

Keystone Pipeline Project Faces Nebraska Court Showdown

By Andrew Harris and Tom Witosky - Sep 27, 2013

The proposed Keystone XL pipeline faces a court challenge in Nebraska, where three property owners contend state lawmakers gave the governor illegal power to take away their land for the project.

The Nebraska Legislature transferred to Governor Dave Heineman and, through him, to Calgary-based pipeline builder [TransCanada Corp. \(TRP\)](#), its authority over eminent domain in violation of the state constitution's separation of powers, the landowners said in a court filing.

Today they asked Judge [Stephanie Stacy](#) in Lincoln, the state capital, to strike down that legislation.

"The legislature is not empowered to delegate power to a private company at the expense of its residents," their lawyer, [David Domina](#), told Stacy today.

The Keystone XL pipeline, which has also triggered lawsuits challenging eminent domain in [Texas](#), would connect [Alberta](#)'s oil sands to refineries on the U.S. Gulf Coast. Because the project crosses the national border, it is subject to U.S. State Department review.

While congressional Republicans and some Democrats have pressed President [Barack Obama](#) to approve the \$5.3 billion project, his administration has yet to take action.

'Significantly Exacerbate'

The president, in a June speech at [Georgetown University](#) in [Washington](#), said the pipeline shouldn't be built if it's found to "significantly exacerbate" carbon pollution.

About 75 pipeline opponents, including those pressing the case before the court, rallied outside the Lancaster County Courthouse in Lincoln before today's hearing. Inside, spectators lined up for seats in a packed courtroom.

The hearing lasted about 35 minutes, after which Stacy said she would issue a written ruling without giving a time frame for doing so.

The legislation at issue amended a prior measure, the Major Oil Pipeline Siting Act, that had placed the state's [Public Service Commission](#), or PSC, in charge of any pipeline project as a regulator of common carriers. The new bill gave pipeline builders the option of seeking approval from the governor and the state's Department of Environmental Quality, bypassing the PSC.

"Nebraska will move forward on the review process of the proposed Keystone XL pipeline and any future pipelines that will create jobs and reduce U.S. dependence on Middle Eastern oil," Heineman, a Republican, said in an [April 2012 statement](#) issued upon signing the bill. "The review process is a top priority for Nebraska."

Limited Authority

Heineman's authority is limited to decisions about where the pipeline would run, state Attorney General Jon Bruning argued in court papers, disputing the landowners' claims that the measure violates the separation-of-powers principle.

The state also disputed whether TransCanada qualifies as a common carrier, calling it a "pipeline carrier."

"Prior to 2011, pipeline carriers were automatically provided with eminent domain authority to construct pipelines in, across and through [Nebraska](#)," according to Bruning's filing.

"We don't anticipate this court case will impact the timing of a decision on Keystone XL," Grady Semmens, a TransCanada spokesman, said in an e-mailed statement. "The governor's decision approving the route has not been stayed pending the outcome of the court challenge, it remains valid and there is no legal bar to the Department of State moving ahead with its process."

Pipeline Routing

State Assistant Attorney General Katherine Spohn denied Nebraska residents' rights had been violated, telling Stacy today that the measure complied with the state's constitution and that objectors could challenge the pipeline routing once it is decided.

"There's no denial of rights to property owners," she said.

Landowners' lawyer [Brian Jorde](#), in a phone interview yesterday, said his clients are concerned as Nebraska taxpayers and landowners.

"They're concerned about the potential environmental effects, concerned that a foreign, for-profit company, came into Nebraska with eminent domain power to take their land," Jorde said.

The landowners seek to restore PSC oversight so that the agency can go through its siting process, Jorde said.

‘Cut Out’

“The way the legislation is written, the pipeline company itself, the applicant, gets to choose,” whether to seek approval from the PSC or deal with the governor, Jorde said. “If they chose the governor and the governor says ‘I like this route,’ then the PSC is completely cut out, and that’s exactly what they’ve done.”

TransCanada has the power to take property under eminent domain, leaving landowners with the choice of accepting an offered price for land or going to court, Jorde said.

“Meanwhile, TransCanada gets the land,” he said.

While only one of the plaintiffs, Susan Dunavan of York County, owns land in the pipeline’s path, the other two may also be subject to eminent domain, Jorde said. They are Randy Thompson of Lancaster County and Susan Luebbe of Holt County, according to the complaint.

“No one in Nebraska should be threatened by a corporation, foreign or domestic,” Dunavan said at the rally. “This pipeline is not for Nebraska. It is not for the [United States](#). It is solely for the benefit of [Canada](#) and the oil industry.”

“They gave eminent domain to a foreign corporation,” Thompson said. “I don’t know how you feel about it, but I sure as hell don’t like it.”

The case is *Thompson v. Heineman*, CI 12-2060, Lancaster County, Nebraska, District Court (Lincoln).

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