

PUBLIC SUBMISSION

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Docket: DOE-HQ-2024-0088

Potential Designation of the Tribal Energy Access National Interest Electric
Transmission Corridor

Comment On: DOE-HQ-2024-0088-0002

Potential Designation of the Tribal Energy Access National Interest Electric
Transmission Corridor

Document: DOE-HQ-2024-0088-DRAFT-0018

Comment on FR Doc # 2025-05698

Submitter Information

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Government Agency: Nebraska Game and Parks Commission

General Comment

See attached file(s)

Attachments

2025.0411.NGPC_Tribal-Energy-Access-NIETC_ScopeComments



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April 8, 2025

U.S. Department of Energy
Grid Deployment Office
1000 Independence Ave. SW, Suite 4H-065
Washington, DC 20585

Re: Response to Public Comment Period – National Interest Electric Transmission Corridors (NIETCs) – Docket DOE-HQ-2024-0088-Potential Designation of the Tribal Energy Access NIETC; Brown, Cherry, and Thomas Counties, Nebraska

To Whom It May Concern:

In response to the U.S. Department of Energy's (DOE) request for public comments, the Nebraska Game and Parks Commission (NGPC) submits the following comments regarding the potential designation of the Tribal Energy Access NIETC (DOE-HQ-2024-0088) proposed route and potential impacts to NGPC trust resources in Nebraska. As we understand it, a NIETC is an area of the country where the DOE has determined the lack of adequate transmission harms consumers and that the development of new transmission would advance important national interests in that area, such as increased reliability and reduced consumer costs. Once designated, new transmission would likely be developed in the corridor. The Nebraska Game and Parks Commission has responsibility for protecting endangered and threatened species under authority of the Nongame and Endangered Species Conservation Act (NESCA) (Neb. Rev. Stat. § 37-801 to 37-814). We have reviewed the project pursuant to NESCA, as well as other state fish and wildlife and public land trust resources and offer the following preliminary comments.

The portion of the potential Tribal Energy Access NIETC within Nebraska is located within the range of the following state-listed endangered or threatened species:

	Common Name	Scientific Name	State Status	Fed Status
BIRDS	Eastern Black Rail ^	<i>Laterallus jamaicensis jamaicensis</i>	Threatened	Threatened
	Rufa Red Knot ^	<i>Calidris canutus rufa</i>	Threatened	Threatened
	Whooping Crane	<i>Grus americana</i>	Endangered	Endangered
MAMMALS	Northern Long-eared Bat	<i>Myotis septentrionalis</i>	Endangered	Endangered
FISH	Finescale Dace	<i>Chrosomus neogaeus</i>	Threatened	
	Northern Redbelly Dace	<i>Chrosomus eos</i>	Threatened	
INSECTS	American Burying Beetle	<i>Nicrophorus americanus</i>	Threatened 4(d) rule	Threatened 4(d) rule

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	Common Name	Scientific Name	State Status	Fed Status
PLANTS	Blowout Penstemon	<i>Penstemon haydenii</i>	Endangered	Endangered
	Western Prairie Fringed Orchid	<i>Platanthera praeclara</i>	Threatened	Threatened

^ There are recent (not historical) records of these species in Nebraska. However, there are no known breeding populations and/or Nebraska does not provide an important stopover or migratory path for these species.

The following protected species have suitable habitat and known occurrences within 1-mile of the potential Tribal Energy Access NIETC:

- American burying beetle
- Finescale dace
- Northern long-eared bat
- Northern redbelly dace
- Western Prairie Fringed Orchid
- Whooping Crane

American Burying Beetle

The American burying beetle (*Nicrophorus americanus*) is a member of the carrion beetle family Silphidae. They are an important part of the nutrient cycling process as they recycle decaying materials back into the ecosystem. These beetles are nocturnal and search widely for carrion. This species is found in a variety of habitats including grassland prairie, forest edge, scrubland and mesic areas such as wet meadows, streams, and wetlands. Carrion availability is a more important component of habitat than a specific type of vegetation. The causes for the decline of this species are complex and remain unresolved, but likely relate to habitat fragmentation, use of artificial lighting, and degradation of habitats that result in declines of small birds and mammals (200 grams or less) that the American burying beetle uses for reproduction purposes (Nebraska Game and Parks Commission 1995). In Nebraska, the American burying beetle has been observed from April 1 to October 29, with peak periods of activity extending from June through August. Potential areas of construction should be surveyed for grasslands and pastures. If suitable habitat will be impacted, total area of soil disturbance will need to be calculated to determine if the project will negatively affect this species. Further consultation will need to occur with the NGPC regarding impacts to American burying beetle suitable habitat due to soil disturbance associated with construction.

Blowout Penstemon

Blowout penstemon is the rarest plant species native to the Great Plains (Nebraska Game and Parks Commission 1997). It grows only in open, sandy habitat of blowouts. It blooms in May and June and has large lavender flower heads. They can grow up to 2 feet in height. After blooming, this plant can still be identified by a qualified biologist. Suitable habitat consists of blowouts; rounded wind-excavated depressions in dune tops. Surveys should be conducted during the blooming season in all suitable habitat for this species.

Northern Long-eared Bat

During the summer, northern long-eared bats (NLEBs) typically roost singly or in colonies underneath bark or in cavities, crevices or hollows of live and dead trees and/or snags (typically ≥ 3 inches dbh). Males and non-reproductive females may also roost in cooler places, like caves and mines. This species of bat seems opportunistic in selecting roosts, using trees based on the presence of cavities, crevices or

peeling bark. They have also occasionally been found roosting in structures like barns and sheds, particularly when other roosting habitat is not available. They forage on insects in upland and lowland woodlots and tree lined corridors. NLEBs typically overwinter in hibernacula that include caves and abandoned mines, but may also use other structures resembling caves or mines, such as abandoned railroad tunnels, storm sewer entrances, dry wells, aqueducts and other similar structures. An evaluation should be done to determine if there is hibernating or roosting habitat available within or near the project area which could be used by this species and could be affected by project activities. Tree clearing activities should be scheduled to avoid the maternal roosting season (June 1 – July 31).

Finescale Dace and Northern Redbelly Dace

The finescale dace and northern redbelly dace are members of the minnow family. Both fish range in size from 2-5 inches, but on average, finescale dace are larger than redbelly dace. The finescale dace has a brown-gray back and each side has an iridescent, silvery band with a dark, thick gold-orange stripe beneath it. It has a stout body and a large mouth. The northern redbelly dace has an olive-brown colored back, and each side has an iridescent, silvery band in between two dark bands. Redbelly dace have cream to yellow colored bellies, except for breeding males whose bellies are yellow-orange to red. In Nebraska, these two dace species are often found together in the headwaters of clear, cool, high quality streams. Spawning periods are dependent on water temperature. Finescale dace spawn from April to June and redbelly dace spawn from May to August (Nebraska Game and Parks Commission 2013). These species would be impacted by a reduction in flows or impairment of stream quality.

Western Prairie Fringed Orchid

Western prairie fringed orchid occurs in native tall or mixed-grass prairies that are associated with wet meadows. Although the plant can be a colonizer species and grow on disturbed areas, it is found in greatest abundance on high quality prairie. This plant blooms in late June to July. Surveys should be conducted during the blooming season in all suitable habitat for this species.

Whooping Crane

Whooping cranes use shallow, sparsely vegetated streams, rivers, and wetlands to feed and roost during their migration. They also frequently stopover near ponds and lakes, and may feed in crop fields or hay meadows that are in close proximity to roosting locations. The migration period in Nebraska is approximately March 6 through April 29 and from October 9 through November 15. In addition, a 3-mile wide, 56 mile long reach of the Platte River from Lexington to Shelton, Nebraska has been federally listed as critical habitat for whooping cranes. Alterations to feeding and roosting habitats, human disturbance (i.e. noise, construction-related activities, infrastructure, etc.) and depletions of instream flows have negative impacts on whooping cranes. If construction work would occur in suitable habitat for this species during the migratory seasons, survey protocol should be implemented.

Bald and Golden Eagle Protection Act

The federal Bald and Golden Eagle Protection Act (Eagle Act) (16 U.S.C. 668-668c) provides for the protection of the bald eagle (*Haliaeetus leucocephalus*) and golden eagle (*Aquila chrysaetos*). Under the Eagle Act, “take” of eagles, their parts, nests or eggs is prohibited without a permit issued by the Secretary of the Interior. Disturbance resulting in injury to an eagle or a decrease in productivity or nest abandonment by substantially interfering with normal breeding, feeding, or sheltering behavior is a form of “take.”

Bald eagles use mature, forested riparian areas near rivers, streams, lakes, and wetlands and occur along all the major river systems in Nebraska. The bald eagle southward migration begins as early as October and the wintering period extends from December-March. The golden eagle is found in arid open country with grassland for foraging in western Nebraska and usually near buttes or canyons which serve as nesting sites. Golden eagles are often a permanent resident in the Pine Ridge area of Nebraska. Additionally, many bald and golden eagles nest in Nebraska from mid-February through mid-July.

Disturbances within 0.5-miles of an active nest or within line-of-sight of the nest could cause adult eagles to discontinue nest building or to abandon eggs. Both bald and golden eagles frequent river systems in Nebraska during the winter where open water and forested corridors provide feeding, perching, and roosting habitats, respectively. The frequency and duration of eagle use of these habitats in the winter depends upon ice and weather conditions. Human disturbances and loss of wintering habitat can cause undue stress leading to cessation of feeding and failure to meet winter thermoregulatory requirements. These effects can reduce the carrying capacity of preferred wintering habitat and reproductive success for the species.

To comply with the Eagle Act, it is recommended that the project proponent determine if the proposed project would impact bald or golden eagles or their habitats. This can be done by conducting a habitat assessment, surveying nesting habitat for active and inactive nests, and surveying potential winter roosting habitat to determine if it is being used by eagles. The area to be surveyed is dependent on the type of project; however for most projects we recommend surveying the project area and a ½ mile buffer around the project area. If it is determined that either species could be affected by the proposed project, the NGPC recommends that the project proponent notify the NGPC as well as the Nebraska Ecological Services Office, U.S. Fish and Wildlife Service, for recommendations to avoid “take” of bald and golden eagles.

Migratory Bird Treaty Act

Under the Migratory Bird Treaty Act (16 U.S.C. 703-712: Ch. 128 *as amended*) (MBTA) construction activities in grassland, wetland, stream, woodland, and river bank habitats that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests should be avoided. Although the provisions of MBTA are applicable year-round, most migratory bird nesting activity in Nebraska occurs during the period of April 1 to July 15. However, some migratory birds are known to nest outside of the aforementioned primary nesting season period. For example, raptors can be expected to nest in woodland habitats during February 1 through July 15, whereas sedge wrens, which occur in some wetland habitats, normally nest from July 15 to September 10. If development in this area is planned to occur during the primary nesting season or at any other time which may result in the “take” of nesting migratory birds, we would request that the project proponent arrange to have a qualified biologist conduct a field survey of the affected habitats to determine the absence or presence of nesting migratory birds. If a field survey identifies the existence of one or more active bird nests that cannot be avoided by the planned construction activities, the NGPC and the Nebraska Ecological Services Office, U.S. Fish and Wildlife Service, should be contacted immediately. For more information about the MBTA and avoiding impacts to migratory birds, or to report active bird nests that cannot be avoided by planned construction activities, please contact the Nebraska Ecological Services Office, U.S. Fish and Wildlife Service, 9325 South Alda Road, Wood River, NE 68883. Adherence to these guidelines will help avoid the unnecessary take of migratory birds.

This information is being provided based on a review of the potential Tribal Energy Access NIETC, aerial photographs, and our Nebraska Natural Heritage Database. If the proposed project route is changed and as more information is developed regarding construction of a transmission line, we recommend further coordination with the NGPC Planning & Programming Division Environmental Review Team.

Native Prairie and At-Risk Plant Communities

The potential Tribal Energy Access NIETC would traverse known native prairie areas in Brown, Cherry, and Thomas counties, which are a rare resource. Dry-Mesic Bur Oak Forest and Woodland, Freshwater Seeps, Sandhills dune prairie, Sandhills Fen, Sandhills hardstem bulrush marsh, Sandhills mesic tall-grass prairie, and Sandhills wet meadow are at-risk (rare) communities occurring within the project area and would be crossed by the proposed pipeline route. For a description of these community types, please refer to the *Nebraska Natural Legacy Project* (Schneider et al. 2011) and *Terrestrial Ecological Systems and Natural Communities of Nebraska* (Rolfsmeier and Steinauer 2010). We encourage the DOE to assess the route for the presence of these and other at-risk communities, and to avoid planning activities that would destroy or fragment these communities. This includes altering run-off patterns, drainage, groundwater connectivity, and other components influencing the hydrology of the system.

resulting from construction activities, such as, but not limited to, leveling the terrain, building access roads, and disturbing native vegetation.

This project also occurs within the Cherry County Wetlands, Elkhorn River Headwaters, Middle Niobrara, and Upper Loup Rivers Biologically Unique Landscapes (BUL) as identified by the *Nebraska Natural Legacy Project* (Schneider et al. 2011), Nebraska's State Wildlife Action Plan. These areas were designated as BULs because they are landscapes that offer opportunities for conserving the full array of biological diversity in Nebraska. As previously stated, there are known occurrences of at-risk ecological communities and species within these BULs which are worthy of protecting. If development is going to occur within a BUL, we encourage the DOE to identify and site corridors, if feasible, in areas which are already disturbed or highly degraded (i.e. row crop fields) in order to avoid loss of remaining wildlife habitat and bisect major bird migratory corridors.

With regards to revegetation in any prairie areas, we recommend using native species that are appropriate for the area. We would encourage the use of a diverse seed mixture that mimics what would be removed for construction, especially in the prairie areas. We would encourage that seed mixtures be composed of seed collected from native prairies in the vicinity of the impact site. Using appropriate, native species would also help to stabilize the soils and reduce the potential for erosion in restored areas along transmission lines.

Wetlands and Streams

In general, NGPC has concerns for impacts to wetland and stream resources, as they provide valuable habitat to many fish and wildlife species. Because this is a lengthy, linear corridor, we acknowledge that it would be impossible to completely avoid impacting stream and wetland resources. Based on the information provided, the corridor would include many individual stream/river crossings, and it would also traverse several undisturbed wetland complex areas in the state. These wetland complexes are identified as the Sandhills wetlands. For additional information and a map showing these wetland complexes, see the publication titled "Guide to Nebraska's Wetlands and their conservation needs" located online (<http://outdoornebraska.gov/nebraskawetlands/>).

As mentioned above, the potential Tribal Energy Access NIETC also involves many stream/river crossings. Of the major crossings, the corridor would cross Minnechadusa Creek (Cherry County), Niobrara River (Cherry County), Evergreen Creek (Cherry County), Plum Creek (Brown County), Calamus River (Brown County), and the North Loup River (Cherry county). These streams and rivers, at the point of crossing, are ranked as high-valued fishery resources based on the Stream Use Classification for the State of Nebraska, Title 117. The highest-valued classification was based on the stream resource providing habitat that maintains outstanding populations of species of high interest to the state, potentially including state or federal endangered or threatened species.

If any fill material will be placed into wetlands or streams resulting from this project, the U.S. Army Corps of Engineers should be contacted to determine if a 404 permit is needed. For any construction activities that would have the potential to directly impact water resources, we would recommend that appropriate erosion control methods be established during construction to prevent increased sediment input into the aquatic system in order to avoid impacting aquatic species and habitat. Care should also be taken to avoid the input of contaminants, such as oils, and grease, etc., into waterways during construction. NGPC encourages those impacts to stream and wetland resources that cannot be avoided and minimized, be mitigated. Impacts to riparian corridors as a result of transmission line construction, including tree and shrub loss, should also be mitigated. Any lines crossing waterbodies used by migratory birds and waterfowl should be marked in accordance with APLIC standards.

State Recreation and Wildlife Management Areas

The potential Tribal Energy Access NIETC would cross the Cowboy Trail State Recreational Trail, which is owned and managed by NGPC. Any crossing, structural changes, or modifications to the trail would require coordination with NGPC regarding real estate matters and should not be conducted without formal

consent and applicable legal agreements in place. It was also noted, based on the information provided, that the potential Tribal Energy Access NIETC would cross or come within 1-mile of NGPC owned or managed lands. Government Canyon Valentine Fish Hatchery and Borman Bridge Wildlife Management Area (WMA) are located in Cherry County. Plum Creek Valley WMA and Willow Lake B.C. WMA are located in Brown County. I have enclosed overview maps showing the location of these areas. We request that state wildlife management areas and other NGPC owned or managed properties be avoided for construction of transmission lines, as the use of these lands for that purpose would conflict with their purpose of hunting and recreation. We also have concerns regarding how a transmission line crossing these properties might affect management activities if it were to cross state managed lands, primarily with regards to prescribed burning. Prescribed burning is often a management tool used to improve wildlife habitat, not only on public land but also on private land.

Please note this correspondence does not satisfy requirements of Neb. Rev. Stat. §37-807 (3) of the Nongame and Endangered Species Conservation Act. Under authority of Neb. Rev. Stat. §37-807 (3), all Nebraska state agencies are required to consult with the Commission to ensure any actions authorized, funded or carried out by them do not jeopardize the continued existence of a state listed species. This requirement would extend to any permit issued or authorized by a state agency.

For an assessment of potential impacts to habitats and species protected under federal wildlife laws, including federally listed, candidate or proposed endangered or threatened species, please contact the Nebraska Field Office (nebraskaes@fws.gov), U.S. Fish and Wildlife Service, 9325 South Alda Road, Wood River, NE 68883.

Thank you for the opportunity to comment. If you have any questions or need additional information, please feel free to contact me at (402) 471-5422 or melissa.marinovich@nebraska.gov.

Sincerely,



Melissa Marinovich
Assistant Division Administrator
Planning and Programming Division

ec: USFWS (Mark Porath, NEFO)

References

- Nebraska Game and Parks Commission. 1995. *Nebraska's Threatened and Endangered Species: American Burying Beetle*. Nebraska Game and Parks Commission, Lincoln, Nebraska.
- Nebraska Game and Parks Commission. 1997. *Nebraska's Threatened and Endangered Species: Blowout Penstemon*. Nebraska Game and Parks Commission. Lincoln, NE.
- Nebraska Game and Parks Commission. 2013. *Nebraska's Threatened and Endangered Species: Northern Redbelly & Finescale Dace*. Nebraska Game and Parks Commission, Lincoln, Nebraska.
- Rolfsmeier, S. B. and G. Steinauer. 2010. *Terrestrial Ecological Systems and Natural Communities of Nebraska*. Nebraska Game and Parks Commission, Lincoln, Nebraska.
- Schneider, R., K. Stoner, G. Steinauer, M. Panella, and M. Humpert. 2011. *The Nebraska Natural Legacy Project: State Wildlife Action Plan*, 2nd ed. The Nebraska Game and Parks Commission, Lincoln, NE.