NEBRASKA POWER REVIEW BOARD

Minutes of the 854th Meeting

June 21, 2024

  The 854th 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, and Mr. Moen. Mr. Liegl had informed the Board during the May meeting that he would not be able to attend the June meeting. Executive Director Texel stated that public notice for the meeting had been published in the *Lincoln Journal Star* newspaper on June 11, 2024.  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 May 31, 2024, public meeting.  The minutes had been sent electronically to the Board members. The staff did not have any recommended changes, and no one had contacted them with any requested changes. Mr. Moen moved to approve the draft minutes. Mr. Austin seconded the motion. Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – abstain, Mr. Austin – yes, Mr. Liegl – absent, and Mr. Moen – yes.  The motion carried 3-0 with one abstain and one absent. Vice Chairwoman Gottschalk explained that she abstained because she was absent from the May meeting.

The next agenda item was acceptance of the expense report for the month of May.  In May there was $38,706.52 in personal services, $14,435.00 in operating expenses, and $2,324.86 in travel expenses. The total May expenses were $58,374.28. Executive Director Texel explained that the Board has used 96.52% of the agency’s cash fund, and 91.6% of the fiscal year has gone by. Thus, the Board is roughly 5% over budget. It was also discussed that the Board will need to dip into its reserve fund for the first time to cover the expenses for the month of June. Vice Chairwoman Gottschalk moved to accept the May expense report. Mr. Austin seconded the motion. Voting on the motion: Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – absent, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

The next item on the agenda was to consider the Chimney Rock Public Power District’s Petition for charter amendment 8. This petition is in response to the Board’s decision in the Central Nebraska Public Power and Irrigation District’s Petition for Charter Amendment 6. In that decision, the Board denied the petition because it did not include the language that a district cannot issue general obligation bonds, and the district’s current charter does not already contain such language. The language is required to be in all public power district charters, pursuant to Neb. Rev. Stat. section 70-604(5). As a result of that proceeding it was discovered that, along with Central Nebraska PP&ID, 14 other districts did not have the required language in their charters. Chimney Rock PPD is one of those 14 districts. Chimney Rock PPD filed its Petition on April 19, 2024. Section 5 of the District’s current charter states “The proposed district shall have no power of taxation and all property within said district shall be exempt from the levy of any taxes for the payment of any obligations of the district.” The Petition would add the language “nor shall it have the power to issue general obligation bonds” following the word “taxation” in charter section 5. The PRB is required to publish notice of a proposed charter amendment for three consecutive weeks in two local newspapers in the district’s territory. The notice was published in the *Scottsbluff Star-Herald* and the *Bridgeport News-Blade* newspapers on April 25, May 2, and May 9, 2024. The Board did not receive any protest or objection to the proposed changes. Under Neb. Rev. Stat. section 70-663, the Board may approve a charter petition without a hearing if no protests or objections are filed. Executive Director Texel said that to approve the Petition, the Board needs to find that the charter amendment will not be contrary to the best interests of the district and will not jeopardize or impair the rights of creditors of the district or of other persons. Executive Director Texel recommended that the Board waive the hearing and approve the Petition for Charter Amendment 8. Vice Chairwoman Gottschalk moved to waive the hearing and approve Chimney Rock Public Power District’s Petition for Charter Amendment 8, adding the language “nor to issue general obligation bonds” to its charter. Mr. Moen seconded the motion. Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – absent, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

The next item on the agenda was approval of the PRB’s assessment figure for fiscal year 2024-2025. The executive director reviewed the electric utilities’ gross revenue for the past few years. The 2023 gross revenue decreased from the 2022 gross revenue by approximately $156,400,000. The 2022 gross revenue decreased from the 2021 gross revenue by approximately $59 million. The analyst at the Budget Office informed the staff he wants the PRB to collect $575,000 for the Board’s cash fund. Last year the PRB collected $553,000. The budget office set our reserve fund for this year at approximately $135,000. Last year the reserve fund had $172,000. It is the executive director’s understanding that the Budget Office is trying to keep the assessment figure within five percent of the previous year so the assessment figure will not fluctuate very much. Last year’s assessment figure was 11.923502. For the 2024-2025 fiscal year the assessment figure will need to be 12.82005229 cents per $1,000 gross revenue. The Board members noted that the Board will not be collecting its full legislative appropriation. The Board discussed the different reasons why the Budget Office is not allowing the Board to collect the full amount of the approved budget. The Legislature approves the Board’s submitted biennial budget. The Budget Office is only allowing the Board to collect its anticipated expenses, based on the Board’s historical spending. Chairman Hutchison asked if there was ever a time when the Board did not agree on an assessment figure. Executive Director Texel said that when Governor Nelson was in office the Board and the Governor’s office could not agree on a figure and it was almost three months before a final decision was made. Chairman Hutchison commented that the Board needs to be concerned that we are using reserve funds and what do we do to correct this situation. Ms. Gottschalk moved to approve the assessment figure of 12.820005229 cents per $1,000 gross revenue for Fiscal Year 2024-2025.  Mr. Moen seconded the motion. Voting on the motion: Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – absent, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

The next item on the agenda was to consider whether to approve expenses for the board members and executive director to attend the annual Wind and Solar Conference. The 2024 Nebraska Wind and Solar Conference will be held in Lincoln on October 22 - 23, at the Cornhusker Marriott Hotel. Executive Director Texel told the Board he has attended all but one of the conferences. This is an informative conference and in the past Board members have taken time to attend the event when they could. The registration is $161.90 if registered prior to August 31. The executive director stated that the registration would be his only expense. Ms. Hallgren (the Board’s business manager) added that if any board member would like her to handle the registration for them to let her know. Vice Chairwoman Gottschalk stated that she would like to attend, but would like to know if she did register and then would be unable to attend could the registration be transferred to another member? David Bracht, who is involved in the Wind and Solar Conference, responded via Webex chat that the registration fee can be transferred to another board member. Mr. Austin moved to approve the expenses for any board member and the executive director to attend the 2024 Wind and Solar Conference. Mr. Moen seconded the motion. Voting on the motion: Voting on the motion: Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – absent, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

The next agenda item was the executive director’s report. The first item is the SPP update. The Board had a copy of JK Energy’s monthly activities report. Chairman Hutchison stated that the Cost Allocation Working Group (CAWG) has a member from each state commission in the SPP. John Krajewski is the PRB’s representative. CAWG reviews the items that will be on the Regional State Committee (RSC) agenda. One of the items that has been in process is the Holistic Integrated Tariff Team (HITT). This team is working on how to share the cost of transmission construction in different zones. CAWG voted on the issue and the initial proposal failed on a 5-7 vote. Chairman Hutchison appreciated the input from the Nebraska utilities. The input was helpful. The next item was the Resource and Energy Adequacy Leadership (REAL) team. The team has been focusing on resource adequacy and creating a planning reserve margin of 36% for winter and 16% for the summer. The policy needed to adopt and implement the PRM was approved by the REAL team and will now go to the RSC. The policy will ultimately need to be approved by the Federal Energy Regulatory Commission (FERC). The next item was the Joint Targeted Interconnection Queue (JTIQ) study. OPPD in particular is concerned with this study, since it is on the SPP-MISO seam. The necessary tariff language was approved. There was an educational session, and this will now be filed with FERC for approval.

Executive Director Texel talked about the new statutory requirement that any electric supplier commencing construction of or acquiring a generation or transmission facility located within ten miles of certain military installations provide written notice certifying to the PRB that no materials, electronics, or other components used were manufactured by a foreign adversary, or certify that the owner complies with the North American Electric Reliability Corporation’s (NREC) critical infrastructure protection (CIP) requirements. This is also a requirement for owners of privately developed renewable energy generation facilities. The bill had an emergency clause, so it went into effect when the Governor signed it on April 15. A letter was sent to all electric suppliers assessed by the PRB and to attorneys who represent private developers. Executive Director Texel explained that he has been coordinating with the military to see if the PRB can obtain definitive determination of exactly where in Nebraska the military installations are located. If possible, it would be helpful if the military could at least provide a map that outlines the areas in the state that would be within ten miles of the specific installations. The executive director stated that he contacted a judge advocate with the Nebraska National Guard and is waiting to hear back from the military as to the next step.

The Board filed an intervention in FERC docket EL24-110-000. The proceeding involves a dispute between the Eolian company and the Omaha Public Power District. The two entities are trying to negotiate a Generator Interconnection Agreement (GIA) to file with SPP and could not come to agreement on the terms. Eolian requested SPP to file an unexecuted GIA. SPP was uncertain how to proceed, so SPP filed a Petition for Declaratory Order with FERC asking for directions on how to proceed. All motions and comments were due on June 20. Several other utilities and organizations filed motions to intervene and comments, including the Nebraska Public Power District and the Lincoln Electric System. At last months’ meeting the Board voted to request the Nebraska Attorney General to appoint Executive Director Texel as a special assistant attorney general to file a Motion to Intervene with comments. The attorney general made the appointment. Executive Director Texel is to coordinate with two personnel at the attorney general’s office, such as providing them with a copy of the intervention and comments prior to filing them with FERC. The filing included a copy of the PRB’s decision on OPPD’s energy storage resource (finding that the PRB has jurisdiction over ESRs under Nebraska law) and the 1996 attorney general’s opinion concluding that nothing in Nebraska law precluded a private entity from constructing a generation facility in Nebraska, subject to PRB approval.

The next item on the agenda was to consider whether the Board would give a pay raise to the executive director and general counsel. All other eligible state employees, both those covered by the bargaining unit (i.e., the state employees’ union) and the rules covered employees, will receive a 2% pay raise, as well as an additional 3% if their performance evaluation was at least “satisfactory.” The pay raises will go into effect on July 1, 2024. Agency heads are non-classified employees, and their salary is left to the discretion of their board or commission, so long as the agency’s budget will cover the raise. The Legislature appropriated an amount that would cover a 5% increase for all three PRB employees. Chairman Hutchison asked about when the executive director’s performance evaluation was done. The executive director said that his evaluation is done in August, to coincide with his hiring anniversary date. Mr. Moen moved to give the executive director and general counsel a 5% pay increase effective July 1, 2024. Vice Chairwoman Gottschalk seconded the motion.  Voting on the motion:  Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – absent, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

Executive Director Texel stated that the next three PRB meetings are scheduled for July 12, August 16, and September 20, 2024. He pointed out that the July meeting is not on the normal third Friday of the month.

Mr. Moen moved to adjourn the meeting.  Mr. Austin seconded the motion.  Voting on the motion:  Chairman Hutchison – yes, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – absent, and Mr. Moen – yes.  The motion carried 4 –0 with one absent.  The meeting was adjourned at 10:41 a.m.

Timothy J. Texel

Executive Director and General Counsel