

Alternative routes, and TransCanada Claim About the Need for a New Environmental Impact Statement

The TransCanada XL pipeline proposed to dissect Nebraska from Boyd County through Jefferson County must comply with, and undergo review for compliance with, the national environmental policy act. Regulations adopted pursuant to the act appear at 43 CFR § 1501 et seq. Three sections of the regulations bear directly on alternative routes and the need for consideration of alternatives in an environmental impact statement.

Section 1502.14 provides:

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (SEC 1502.15) and the Environmental Consequences (SEC 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues in providing a clear basis for choice among options by the decision maker and the public. In this section agency shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives and for alternatives which have been eliminated from detailed study, briefly discuss the reasons for their elimination.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate litigation measures not already included in the proposed action or alternatives.

These thoughts are carried forward into the decision making process for agencies by 43 CFR § 1505.1:

Agency shall adopt procedures (SEC 1507.3) to ensure that decisions are made in accordance to the policies and purposes of the Act. Such procedures shall includes but not be limited to:

(e) Requiring that the alternatives considered by the decision maker are encompassed by the range of alternatives discussed in the relevant environmental documents and that decision maker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decision maker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

43 CFR § 1506.1 limits agency action during the National Environmental Policy Act review and compliance process:

(a) Until and agency issues a record of decision as provided in SEC 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would

(1) have an adverse environmental impact; or

(2) limit the choice of reasonable alternatives.

The environmental impact assessment process appears to have been completed in compliance with these provisions of federal law. Assuming this is so, it does not appear to us as though a new environmental impact statement is required where TransCanada to utilize one of the reasonable alternative routes considered in the now completed final Environmental Impact Statement.

When evaluating routes and alternatives through Nebraska, one must recall that the current proposed route would provide a new dissection of the state across previously undisturbed soil, while adding the pipeline to the existing route would produce a second structure in the easement, but not repeat, as if it were the only structure, in environmental risks, hazards or destructions of permanent pipeline placement, associated with the original route, as they already exist.