NEBRASKA POWER REVIEW BOARD

Minutes of the 861st Meeting

April 18, 2025

  The 861st meeting of the Nebraska Power Review Board (Board or PRB) was held in the First Floor Hearing Room, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.  The roll was called and present were Chairman Hutchison, Vice Chairwoman Gottschalk, Mr. Liegl, and Mr. Moen. Mr. Austin had informed the staff a month ago that he would not be able to attend the April meeting. Executive Director Texel stated that public notice for the meeting had been published in the *Lincoln Journal Star* newspaper on April 8, 2025.  The Board made the meeting available to the public through Webex.  The Webex login information was available on the Board’s website and was published in the *Lincoln Journal Star* notice.  The agenda on the Board’s website provided links to the agenda items with associated documents the Board will consider, as well as a link to the Nebraska Open Meetings Act. Executive Director Texel explained that if any member of the public watching the meeting on Webex wanted to speak, they can click on the “raise your hand” icon.  At that time they would be unmuted, they could announce who is speaking, provide an address, and disclose if they represent an organization. Anyone wishing to comment on an item or ask a question could also type the comment or question in the “chat” function and the Board’s staff would read the question. All background materials for the agenda items to be acted on were provided to all Board members prior to the meeting and a copy of the materials was in each Board member’s meeting notebook.  The executive director announced that a copy of the Nebraska Open Meetings Act was on display on the south wall of the room, and another copy was available in a black three-ring binder on the table in the back of the room.  A copy of all materials that the Board would consider was available for public inspection on a file cabinet on the south wall, as well as extra copies of the agenda.

 The Board first considered the draft minutes from its February 21, 2025, public meeting.  The minutes had been sent electronically to the Board members. David Ried with Ried Energy Consulting had contacted the executive director about several changes to the minutes. The first was on page 3, in the third line of the first full paragraph, there is a reference to a “sever” winter storm. The word should be “severe.” On page 4, in tenth line of the first paragraph the sentence says “The Board discussed the what it thought . . . .” The word “the” should be deleted. The last change was on page 6, in the fourth line of the first paragraph. Offutt Air Force Base was spelled with one “t.” The correct spelling is with two t’s (Offutt). Mr. Liegl moved to approve the draft minutes with the noted corrections. Mr. Moen seconded the motion. Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – absent, Mr. Liegl – yes, and Mr. Moen – abstain.  The motion carried 3-0 with one absent.

The next agenda item was acceptance of the expense reports for the months of February and March.  In February there was $29,604.10 in personal services, $17,394.24 in operating expenses, and $734.25 in travel expenses. The total February expenses were $46,264.09. In March there was $29,657.89 in personal services, $16,832.68 in operating expenses, and $414.40 in travel expenses. The total March expenses were $46,904.97. Executive Director Texel said that the Board is nine months into the fiscal year, so 75% of the fiscal year has gone by. The Board has used 77.09% of the agency’s cash fund. The cash fund is approximately 2.09% over budget, which has been fairly constant for several months now. Vice Chairwoman Gottschalk moved to accept the February and March expense reports. Mr. Liegl seconded the motion. Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – absent, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

The next item on the agenda was a briefing by Tri-State Generation and Transmission Association, Inc. (Tri-State). The briefing covered how transmission is coordinated in the western interconnection, what entities are involved, and issues related to the Board’s participation in the newly formed CREPC 1920 Ad Hoc Committee. The Board had reached out to Tri-State to learn more about western transmission issues after the Committee on Regional Electric Power Cooperation (CREPC) formed the 1920 Ad Hoc Committee. The committee will serve as an avenue for state regulatory entities in the western interconnection to provide input concerning transmission planning, as required in the Federal Energy Regulatory Commission’s (FERC) Orders 1920 and 1920-A. Last month the Board had discussed having a member participate in the Ad Hoc Committee meetings and designated Chairman Hutchison to serve as the Nebraska representative on the committee. Since only a small portion of Nebraska is in the western interconnection the Board is not completely familiar with the western interconnection activities. Ryan Hubbard, Senior Manager for Transmission Business Strategy at Tri-State, agreed to give a briefing to the Board about how transmission works in the west. Mr. Hubbard gave an overview of those entities that are part of the western interconnect and the types of transmission entities involved in the west. He explained that Tri-State will participate in the Southwest Power Pool’s (SPP) western expansion once it goes into effect, but there is also a portion of Tri-State’s operating area that will not be under SPP. Chairman Hutchison thanked Mr. Hubbard for his presentation. The Board discussed if there was a need for Chairman Hutchison to continue to participate in the Ad Hoc Committee. Chairman Hutchison did mention that he has learned a lot during the Ad Hoc Committee meetings. The Board members agreed that with the impending approval of SPP operating in the western interconnection, which will include all of Nebraska in the western interconnection, it did not appear necessary for the Board to continue to participate. Chairman Hutchison said he would contact the Ad Hoc Committee to ask procedurally how they would prefer the PRB to notify the Committee that the PRB will be ending its participation in the Committee’s activities. If the Committee would like a formal action the issue will be placed on the Board’s May agenda.

 The next item on the agenda was consideration of PRB-4050. This is an application submitted by City of Central City. The application was filed on March 21, 2025. The application requests permission to build 2.2 miles of 69 kilovolt (kV) three-phase subtransmission line, with .4 mile of 12.5 kV underbuilt. The line is in the service area of Southern PPD. The project is a rebuild of an existing 34.5 kV line and upgrading it to 69 kV. The line provides the primary service to the city of Central City. The new line will extend from the south side of Central City’s service area to NPPD’s substation approximately two miles south of town that supplies the area. Although the project includes line inside Central City’s service area, 2.2 miles of the line is in Southern PPD’s service area. Exhibit A-1 is a map showing the location of the line. Southern PPD filed a Consent and Waiver Form. There is no military installation issue involved within ten miles of the project area, so Central City did not need to certify that its vendors do not use foreign adversary components. The construction is in Merrick and Hamilton counties and those counties are not on the list of geographic areas in which an applicable military installation is located, as defined by the new definition in Neb. Rev. Stat. section 70-1001.01(9). The PRB also consulted with the Nebraska Game and Parks Commission (the Commission) as required by Neb. Rev. Stat. section 37-807(3). In a letter dated April 17, 2025 the Commission stated the project is within the range of endangered Whooping Crane and Northern Long-eared Bat, and the threatened Piping Plover and Interior Least Tern. The Commission found that there is no suitable habitat for the Northern Long-Eared Bat in the area. There is suitable habitat for the Whooping Crane, Piping Plover and Interior Least Tern. Central City’s contractor, RVW Inc., agreed to follow the Commission’s conservation measures during the migration periods of the Whooping Crane, and during the nesting season for the Piping Plover and Interior Least Tern. With this agreement, the Commission stated that the project “May Affect, but is not Likely to Adversely Affect” any threatened or endangered species, and the Commission did not object to approval of the project. Mr. Moen moved to approve PRB-4050 with the requirement that Central City and its contractor follow the Nebraska Game and Parks Commission protocols. Vice Chairwoman Gottschalk seconded the motion. Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – absent, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

The next item on the agenda was to consider PRB-4048. This is an application filed by the Y-W Electric Association for permission to construct .645 mile of 12.47 kilovolt distribution line in Dundy County. The application was filed on April 2, 2025. The project consists of .57 mile of 12.47 kV three-phase overhead and .075 mile of 12.47 kV three-phase underground distribution line for a total length of .645 mile. The new line will serve two water wells owned by Spuds & Suds, LLC, a subsidiary of Blackshirt Feeders. The wells are in the service area of Southwest PPD. Southwest PPD filed a Consent and Waiver form. The construction is in Dundy County and that county is not on the list of geographic areas in which a military installation is located pursuant to the new definition in Neb. Rev. Stat. section 70-1001.01(9). The PRB also consulted with the Nebraska Game and Parks Commission as required by Neb. Rev. Stat. section 37-807(3). In a letter dated April 12, 2025 the Commission stated the project is within the range of the endangered Swift Fox. The Commission found that there is no suitable habitat in the project area for Swift Fox. The Commission determined that the project will have “No Effect” on any threatened or endangered species or their critical habitat, and the commission did not object to approval of the project. Vice Chairwoman Gottschalk moved to approve PRB-4048. Mr. Liegl seconded the motion. Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – absent, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 5-0.

 The next item on the agenda was PRB-4051. This is an application submitted by City of Nebraska City. The application was filed on April 4, 2025. The application is requests permission to build .73 mile of 14.4 kV three-phase distribution line. The construction will serve a water well for GoodLife Agriculture, LLC. The line is in the service area of the Omaha Public Power District (OPPD). Exhibit A-1 is a map showing what is being done and the project area. OPPD filed a Consent and Waiver Form. There is no military installation issue in the area, so Nebraska City did not need to certify that its vendors do not use foreign adversary components. The construction is in Otoe County and this county is not on the list of geographic areas in which an applicable military installation is located pursuant to the new definition in Neb. Rev. Stat. section 70-1001.01(9). The PRB also consulted with the Game and Parks Commission as required by Neb. Rev. Stat. section 37-807(3). In a letter dated April 17, 2025 the Commission stated the project is within the range of the endangered Northern Long-eared Bat, Pallid Sturgeon and Sturgeon Chub, and the threatened Western Prairied Fringe Orchid, American Ginseng, Lake Sturgeon and Southern Flying Squirrel. The Commission found there is no suitable habitat for the orchids. There is suitable habitat for the Ginseng and Flying Squirrel, but the City’s contractor will use horizontal drilling to avoid disturbing the forest habitat for the Ginseng and Squirrels. The project area does have suitable habitat for Northern Long-Eared Bats, Pallid Sturgeons and Lake Sturgeons. GoodLife Agriculture agreed to implement the conservation mitigation measures the Commission recommended for these species, which will include using downward-facing lights with shielding from wooded areas, no tree removal during May 15 to July 31, reseeding disturbed pasture and backfilling cultivated fields, and no wastewater or spoil can be discharged into the Missouri River from March 1 to July 31. With those conservation measures, the Commission stated that the project “May Affect, but is not Likely to Adversely Affect” any threatened or endangered species, and the Commission did not object to approval of the project. Mr. Liegl moved to approve PRB-4051 subject to the contractor following the Game and Parks Commission recommended protocols. Mr. Moen seconded the motion. Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – absent, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

The next item on the agenda was to consider amendments to PRB Guidance Document 14. Guidance Document 14 (GD 14) deals with how the Board addresses Energy Storage Resources, also referred to as battery storage facilities. GD 14 determines that an ESR can be considered “associated” with a generation facility or part of the overall facility in a generation application, if the ESR’s primary purpose is to store electricity produced by the generation facility, the ESR is located on same premises or in immediate vicinity as the generation facility, and the aggregate rated capacity of ESRs associated with the generator do not exceed the capacity of the generation facility. Legislation was introduced this year pertaining to ESRs, which is LB 349. During a review of the proposed statutory changes and comparing the bill’s provisions to GD 14, it was noticed that language in the current GD 14 could potentially allow an entity to claim an ESR is associated with a generation facility, even over the objection of the generation facility’s owner. If the entity were to place an ESR in the vicinity of a generation facility, claim that the ESR’s primary purpose is to store the ouput from the generator, and show that the ESR’s rated capacity is not greater than the generator, the language in GD 14, read strictly, might allow the ESR to be associated with the generator. The intent of GD 14 was to address situations where the generation facility’s owner is either the owner of the ESR, or is working in conjunction with the ESR’s owner. The current language in GD 14 does not require consent from the current owner of the generation facility. This potential “loophole” is clarified in the proposed amendments, along with some general clean-up changes. The draft amendment language was provided to the Nebraska Power Association and the Board’s list of private attorneys and lobbyists that represent private developers operating in Nebraska. David Levy commented via email that the draft amendments do look like true clean-up changes. Late Thursday afternoon (the day before the Board meeting), Collin Sniff with OPPD provided some additional requested substantive changes. The OPPD draft language was in the Board members’ meeting notebooks, but not all Board members had the opportunity to fully read through the language. Mr. Sniff addressed the Board members via Webex about the language he submitted. The language provides further clarity to the current proposed draft and does not make any additional substantive changes. Mr. Moen explained that the guidance document was intended to treat ESR’s similar to a coal pile that would supply the adjacent generation facility. The coal pile, like an ESR under GD 14, does not change the fuel or the capacity of the generation facility because the ESR only operates when the generator is not operating. The Board discussed tabling the item until next month. The Board received an ESR application and it will have a hearing scheduled next month. The Board asked if approval of the Board’s draft amendments would have any effect on the application. Executive Director Texel explained that the application would be required to follow the guidance document language that was in effect when the application was filed, but the application does not involve an ESR associated with a generator. Chairman Hutchison thought the Board should take a vote on the language drafted by Executive Director Texel and take the next month to review Mr. Sniff’s language. OPPD’s additional language could be placed on the agenda for another vote during the May meeting, if Mr. Sniff does not object to that. Mr. Sniff said he did not object to that process. Vice Chairwoman Gottschalk moved to approve the draft amendments to Guidance Document 14 without the Omaha Public Power District’s additional language. Mr. Liegl seconded the motion: Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – absent, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

The first item on the executive director’s report was the Southwest Power Pool (SPP) update. The Board had a copy of JK Energy’s monthly activities report. Chairman Hutchison spoke about the upcoming quarterly meeting to be held at the Hilton in downtown Omaha. If any member wanted to attend or even watch on Webex he encouraged it.

 The executive director discussed the legislative bills introduced in the 2025 session. The bills on the tracking document are those that are related to the PRB or the electric industry. He said he would address the bills that had been prioritized, or that had some major change since the last update.

 LB 35 was introduced by Senator Brandt. Current law states that a private developer is exempt from the need to certify that a new privately developed renewable energy generation facility has no components manufactured by a foreign adversary if the private developer certifies it is in compliance with the North American Electric Reliability Corporation’s (NERC) critical infrastructure protection standards. The certification must be made at least 30 days prior to commencement of construction. The new language would allow the developer to certify that it “will, upon reaching commercial operation” be in compliance with the NERC standards. The Board did not take any position on the bill. The bill was placed on Final Reading on February 13. The executive director pointed out that the same language was included in LB 43. He was told the plan is that if LB 43 is enacted as expected, either Senator Brandt will withdraw LB 35 or Speaker Arch will never schedule it for a final vote to avoid a conflict.

 LB 43 was introduced by Senator DeKay. The bill would change provisions relating to notice and certification requirements for electric generation facilities, transmission lines, and privately developed renewable energy generation facilities located near certain military installations. This is a clean-up bill to address issues that have come up after the bill requiring certifications for facilities within ten miles of applicable military installations was enacted last year. The bill, by citing federal regulations, sets out the counties in which the applicable military installations are located. Electric utilities operating in those counties would need to address the certification, while utilities that do not operate in those counties would not need to do so. The counties covered are Banner, Cheyenne, Deuel, Garden, Kimball, Morrill, Scotts Bluff and Sioux, as well as areas within ten miles of Offutt Air Force Base in Bellevue. It also allows a one-time exemption after a utility consults with its vendors to ensure the vendors do not use components manufactured by a foreign adversary. There is also a “fail safe” provision that would allow a process where the PRB could approve the use of parts made by a foreign adversary if the utility has no other way of obtaining the parts and the PRB determines that not using the part would cause greater harm than that associated with using the part. This process was copied from the Pacific Conflict Stress Test Act that was enacted last year. The executive director testified in support of the bill at the hearing on January 22 before the Natural Resources Committee. The bill included an emergency clause, so it goes into effect upon the Governor signing it. LB 43 was passed on February 21, and the Governor signed it on February 25. Thus, the bill’s provisions are already in effect.

 LB 105 was introduced by Senator Hughes. This was brought to Senator Hughes by the Nebraska Rural Electric Association to allow public power districts to divide voting precincts for purposes of creating the voting subdivisions in their charters, instead of the current requirement that a district either include an entire precinct or county or none of it. The bill also removes the limitation that the PRB only reviews charter amendments to determine if the rural users of electricity will be prejudiced by the new voting configuration. The PRB testified in support of removing the “rural” limitation, so the Board can protect all users of electricity. LB 43 was enacted on April 3, and the Governor signed it on April 7. The bill did not contain an emergency clause, so it will go into effect three months after the adjournment of the legislative session.

LB 349 was introduced by Senator Prokop. The bill would change provisions relating to applications and exemptions regarding the construction or acquisition of electric energy storage resources, otherwise known as battery storage facilities. The bill creates a definition for electric energy storage resources. Executive Director Texel told the Board that public power entities testified in opposition to the bill. He had testified neutral, but told the Committee that although the bill was characterized as a codification of the PRB’s Guidance Document 14, it was not. There are numerous and significant differences between the two. The Baird Holm law firm is working on the bill for Eolian, the company that is the bill’s principal proponent. Baird Holm drafted an amendment that addresses the PRB’s concerns. Executive Director Texel said the amendment did align the applicable provisions in the bill with Guidance Document 14. There are other differences, such as eminent domain and capacity sales, but those issues are not addressed in the Guidance Document. Senator Brandt had been informed the contradictions between the bill and Guidance Document 14 had been addressed. However, LB 349 does not have a priority designation.

LB 396 was introduced by Senator DeKay. The bill would eliminate the requirement that public power districts file their budgets and audits with the PRB, and that the PRB approve the form of the budgets. NPPD brought this bill to eliminate the requirements. Executive Director Texel testified in support of the bill. The bill was passed on a 47-0 vote on March 13. The Governor signed the bill on March 17. The bill will take effect three months after adjournment of the legislative session, which will be well before the next round of budget and audit submissions are due.

LB 489 was introduced by Senator Brandt. The bill would prohibit private entities from operating, maintaining, constructing or acquiring transmission lines and related facilities in Nebraska. The bill is a reaction to the Black Hills application for seven miles of transmission in far western Nebraska that was dismissed by the PRB. Executive Director Texel said Senator Brandt had expressed a desire to have the PRB exercise at least some oversight when a private entity builds a line in Nebraska. Black Hills Energy expressed that it was open to having the PRB approve such lines. Executive Director Texel had suggested creation of a “do no harm” standard that would require the PRB to find that the proposed private transmission line would not serve any Nebraska customer at retail, that it will not duplicate any existing transmission facilities, and that it will not cause significant harm to the ratepayers of any Nebraska electric utility that serves customers at retail. He also wanted the bill to apply to lines with 34.5 kV capacity and larger. OPPD objected to the inclusion of “significant” harm. Although significant work had been invested in this bill, the parties could not agree on the final details and Senator Brandt said the bill is dead for this year.

LB 526 was introduced by Senator Jacobson at the request of the Governor. The bill provides for an excise tax on cryptocurrency mining and authorizes public power districts to require payments or letters of credit from cryptocurrency mining operations for certain infrastructure upgrades. The bill was amended to remove the excise tax, and cryptocurrency companies withdrew their opposition. Senator Jacobson designated LB 526 as his priority bill. This bill was advanced to Select File by a 35 to 0 vote, so it appears the amendments cleared the way for the bill’s passage.

Executive Director Texel told the Board that Governor Pillen appointed Dennis Grennan to replace Mr. Moen on the Board. Mr. Grennan has not had his confirmation hearing yet. It is scheduled for April 24. There is a possibility that Mr. Grennan will be confirmed in time for the May 16 meeting.

Executive Director Texel told the Board that NPPD expressed interest in using the PRB’s Orientation Manual to help educate senators about the electric industry in Nebraska. The online manual has not been updated since 2018. Ms. Birkett, the Board’s paralegal, reviewed the manual and edited the portions where information needed to be updated. The executive director had read through the entire manual, which is 90 pages long, and made some final edits. There are some remaining formatting issues that Ms. Birkett needs to finalize, after which the revised manual will be put on the Board’s website.

Executive Director Texel stated that the next three PRB meetings are scheduled for May 16, June 20, and July 18, 2025. The Board has again scheduled its 2025 public meetings for the third Friday of each month.

Mr. Liegl moved to adjourn the meeting.  Mr. Moen seconded the motion. Voting on the motion:  Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – absent, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 4 – 0.  The meeting adjourned at 10:45 a.m.

 Timothy J. Texel

 Executive Director and General Counsel