NEBRASKA POWER REVIEW BOARD

Minutes of the 860th Meeting

February 21, 2025

  The 860th 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. Austin, Mr. Liegl, and Mr. Moen. Executive Director Texel stated that public notice for the meeting had been published in the *Lincoln Journal Star* newspaper on February 11, 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 near the back of the room, as well as extra copies of the agenda.

 The Board first considered the draft minutes from its January 17, 2025, public meeting.  The minutes had been sent electronically to the Board members. No one had contacted the board with recommended corrections and the staff did not have any suggested changes. Mr. Liegl moved to approve the draft minutes. Vice Chairwoman Gottschalk seconded the motion. Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – abstain.  The motion carried 4-0 with one abstaining.

The next agenda item was acceptance of the expense report for the month of January.  In January there was $28,312.30 in personal services, $26,842.71 in operating expenses, and $1,053.06 in travel expenses. The total January expenses were $56,208.07. Executive Director Texel said that the Board is seven months into the fiscal year, so 58% of the fiscal year has gone by. The Board has used 61% of the agency’s cash fund. The cash fund is approximately 3% over budget, which it has been for several months now. Vice Mr. Austin moved to accept the January expense report. Vice Chairwoman Gottschalk seconded the motion. Voting on the motion: Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 5-0.

 The next item on the agenda was to consider SAA 310-25-A and SAA 57-25-A (consolidated). This is a joint application filed by the Nebraska Public Power District, Dawson Public Power District and the City of Kearney to amend retail service area agreements 310 and 57. The amendment was filed on January 16, 2025. Both service area agreements are assigned to NPPD and Dawson PPD. S.A.A. 57 was previously between Platte Valley PPD and Dawson PPD, while S.A.A. 310 is between NPPD and Dawson. In 1970 NPPD and Platte Valley PPD merged and now there are two agreements for NPPD with Dawson PPD. NPPD serves Kearney at retail and holds the service area rights to the City. For purposes of service area amendments in such circumstances, NPPD operates as the municipal electric provider. Kearney is an interested party and the PRB considers Kearney to be an intervenor. The joint application serves as Kearney’s Petition for Intervention, which the Board has historically granted as of right. Kearney annexed three tracts of territory on the north edge of the City. NPPD would like to incorporate those territories into the service area agreements between NPPD and Dawson PPD. The developments are known as “Arbor View Second”, “Arbor View Third” and Arbor View Fourth.” Exhibit A of the amendment identifies the location of the annexed territories. Exhibit B is a metes and bounds description of the entire service area boundary surrounding Kearney once the amendment is approved. Exhibits C, D and E are the resolutions accomplishing each of the annexations. Exhibit F, G, and H are the Kearney City Council’s resolutions authorizing the City to join NPPD as a co-applicant in the service area agreement application before the PRB. The annexed territories do not have any Dawson PPD infrastructure or customers located in them. Vice Chairwoman Gottschalk moved to approve SAA 310-25-A and SAA 57-25-A (consolidated). Mr. Liegl seconded the motion. Voting on the motion: Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 5-0.

The next item on the agenda was to consider SAA 318-25-A. This is a joint application filed by Butler PPD and the City of Wahoo to amend retail service area agreements 318. The amendment was filed on January 21, 2025. This amendment is requesting that territory currently served by Butler PPD be transferred to Wahoo’s service area. Wahoo annexed a tract of territory in sections 27 and 34, Township 15, Range 7 east, but the transfer involves more territory than is involved in the annexation. Butler PPD and Wahoo agreed to the transfer of territory described in Exhibit A-1. Butler PPD and Wahoo have agreed on compensation for the loss of revenue and some infrastructure. Butler PPD will maintain the right to own, maintain and operate a 34.5 kV sub- transmission line and a 7200 kV distribution line that passes through the area to be transferred. Exhibit C is the annexation plat, metes and bounds and ordinance that annexed a portion of the territory. Wahoo would like to incorporate this territory into its service area. Mr. Liegl moved to approve SAA 318-25-A. Vice Chairwoman Gottschalk seconded the motion. Voting on the motion: Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 5-0.

The next item on the agenda was to consider a selection of an extreme weather scenario to be analyzed in the 2025 Load and Capability Report. This will be the second year for this scenario to be included in the report. The 2024 scenario was a sever winter storm in western-central Nebraska. This scenario would affect the operations at Gerald Gentleman Station and other utilities operations in the area. The three scenarios to select from this year were: 1) heavy spring rains and near record snowfall in the Rocky Mountains, causing dams on the Missouri River to release large amounts of water into the summer season. Flooding causes electric generation to be out of service; 2) extreme and sustained cold temperatures in eastern Nebraska cause river icing along the Missouri River. Electric generation stations using the Missouri River are impacted and extreme cold causes increased use of natural gas and increased electric consumption; or 3) extreme and sustained drought conditions across a majority of Nebraska causes reduced river flows and heat-related complications at generating facilities. Ms. Shannon Coleman with Omaha Public Power District, who is a member of the Nebraska Power Association’s Joint Planning Committee that prepares the report, presented the scenarios. The Board discussed the selection from last year and discussed each option. Vice Chairwoman Gottschalk wanted the scenario chosen to include the impact on rural irrigation users and low wind availability. There was discussion about historical events when irrigators to choose between cost of irrigating crops or not having much of a crop. Chairman Hutchison spoke about one of the scenarios being very realistic because last year there were incidents on the Missouri River when the water level was too low and frozen, not allowing some generators to operate. All Board members agreed on selection of option (3) and asked to include in the scenario that associated with the event there was low wind availability.

The next item on the agenda was the designation of a PRB member to serve as Nebraska’s representative on the CREPC 1920 Ad Hoc Committee. The Committee is being formed as a way for state commissions in the western interconnection to coordinate comments to FERC in response to Orders 1920 and 1920-A. Chairman Hutchison discussed the reason for a member to be Nebraska’s representative. Executive Director Texel also stated that the group coordinating formation of the committee contacted the Nebraska Public Service Commission. The Commission agreed that the PRB was the appropriate agency to represent Nebraska on the Committee. He also stated that he is a representative on the Western Interconnection Regional Advisory Body (WIRAB), which is an advisory group of state utility commission and energy office commissioners from states with electric utilities operating in the western interconnection. Chairman Hutchison stated that he would be willing to be Board’s representative. Mr. Austin asked what would the duration of this group be? Chairman Hutchison stated that it is expected to operate for about one year. The group will deal with issues the western interconnection. He thought it might be worthwhile to ask if the Municipal Energy Agency of Nebraska (MEAN) and Tri-State Generation and Transmission Association would be willing to give the Board a briefing on the activities in the western interconnection and who the entities involved are. Both those utilities operate in the western interconnection. There was discussion about the Southwest Power Pool’s western expansion with Markets+, and that it was waiting to have its proposed tariff approved by the Federal Energy Regulatory Commission (FERC). This is another good reason to have Tri-State and MEAN come and discuss their position in the western interconnection. Chairman Hutchison said he would like to discuss how transmission planning is done in the western interconnect. Robyn Spady, OPPD representative, told the Board that OPPD is struggling with the definition of what is a “relevant state entity” in FERC Order 1920. FERC does not make it entirely clear what entity would be eligible to fill that role. The Board discussed the what it thought the FERC order meant by the definition in the order. Chairman Hutchison pointed out that it did not say it was the state entity that approve electric utility rates. Executive Director Texel said he has read the order and it was his belief that FERC meant the entity with approval for siting transmission or to construct transmission. Ms. Spady stated that it might be a good idea to further explore this issue. Mr. Austin moved to designate Chairman Hutchison to be the Nebraska representative on the CREPC 1920 Ad Hoc Committee. Mr. Liegl seconded the motion. Voting on the motion: Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 5-0.

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 congestion hedging issues. The RSC did approve a policy, but it was on a 6-5 vote. This is a contentious issue. Several years ago it was addressed and the proposed policy was voted down.

 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.

 LB 20 was introduced by Senator John Cavanaugh. The bill requires local electric utilities to interconnect customers that have agricultural self-generation facilities. The bill clarifies that an electric utility cannot tell a customer with a self-generation unit larger than 25 kilowatts (the net metering standard) that the customer must sign a buy-sell agreement or the utility will deny further electric service. Executive Director Texel did not recommend testifying on this bill, but he stated that if time allowed he would attend the hearing to address any questions or misstatements about current law on the subject. It was his opinion that current law would not allow a utility to disconnect a customer with a self-generation facility, absent some kind of safety code violation or non-payment. The Board members agreed the PRB would not take a position on the bill. The bill was placed on Final Reading on February 13.

 LB 29 was introduced by Senator Conrad. The bill creates a review process for agency rules and regulations. Every state agency would need to conduct a review of all existing and pending rules and regulations. A detailed report would be submitted to the Clerk of the Legislature by June 30. The first review would start January 1, 2026. Agency rulemaking authority would be suspended from January 1 of the year in which the report is due until the date the report is submitted. The legislative committee with jurisdiction over that agency can then make recommendations for changes to the agency’s regulations. The Board took no position on the bill. The hearing on LB 29 was held February 12 before the Government, Military and Veterans Affairs Committee. The Committee has not taken any action on the bill yet.

 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 Offut Air Force Base in Bellevue. It also provides for 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 includes an emergency clause, so would go into effect upon the Governor signing it. The amended version of LB 43 was placed on Final Reading on February 19.

 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. This is the same bill introduced last year as LB 837. The executive director said last year the PRB was neutral, but he had testified to support the removal of the word “rural” in the part of the statute that says the PRB must find that the charter change does not prejudice the rural users of electricity. He testified at the February 12 hearing before the Natural Resources Committee that the Board believes it should be able to protect all users of electricity. The bill was placed on General File February 18.

LB 117 was introduced Senator Holdcroft. The bill would provide a sales and use tax exemption for electricity, natural gas, propane and sewer utility services. The hearing was held on January 31 and the Revenue Committee has not taken further action on the bill.

LB 121 was introduced by Senator Hardin. The bill would prohibit disposal of solar panels and wind turbine blades and their component parts in Nebraska landfills. The hearing before the Natural Resources Committee was held January 30. The Committee has not taken any action on the bill yet.

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. The bill creates a definition for electric energy storage resources. It also changes the definition of a power supplier by stating that an electric supplier can be any legal entity “public or private” and that engaging in storage of electricity makes an entity an electric supplier. The bill amends the definition of privately developed renewable energy generation facilities (PDREGF) to include energy storage resources. That means energy storage resources built or installed by a private entity only require notice with certifications, without any PRB review or approval. The hearing date on the bill before the Natural Resources Committee is March 6. The Board previously decided the executive director would testify in a neutral capacity to explain the current state of the law regarding energy storage resources and PRB Guidance Document 14, express concerns that a non-renewable resource would be defined to be renewable, and explain that the bill would essentially remove PRB review or decision-making authority for privately developed energy storage resources.

LB 396 was introduced by Senator DeKay. The bill would change provisions relating to the form and filing of public power district budgets and audits with the Nebraska Power Review Board. The bill is straightforward. Public power districts are required to submit their annual audits and budgets to the PRB. Nothing is done with the filings other than to store them in a filing drawer in the PRB offices. NPPD brought this bill to eliminate the requirements. Executive Director Texel testified in support of the at the hearing before the Natural Resources Committee on February 6. The bill was placed on Select File on February 19.

LB 409 was introduced by Senator John Cavanaugh. The bill would change provisions relating to the membership of the Nebraska Power Review Board. The bill requires that one PRB member be a journeyman electrician. The Governor would select the appointee from a list provided to him or her by a nonprofit labor organization representing electrical workers. The hearing before the Natural Resources Committee was held the day prior to the PRB meeting. Senator Cavanaugh explained that the reason for this bill was based on the PRB’s ability to provide an advisory opinion to a utility considering decommissioning a generation facility with over 100 megawatts capacity. The advisory opinion was authorized by LB 1370 last year, which is now codified in section 70-1034. Executive Director Texel testimony in a neutral position.

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. The hearing before the Natural Resources Committee was on February 5. Executive Director Texel testified in a neutral capacity and expressed concern that the bill would prohibit the common practice of allowing the entity building a wind or solar facility to also build the transmission line dedicated to interconnecting the facility to a public power entity’s nearest transmission line. The executive director told the Board that Black Hills, OPPD and himself are working on an amendment. Senator Brandt wants the PRB to have some review oversight when a transmission line is built by a private entity in Nebraska. Executive Director Texel’s idea was to have what is essentially 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 that lines that would be 34.5 kV up to 100 kV. He also believes the bill should deal with the issue of distribution lines, but no language had been drafted to do that yet.

LB 503 was introduced by Senator Bosn. The bill would authorize designation of American Energy Friendly counties and change provisions relating to privately developed renewable energy generation facilities and the nameplate capacity tax. LB 349 is a companion bill to LB 503. The executive director testimony in neutral capacity before the Revenue Committee at the hearing on February 19. There were a large number of testifiers in opposition to the bill.

LB 526 was introduced by Senator Jacobson at the request of the Governor. The bill provides for an excise tax on cryptocurrency mining and allow public power districts to require payments or letters of credit from cryptocurrency mining operations for certain infrastructure upgrades. The PRB submitted written comments in a neutral capacity on the bill. The hearing was held on February 12.

LB 565 was introduced by Senator Quick. It would repeal Guidance Documents issued over the past three years and create a moratorium on their adoption for the next two years. The executive director testified in opposition to the bill before the Government, Military and Veterans Affairs Committee on February 4 because it would repeal several of the PRB’s important guidance documents, and prohibit the Board from issuing new ones for two years. Senator Quick offered an amendment at the hearing to limit the application of the bill to only the Division of Developmental Disabilities of the Department of Health and Human Services. The executive director told the Committee if the amendment were adopted the PRB would be neutral. The Committee has not taken any action on the bill yet.

The Board’s portion of the mainline budget bill will have a hearing in front of the Appropriations Committee on February 26. Executive Director Texel said he plans to testify to thank the Committee for its preliminary decision to provide the Board with what was requested in the PRB’s budget request, and offer to answer any questions.

Executive Director Texel stated that the next three PRB meetings are scheduled for March 21, April 18, and May 16, 2025. The Board has again scheduled its 2025 public meetings for the third Friday of each month.

Vice Chairwoman Gottschalk moved to adjourn the meeting.  Mr. Liegl seconded the motion. Voting on the motion:  Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 5 – 0.  The meeting adjourned at 11:25 a.m.

 Timothy J. Texel

 Executive Director and General Counsel