

GUIDANCE DOCUMENT NO. 4*

PROCEDURES FOR SPECIAL GENERATION APPLICATIONS FILED PURSUANT TO NEB. REV. STAT. § 70-1014.01

I. Purpose

Due to the enactment of Neb. Rev. Stat. §70-1014.01 (formerly known as LB 65 (2003)) the Power Review Board (the Board) believes it beneficial to provide its staff and Nebraska power suppliers with guidance regarding the procedures the Board intends to follow when a special generation application is filed. Although this policy sets out the Board's intentions regarding the procedures it will follow in such circumstances, the policy is intended only as guidelines for purposes of uniformity and predictability. The Board acknowledges that this policy does not have legal effect unless and until its provisions are included in the Board's rules and regulations.

II. Policy Applicability and Definitions

A. This policy applies to all special generation applications filed pursuant to the provisions set out in Neb. Rev. Stat. §70-1014.01.

III. Procedures To Be Followed

A. Upon receipt of an application, the Board's executive director will determine whether the application can be placed on the Board's next agenda. Due to a variety of factors present in each situation, and in order to provide maximum flexibility to the board's staff and applicants, the Board believes it is best not to establish a set deadline by which applications must be submitted. Applicants wishing to know if sufficient time exists to have the matter be considered at the Board's next scheduled meeting should coordinate with the Board's executive director prior to filing the application.

* This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

B. The Board's rules and regulations do not currently contain a separate format for special generation applications'. Power suppliers should continue to use the form provided in the Board's rules at Appendix C of Title 285, Nebraska Administrative code, Chapter 2, (located on pages 8 and 9 of the Board's rules).

1. The last paragraph of Appendix C (section 7, found on page 9) should be deleted and replaced with a new section 7. The new section 7 should state that the applicant is either a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, and electric cooperative, and electric membership association, or another for of governmental entity, and that the application is filed as a special generation application under the provisions of Neb. Rev. Stat. §70-1014.01.

C. If the applicant would prefer that a hearing not be held on its special generation application, the applicant must attach exhibits to the application that provide sufficient specific information to allow the Board to make the findings required in Neb. Rev. Stat. §70-1014.01. The following exhibits should be included:

1. A sworn affidavit from an employee or agent of the applicant that is familiar with the proposed project. Among other information, this person should provide some details concerning where the facility will be located and the total cost of the project. He/she will attest to the amount of kilowatts of electric energy the facility will produce at the facility's rated capacity (which cannot exceed 10,000 kilowatts); which method of generation listed in §70-1014.01 the unit or facility will use; whether the power supplier involved has filed any other special generation applications, and if so, provide some reasons why the current application constitutes a separate and distinct project from the previous special generation applications.

- a. It is not required that all information be provided on one affidavit. Multiple affidavits are appropriate if different individuals have knowledge concerning different aspects of the proposed project.

2. A sworn affidavit describing the public benefits that will be provided by the project that warrant its approval even though it may not constitute the most economically feasible generation option.

3. A sworn affidavit describing the technical specifications or providing a brief description of the generation equipment that will be constructed or installed as a result of the project. If such specifications are in the form of drawings, photographs, etc., a sworn affidavit attesting to their authenticity must be attached.

D. The Board requests that if an applicant prefers the Board not to hold a hearing on its special generation application, the applicant inform the Board of this desire by filing a Request for Waiver of Hearing.

E. If the applicant has obtained signed Consent and Waiver forms from alternate power suppliers that the applicant believes may be affected by the special generation application, the signed originals should be submitted to the Board along with the special generation application and exhibits. Although it is usually helpful, it is not a prerequisite that the applicant obtain the Consent and Waiver forms from alternate power suppliers. The Board will provide written notice to these parties and provide them an opportunity to submit a Consent and Waiver Form.

F. The executive director will review the application and make an initial administrative determination whether the application qualifies as a special generation application.

G. If the application qualifies as a special generation application, a time and date for a hearing will be set. Written notice that the application was filed and notice of the hearing will be sent to the applicant and any alternate power suppliers the Board deems to be affected by the application.

1. The notice will state that if the Board determines the necessary findings can be made without a hearing, and if no interested parties file a Protest or Petition for Intervention in the proceeding, the Board may waive the hearing and consider approval of the special generation application during its next public meeting.

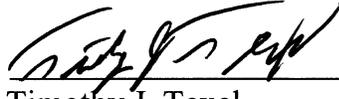
H. Notice will also be provided to the public and any other potentially interested parties through a legal notice that will be placed by the Board in a newspaper with general circulation in the affected area.

1. Similar to the provisions set out in G.1 (above), the public notice will state that if the Board determines the necessary findings can be made without a hearing, and if no interested parties file a Protest or Objection by the stated deadline, the Board may waive the hearing and consider approval of the special generation application during its next public meeting.

2. Upon the receipt of any Protest or Intervention, the Board's staff will provide written notice to the applicant.

I. In the absence of a Protest or Intervention, the Board intends to normally not require a hearing for special generation applications.

1. The Board reserves the right to require a hearing if, in its discretion, it believes one is necessary. However, the Board anticipates that hearings would be used primarily when the project involves special or unique circumstances, or if the application and accompanying exhibits do not provide sufficient information upon which the Board can make the findings required in Neb. Rev. Stat. §70-1014.01.



Timothy J. Texel
Executive Director and General Counsel

Approved at NPRB meeting October 17, 2003.