists that could feasibly and beneficially be used for the route of the major oil pipeline;

023.07F The impact of the major oil pipeline on the orderly development of the area around the proposed route of the major oil pipeline;

023.07G The reports of the agencies filed pursuant to subsection 023.05; and

023.07H The views of the governing bodies of the counties and municipalities in the area around the proposed route of the major oil pipeline.

023.08 Commission Order:

023.08A Time to Enter Order: Within seven (7) months after the receipt of the application, the Commission shall enter an order approving the application or denying the application.

023.08A1 The Commission may, for just cause, extend the time for the entry of an order. The extension shall

not exceed twelve (12) months after the receipt of the application unless all parties agree to a longer extension, except that no extension shall extend more than eight (8) months after the issuance of a presidential permit authorizing the construction of the major oil pipeline.

023.08A2 For purposes of determining the counting months, one (1) month shall equal thirty (30) days.

023.08B Content of Order: The Commission shall include in the order the findings of the Commission regarding the application and the reasons for approving or denying the application. The order approving the application shall state that the application is in the public interest and shall authorize the pipeline carrier to act under Neb. Rev. Stat. Sec. 57-1101.

023.09 Amendment of Application After Denial: If the Commission denies the application, the pipeline carrier may amend the denied application in accordance with the findings of the Commission and submit the amended application within sixty (60) days after the issuance of the order denying the application. Within sixty (60) days after the receipt of the amended application, the Commission shall enter an order approving or denying the amended application after making new findings under subsection 023.07.

023.10 Appeal: Any party aggrieved by a final order of the Commission regarding an application under the Major Oil Pipeline Siting Act, including, but not limited to, a decision relating to the public interest, may appeal. The appeal shall be in accordance with the Administrative Procedure Act.

023.11 Status Reports: If the Commission approves the application, the pipeline carrier shall file a status report with the Commission regarding the construction of the major oil pipeline every six (6) months until the completion of the major oil pipeline within Nebraska. The pipeline carrier shall notify the Commission of the completion of the major oil pipeline within Nebraska within thirty (30) days after such completion.

023.12 Assessment of Expenses: The Commission shall assess the expenses reasonably attributable to investigation and hearing regarding an application filed under subsection 023.02, including expenses billed by agencies filing reports as required in subsection 023.05 and both direct and indirect expenses incurred by the Commission or its staff or consultants, to the applicant as agreed under subsection 023.02.

023.12A Billing of Expenses: The Commission shall ascertain the expenses of any such investigation and hearing and by order assess such expenses against the applicant and shall render a bill therefor, by United States mail, to the applicant, either at the time the order under subsection 023.08 is issued or from time to time during such application process.

023.12A1 Such bill shall constitute notice of such assessment and demand of payment thereof. Upon a bill rendered to such applicant, within fifteen (15) days after the mailing thereof, such applicant shall pay to

the Commission the amount of the assessment for which it is billed.

023.12A2 The Commission shall remit the payment to the State Treasurer for credit to the Public Service Commission Pipeline Regulation Fund or shall direct the State Treasurer to credit any reimbursement of expenses billed by agencies pursuant to Section 023.05 to the appropriate fund of the appropriate agency.

023.12A3 The Commission may render bills in one fiscal year for costs incurred within a previous fiscal year.

023.12B Failure to Pay Assessment: If any applicant against which an assessment has been made pursuant to this section, within fifteen (15) days after the notice of such assessment, (a) neglects or refuses to pay the same or (b) fails to file objections to the assessment with the Commission as provided in subsection 023.12C, the Commission shall transmit to the State Treasurer a certified copy of the notice of assessment, together with notice of neglect or refusal to pay the assessment, and on the same day the Commission shall mail by registered mail to the applicant against which the assessment has been made a copy of the notice which it has transmitted to the State Treasurer. If any such applicant fails to pay such assessment to the State Treasurer within ten (10) days after receipt of such notice and certified copy of such assessment, the assessment shall bear interest at the rate of fifteen percent (15%) per annum from and after the date on which the copy of the notice was mailed by registered mail to such applicant.

023.12C Objection to Assessment: Within fifteen (15) days after the date of the mailing of any notice of assessment under subsection 023.12A, the applicant against which such assessment has been made may file with the Commission objections setting out in detail the grounds upon which the applicant regards such assessment to be excessive, erroneous, unlawful, or invalid. The Commission shall determine if the assessment or any part of the assessment is excessive, erroneous, unlawful, or invalid and shall render an order upholding, invalidating, or amending the assessment. An amended assessment shall have in all respects the same force and effect as though it were an original assessment.

023.12C1 Payment of Assessment if Objection Overruled: If any assessment against which objections have been filed is not paid within ten (10) days after service of an order finding that such objections have been overruled and disallowed by the Commission, the Commission shall give notice of such delinquency to the State Treasurer and to the applicant in the manner provided for in subsection 023.12B. The State Treasurer shall then collect the amount of such assessment. If an amended assessment is not paid within ten (10) days after service of the order of the Commission, the Commission shall notify the State Treasurer and the applicant as in the case of delinquency in the payment of an original assessment. The State Treasurer shall

then collect the amount of such assessment as provided in the case of an original assessment.

023.12C2 Appeal of Order Overruling Objection to Assessment: Any party aggrieved by a final order of the Commission regarding an assessment under the Major Oil Pipeline Siting Act may appeal. The appeal shall be in accordance with the Administrative Procedure Act.