

GUIDANCE DOCUMENT NO. 12*

POWER REVIEW BOARD JURISDICTION WHEN A NON-UTILITY PROVIDES ELECTRICITY TO THIRD PARTIES

I. Purpose

Each electric power supplier serving customers in the State of Nebraska has a certified service area in which it is both authorized and obligated, if economically feasible, to provide retail electric service to the customers in that service area. There are limited instances where entities that are not utilities provide electricity to third parties for various purposes. The Nebraska Power Review Board (the Board or PRB) believes it would be helpful to citizens, businesses and electric utilities to have guidance regarding whether and under what circumstances the Board believes provision of electricity to third parties by a non-utility would mean the provider is acting as an electric power supplier and the activity is therefore subject to the Board's jurisdiction. This policy is intended to provide general guidance regarding how the Board interprets its jurisdiction over the provision of electricity by non-utility entities to third parties in order to ensure that citizens, businesses and utilities know how to conduct their affairs and remain compliant with Nebraska law when dealing with situations involving the provision of electricity to third parties.

II. Power Review Board Jurisdiction

The Board has jurisdiction over certain activities in which electric power suppliers operating in the State of Nebraska are engaged. Under Nebraska law, other than in the instance of privately developed renewable energy generation facilities as defined in § 70-1001.01 and qualified net metering facilities as defined in Neb. Rev. Stat. § 70-2002, "electric suppliers or suppliers of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail. Electric supplier does not include a commercial electric vehicle charging station operator that is a private person or privately owned partnership, privately owned corporation, or other privately owned business." Neb. Rev. Stat. § 70-1001.01(6)**. Unless otherwise agreed to by the suppliers involved, "no supplier shall offer electric service to additional ultimate users outside its service area or construct or acquire a new electric line or extend an existing line into the service area of another supplier for the purpose of furnishing

* 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.

service to ultimate users therein without first applying to the board and receiving approval thereof, after due notice and hearing under rules and regulations of the board.” Neb. Rev. Stat. § 70-1011. Due to these provisions of law, entities that are not a utility with a certified retail service area that sell or distribute electricity to third parties without the consent of the utility holding the service area rights to that location may be in violation of Nebraska law. If customers are being served in violation of the provisions of Chapter 70, article 10, the Board has the authority, and possibly the obligation, to bring an action to enjoin the violation until the power supplier complies with the provisions of Chapter 70, article 10. Neb. Rev. Stat. § 70-1015(1).

Due to the above provisions of law, the Board has jurisdiction over situations where any entity is selling or distributing electricity at wholesale or retail to third parties, subject to certain exclusions.

III. Situations Constituting a Violation

The Board’s interpretation of Nebraska law is that a violation occurs when a non-utility entity sells electricity to third parties, and the compensation paid by the third party is based on the actual amount of electricity used by the third party customer as measured by an electric meter or other similar device. Under such circumstances, the non-utility entity becomes a retail power supplier under Nebraska law, thus subjecting the activity to the Board’s jurisdiction. Whether the entity is making a profit from the sale of the electricity is not relevant.

A. Example: If a landlord meters or otherwise measures the consumption of electricity on the pertinent property and charges tenants an additional amount based on the actual usage, the landlord is selling electricity to third parties and is operating as an electric power supplier. This would include rental properties such as apartment complexes, duplexes, and mobile home parks. The Board does have jurisdiction over such operations and the operation is a potential violation of Nebraska law.

IV. Situations That Do Not Constitute a Violation

If an entity provides electricity to third parties as part of another service or package, and the customer is not charged for electricity based on the actual usage, the Board does not believe that the entity is engaged in “selling” or “distributing” electricity as used in § 70-1001.01(2)**. The Board considers provision of electricity in such situations as incidental to the primary business in which the entity is engaged, and is intended to be a service or activity included as part of a larger package. In such instances the entity is not acting as an electric power supplier, and the activity does not create PRB jurisdiction over the entity or its actions.

A. Example: The provision of electricity by an entity, including private businesses and political subdivisions of the state, through the use of charging stations or other devices solely to its own buildings, machines, vehicles, etc. does not fall within the Board's jurisdiction and does not violate Nebraska law.

B. Example: Businesses such as truck stops, gas stations, convenience stores, campgrounds and hotels that provide electricity on a temporary basis to their customers without charging for the electricity based on usage are not operating as electric power suppliers and therefore those activities do not fall within the Board's jurisdiction and do not constitute a violation of Nebraska law.

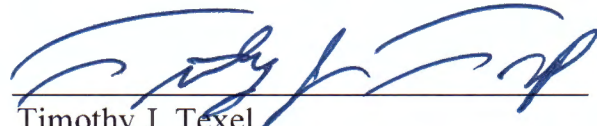
C. Example: A campground that provides electricity as part of a set packaged price that also includes the use of a camp site, water, recreational vehicle sewer disposal services, bathrooms, showers, picnic facilities, cable television, etc. is not selling or distributing electricity for purposes of § 70-1001.01(2)**.

As stated above in Section II, situations where an entity operates a commercial charging station for electric vehicles is a specific exception to the normal rule prohibiting sales of electricity within another power supplier's retail service area. In addition to the exemption of commercial electric vehicle charging station operators from the definition of the term "electric supplier or supplier of electricity," Neb. Rev. Stat. § 70-1002.02(2) states that a "commercial electric vehicle charging station operator may receive electric energy solely from an electric supplier with the right to serve the location of the commercial electric vehicle charging station and shall not offer, provide, sell, or resell electric energy at wholesale or retail for any purpose or use other than the charging of electric vehicles at the location of the commercial electric vehicle charging station. A commercial electric vehicle charging station operator may charge electric vehicle charging customers on the basis of kilowatt-hours consumed. A commercial electric vehicle charging station is subject to the interconnection requirements, electric rates, and service regulations of the electric supplier in whose certified service area the commercial electric vehicle charging station is located. Nothing in sections 70-1001 to 70-1028 shall prohibit an electric supplier from owning and operating an electric vehicle charging station or recovering its costs to provide electric service to a commercial electric vehicle charging station."

V. Receipt of Complaint

Any person or entity, including consumers and utilities, may file a complaint with the Board concerning a potential violation involving an entity engaged in selling

or distributing electricity to third parties outside its service area. The Board will follow the procedures established in Chapter 70, article 10 and the Board's Rules of Practice and Procedure when a complaint is filed.



Timothy J. Texel
Executive Director and General Counsel

**** The subdivisions in Neb. Rev. Stat. section 70-1001.01 will be renumbered by the Revisor of Statutes, as numerous changes were made to the numbering and text of the definitions by Legislative Bills 399, 1317 and 1370 (2024).**

Amended at NPRB Board Meeting May 31, 2024.

Amended at NPRB Board Meeting June 14, 2013.

Amended at NPRB Board Meeting May 31, 2019.

Approved at NPRB Board Meeting February 23, 2018.