

STATE OF NEBRASKA

POWER REVIEW BOARD



Pete Ricketts
Governor

November 20, 2015

Timothy J. Texel
Executive Director
and General Counsel
301 Centennial Mall South
P.O. Box 94713
Lincoln, Nebraska 68509-4713
Phone: (402) 471-2301
Fax: (402) 471-3715
www.powerreview.nebraska.gov

Bonnie Hostetler
Senior Staff Attorney
Nebraska Public Power District
P.O. Box 499
Columbus, NE 68602-0499

Dear Ms. Hostetler:

I received your letter dated November 18, 2015, in which you ask for confirmation concerning an opinion I expressed in a telephone conversation. My opinion was that a substation constructed to serve a project approved by the Federal Energy Regulatory Commission (FERC) under the regulations created pursuant to the Public Utilities Regulatory Policies Act of 1978 (PURPA) does not need the approval of the Nebraska Power Review Board (NPRB), as the NPRB's jurisdiction is pre-empted. I am providing you with this letter to confirm the opinion I expressed to you, subject to the limitations set out below. Please be advised that the opinion expressed in this letter is my opinion as the NPRB's general counsel. The NPRB itself has not yet formally addressed this issue.

As I understand the situation, the Nebraska Public Power District (NPPD) has been directed by the Southwest Power Pool (SPP) to construct a 115 kV substation to provide transmission interconnection services to a wind turbine electric generation facility in Webster County that has obtained approval under FERC's PURPA self-certification process. The NPRB's records indicate the Cottonwood Wind Project, LLC obtained PURPA approval in September 2015, under FERC docket number QF-15-1026-000. Cottonwood Wind Project provided written notice of the FERC approval to the NPRB. The notice was designated by the NPRB as "QF-15-1026". When we spoke on the phone you indicated that the sole purpose of the substation was to provide interconnection service to the Cottonwood Wind Project and not to any other customers in the area.

It is my opinion that transmission and related facilities such as transformers, switchyards, and substations that are installed or constructed exclusively to provide collection and/or interconnection services to a generation facility approved under the PURPA provisions are an integral part of the federally-approved facility. Since the

MEMBERS

Stephen M. Lichter
Waterloo
Chair

Frank J. Reida
Omaha
Vice Chair

Chuck D. Haase
Grand Island

Rick A. Morehouse
Scottsbluff

Dennis E. Grennan
Columbus

NPRB's jurisdiction is preempted when a facility obtains PURPA approval (see Nebraska Attorney General's Opinion 04024 (2004)), it is my opinion that necessary related facilities should be treated as part of the facility for purposes of determining whether the NPRB has approval jurisdiction. To consider them as separate and distinct would essentially provide the NPRB with the ability to prevent interconnection for a federally-approved project. That result would frustrate the purposes of the federal PURPA provisions. Please note that my opinion assumes the related facility is dedicated to the PURPA approved facility. If a substation or transmission line would provide service to other customers (as distinguished from a *de minimus* benefit to the local transmission system), that could create NPRB approval jurisdiction over the facility. As previously stated, in this instance it is my understanding that the substation is dedicated to the wind farm and will not provide service to other customers.

Although it would be preferable and even clearer if the interconnection facility were listed on the FERC Form 556 when the self-certification was filed, my opinion is not dependent on such a reference. I believe the applicable federal regulations address this topic. A qualifying facility for PURPA application purposes is defined in Title 18 C.F.R. Part 292, Subpart A, as follows:

“(b) *Definitions.* The following definitions apply for purposes of this part.

- (1) *Qualifying facility* means a cogeneration facility or a small power production facility that is a qualifying facility under Subpart B of this part.
 - (i) A qualifying facility may include transmission lines and other equipment used for interconnection purposes (including transformers and switchyard equipment), if:
 - (A) Such lines and equipment are used to supply power output to directly and indirectly interconnected electric utilities, and to end users, including thermal hosts, in accordance with state law; or
 - (B) Such lines and equipment are used to transmit supplementary, standby, maintenance and backup power to the qualifying facility, including its thermal host meeting the criteria set forth in *Union Carbide Corporation*, 48 FERC ¶61,130, *reh'g denied*, 49 FERC ¶61,209 (1989), *aff'd sub nom., Gulf States Utilities Company v. FERC*, 922 F. 2d 873 (D.C. Cir. 1991); or
 - (C) If such lines and equipment are used to transmit power from other qualifying facilities or to transmit standby, maintenance, supplementary and backup power to other qualifying facilities.”

Bonnie Hostetler, Esq.
November 20, 2015
Page 3 of 3

Although the regulation specifically lists transformers and switchyards in (b)(1)(i), the language indicates these are examples, not an exclusive list. I believe substations are similar in nature to the listed facilities in terms of the collection and interconnection purposes they serve. My opinion is in conformity with a previous opinion I provided to Mr. David Levy, in which he requested my opinion regarding whether the NPRB had jurisdiction over a three-mile intertie line near the City of Valentine needed to interconnect a PURPA-approved wind turbine to the local distribution or transmission system. I believe the situation in Valentine is similar and instructional. For your convenience enclosed with this letter is a copy of the opinion letter I provided to Mr. Levy, dated April 30, 2014.

For the reasons set out above, it is my opinion that the NPRB's jurisdiction to approve or deny a transmission or distribution project, including a substation, is preempted when the sole purpose of the facility is to provide interconnection service to a generation facility approved by the Federal Energy Regulatory Commission under the Public Utility Regulatory Policies Act of 1978. Applying this to the situation involving the substation that would provide service to the Cottonwood Wind Project, it is my opinion the Nebraska Power Review Board has no jurisdiction to approve or deny the proposed substation.

Sincerely,



Timothy J. Texel
Executive Director and General Counsel