NEBRASKA POWER REVIEW BOARD

Minutes of the 857th Meeting

October 18, 2024

  The 857th 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 Vice-Chairwoman Gottschalk, Mr. Austin, Mr. Liegl, and Mr. Moen. Chairman Hutchison had informed the Board he would not be able to attend this meeting due to a work conflict. Executive Director Texel stated that public notice for the meeting had been published in the *Lincoln Journal Star* newspaper on October 8, 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 September 20, 2024, 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. Mr. Austin seconded the motion. Voting on the motion: Chairman Hutchison – absent, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – abstain.  The motion carried 3-0 with one absent and one abstain. Mr. Moen explained he abstained because he was absent from the September meeting.

The next agenda item was acceptance of the expense report for the month of September.  In September there was $27,989.35 in personal services, $18,009.84 in operating expenses, and $442.31 in travel expenses. The total September expenses were $46,441.50. Executive Director Texel said that the Board is three months into the fiscal year, so 25% of the fiscal year has gone by. The Board has used 24.75% of the agency’s cash fund. Mr. Moen moved to accept the September expense report. Mr. Liegl seconded the motion. Voting on the motion: Voting on the motion: Chairman Hutchison – absent, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

The next item on the agenda was an amended SAA 253-24-A. Last month the Board tabled this item to give the parties additional time to agree on the language for a joint application and acquire the needed signatures. The current version is a joint application filed by the City of South Sioux City and the Nebraska Public Power District (NPPD). It is based on an annexation. The original application was submitted on August 27, 2024 by South Sioux City. The annexation occurred in September 2023. Since the City was coming up on its one-year deadline in which to file an application to ensure it has the right to take over the annexed territory, the City filed the application unilaterally to preserve its rights. The Board had communicated with both parties and was told that the utilities were in agreement with the amendment, but the Board had not received the amended documents to review, and the documents had not yet been signed by the parties by the Board’s September meeting date. The amended joint application was received on September 27, 2024. NPPD currently holds the service area rights to the annexed territory. There are no customers or facilities in the area to be transferred, so there is no financial compensation involved. Mr. Moen moved to approve the joint amended application SAA 253-24-A. Mr. Austin seconded the motion. Voting on the motion: Chairman Hutchison – absent, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

The next agenda item was SAA 311-24-A. This is a joint application filed by NPPD, the Omaha Public Power District (OPPD) and the Village of Sterling. The application would amend the retail service area around Sterling in SAA 311. The application was filed on September 30, 2024. Sterling annexed a tract of territory on the northeast edge of the Village. A portion of the area annexed extended beyond the current service area around Sterling. A map was included with the application as Exhibit A that shows the service area boundary around Sterling and where the area to be transferred is located. Exhibit B is a legal description of the territory. Exhibit D is the annexation ordinance. Included as part of the transfer are two customers that were being served by OPPD. OPPD has agreed to a value of $12,000 for the infrastructure and $9,000 for the loss of revenue from those customers. NPPD holds the retail service area rights to Sterling and its immediate surrounding area. The Board has a longstanding precedent that when a public power district or cooperative holds the service area rights to a municipality it operates as the municipal utility for purposes of a service area amendment. That means in this situation NPPD is allowed to file the service area agreement amendment when the city annexes territory beyond NPPD’s current service area. Sterling would not actually be a party to the service area agreement or an application. However, the Village is clearly an interested party. It is the PRB’s longstanding practice to allow a municipality in this type of situation to participate as a party without requiring the municipality to file a Petition for Intervention. Mr. Austin moved to approve application SAA 311-24-A. Mr. Liegl seconded the motion. Voting on the motion: Chairman Hutchison – absent, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 4-0 with one absent.

The next item on the agenda was PRB-4039-G. This item was scheduled for an evidentiary hearing to begin at 9:30 a.m. The Board tabled this item until after the hearing could be held and continued with the executive director’s report.

The first item on the executive directors report was the Southwest Power Pool (SPP) update. The Board had a copy of JK Energy’s monthly activities report. Chairman Hutchison was absent but had shared an e-mail with the Board members concerning the SPP’s activities.

Executive Director Texel stated that he had received several maps from the military showing exactly where the Minuteman missile silos are located in western Nebraska. This relates to the new requirement that prior to constructing, installing or acquiring electric generation or transmission facilities located within ten miles of certain military installations the owner must certify to the PRB that the facilities involved contain no materials, electronics, or other components manufactured by a foreign adversary. The U.S. Army Reserve Colonel who was assigned as the liaison to the PRB on this issue provided the three maps showing where the missile silos are located. The executive director has already shared this information with the Nebraska Power Association and the attorneys and lobbyists that represent private developers in Nebraska. This leaves the question regarding whether any military assets in Nebraska other than STRATCOM and the missile silos fall under the definition of “military installation” in Neb. Rev. Stat. section 70-1001.01(7). The Army Reserve Colonel put the executive director in contact with an Air Force Lieutenant Colonel to address that question.

The Board then recessed its public meeting to conduct an evidentiary hearing on PRB-4039-G. During the hearing the Board received testimony and evidence on application PRB-4039-G. The Board deliberated after the hearing. The Board returned to the public meeting at approximately 10:45 a.m. All members were present.

The Board considered application PRB-4039-G. This is an application filed by the City of Sidney. Sidney is requesting authorization to install four diesel generators with an aggregate capacity of ten megawatts. The application was filed on September 23, 2024. The estimated cost of the generation units is $4,087,315. There are other related materials needed for the related substation and transmission facility upgrades that were estimated at $113,300. The total cost was estimated to be $4,200,615.80. During the hearing the Board received testimony about the age of the current units and that the City is on the easternmost edge of the western interconnect. The City purchased the units, which were used, several years ago and was not aware of the need to obtain PRB approval. However, the units have not been used and were never interconnected with the City’s electric system. The City currently has diesel generators with approximately eight megawatts of generation capacity. If a municipality replaces existing units with units of the same or less capacity, no application to the PRB is required. But in this case the City is increasing the capacity from eight to ten megawatts, so an application is required. The units are Caterpillar diesel generators. The City confirmed that the units are American made and do not have any materials manufactured by a foreign adversary. However, the certification is from the vendor from which the City purchased the units. The executive director pointed out that under Neb. Rev. Stat. section 70-1012(2)(a), the owner of the facility must provide the certification to the PRB.

The executive director then explained that consideration of applications following an evidentiary hearing are performed in the PRB’s quasi-judicial capacity. The Board could deliberate, then issue a written order at a later time. However, as a courtesy to the applicant when there is no party opposing approval, and where the Board members agree approval is warranted, the Board often will vote on the matter during its public meeting to give the applicant its answer. If the application is approved, this allows construction or installation to proceed without unnecessary delay and additional expense. The vote is binding, but the written order is the final action approving the application. Mr. Liegl made a motion to approve application PRB-4039-G on the condition that a person from the City who is authorized to speak on behalf of the City submits a letter to the Board’s executive director certifying that the generators do not have any components manufactured by a foreign adversary. The City has two weeks from today to get this letter to the Board’s office. The City cannot interconnect the generating units until the City has received a letter from the Board’s executive director confirming that the Power Review Board received the City’s certification letter. Mr. Austin seconded the motion. Voting on the motion:  Chairman Hutchison – absent, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, 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 November 15, 2024, December 20, 2024, and January 17, 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 – absent, Vice Chairwoman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 4 –0 with one absent.  The meeting was adjourned at 10:47 a.m.

Timothy J. Texel

Executive Director and General Counsel