

**STATE OF NEBRASKA  
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE APPLICATION OF	)	<b>PRB-3608</b>
THE CITY OF FAIRBURY, D/B/A FAIRBURY	)	
LIGHT AND WATER DEPARTMENT,	)	
HEADQUARTERED IN FAIRBURY, NEBRASKA,	)	
REQUESTING AUTHORIZATION TO	)	<b>ORDER</b>
CONSTRUCT 8 MILES OF 15 KILOVOLT	)	
DISTRIBUTION LINE IN JEFFERSON COUNTY,	)	
NEBRASKA.	)	

ON THE 17<sup>th</sup> day of September, 2010, the above-captioned matter came on for consideration before the Nebraska Power Review Board (“the Board”). The Board, being fully advised in the premises, and upon reviewing said application and the evidence presented to the Board at said hearing, HEREBY FINDS AS FOLLOWS (references to testimony are designated by a “T” followed by the transcript page, then the lines upon which the testimony appears, while references to exhibits are designated by “Exh.”):

**FINDINGS OF FACT**

1. That on the 7<sup>th</sup> day of June, 2010, the City of Fairbury, Nebraska, through its utility the Fairbury Light and Water Department (“Applicant” or “the City”) filed an application with the Board requesting authorization to construct approximately eight (8) miles of 15 kilovolt (“kV”), three-phase distribution line in Jefferson County, Nebraska. (T15:22; Exh. 1). The application was designated “PRB-3608.”
2. That although the application was for eight miles of distribution line, only two miles of the line would be located outside Applicant’s retail service area. (T12:16-22; Exh. 10).

3. That those power suppliers, other than the Applicant, that the Board deemed to be potentially affected by or interested in said application were the Norris Public Power District (“Protestant”) and the Nebraska Public Power District (“NPPD”). (Exh. 2, page 4). Protestant is an interested party because approximately two miles of the proposed line would be located in its service area. (T23:2-14; Exh. 10; Exh. 12). NPPD is an interested party because Applicant purchases at least a portion of its electricity at wholesale from NPPD. (T25:14-17). Written notice of the filing of the application and the original hearing date and location was provided to these potentially interested parties via certified U.S. mail on June 8, 2010. (Exh. 2). The notice stated that Protestant had twenty days in which to file a Protest to the application. (Exh. 2, page 2).

4. That NPPD filed a Consent and Waiver form, dated March 17, 2010, whereby it consented to the approval of PRB-3608, waived a hearing and any further notice in the matter, and stipulated that the proposed project will serve the public convenience and necessity, and that Applicant can most economically and feasibly supply the electric service resulting from the proposed construction without unnecessary duplication of facilities or operations. (Exh. 5).

5. That on June 21, 2010, Protestant filed a timely Protest in opposition to the approval of application PRB-3608. (Exh. 3).

6. That pursuant to the requirement set out in Neb. Rev. Stat. § 37-807(3), the Board consulted with the Nebraska Game and Parks Commission (“the Commission”) to ensure that the Board utilizes its authority in furtherance of the purposes of the Nebraska Nongame and Endangered Species Act, and to ensure that an approval of the proposed

distribution line would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Commission to be critical. The Commission provided a letter to the Board stating that the proposed project is within the range of the massasauga (*Sistrurus catenatus*), a state-listed threatened species of rattlesnake. The Commission went on to state that there are no records of the massasauga or any other state-listed threatened or endangered species in the vicinity of the proposed distribution line project, nor does there appear to be suitable habitat for any such species in the area affected by the project. The Commission determined that the project would have “No Effect” on any state listed threatened or endangered species. (Exh. 4).

7. The hearing that was scheduled for July 27, 2010 was continued on the Board’s own motion to August 20, 2010. (Exh. 6, page 2). Due to an error in the previous notice, the Notice of Continuance and Hearing Date was mailed via certified mail to the Applicant, and via first class mail to the Protestant. (Exh. 6, page 4).

8. That on August 20, 2010, the Board conducted the formal evidentiary hearing in PRB-3608.

9. Applicant proposes to construct a total of eight miles of 15 kV distribution line starting at or near the intersection of the western boundary of sections 30 and 31, Township 3 North, Range 4 East of the 6<sup>th</sup> Prime Meridian, in Jefferson County, Nebraska. The line would follow along the north side of Highway 136, past the Village of Harbine, and ultimately end in or near the unincorporated community of Ellis, along

the eastern boundary of section 17, Township 3 North, Range 5 East. (Exh. 1, page 5; Exh. 10; Exh. 12).

10. That the portion of the line that would be located in Protestant's service area is along the southern boundary of sections 28, 29 and 30, Township 3 North, Range 4 East. (Exh. 10).

11. Applicant serves retail customers well beyond its city limits. Its retail service area stretches in several directions from the City to encompass rural customers and area, and the Villages of Harbine, Jansen and Steele City. (Exh. 10). Applicant also serves the Village of Gilead, but the area around Gilead is not Applicant's service area. Applicant's service area extends to the northeast approximately seven miles, then ends at the half section line in sections 30 and 31, Township 3 North, Range 4 East. Applicant's service area also includes a non-contiguous area that begins at the half-section line in sections 21, 28 and 33, Township 3 North, Range 4 East, and extends five or six miles to the northeast. The isolated area expands to the east to include the unincorporated community of Ellis. (Exh. 10; Exh. 12).

12. In each of the areas that extend out from the City other than the one to the northeast, Applicant has constructed what it refers to as a "loop feed" to better serve its customers. The project proposed in PRB-3608 is the last loop feed Applicant wishes to construct in the areas that extend well beyond its corporate limits. This last loop feed would provide enhanced reliability to Applicant's service area northeast of the City, and in particular to the non-contiguous area. (T12:4-15; T42:4-15; Exh. 10).

13. The existing line serving Applicant's northeast territory proceeds east from the Village of Jansen to the southeast corner of section 25, Township 3 North, Range 3 East. It then proceeds north and exits Applicant's service area and enters Protestants service area at the northwest corner of section 25. The line then proceeds east along the southern boundary of sections 19, 20 and 21 until it enters Applicant's non-contiguous service area at the southern boundary of the half section line of section 21, Township 3 North, Range 4 East. The line then proceeds east one and one-half miles, then proceeds northeast through section 23 along Highway 136 to the western boundary of section 24. The line then proceeds north approximately one mile, where it branches to the east, west and north. The east branch extends three miles further east and then branches north and south. The south branch serves the unincorporated community of Ellis. (T19:21-24; T20:4-5; Exh. 10). Applicant's existing line serving the northeast portion of its service area is a radial feed — a single line radiating out from at least the Village of Jansen without a second line to serve as backup. (T38:19-22; T93:19 to 94:9).

14. Applicant's proposed line would begin at or near the southeast corner of section 25, Township 3 North, Range 3 East. The new line would proceed east to the southwest corner of section 28 and continue northeast along Highway 136 past the Village of Harbine. It would cross Applicant's existing line and proceed northeast along Highway 136 to approximately the southwest corner of section 18. The line would then proceed two miles east along the southern boundary of sections 18 and 17, interconnecting with Applicant's existing line in the southeast corner of section 17 just

north of the unincorporated community of Ellis. (T19:24 to 20:22; T22:1-5; Exh. 10; Exh. 12).

15. The existing distribution line serving Applicant's service area to the northeast has been in service since 1939 and it is uncontested that Applicant will need to rebuild it. (T14:9-24; T60:11-14). In order to safely work on the line Applicant would either need to take portions of it out of service, leaving the service area further to the northeast from that location without power, or use a type of bypass system around the portion where the work was being done. Having an alternate method to serve an area, which the proposed project would provide through the "loop feed" it would create, allows work to be performed on the older line in a safe and expeditious manner. The bypass system is not as strong as a permanent line, making it susceptible to weather related problems, which can be severe in Applicant's service area (see paragraph 18). This in turn would increase the chances of an electrical power interruption to the northeast of the location where the work is performed. (T12:23 to 14:6). Even if Applicant were to interconnect into Protestant's transmission system west of Ellis, Applicant believes it might require this type of procedure to be followed when repairing or replacing portions of the older existing line. Applicant believes it would decrease interruptions in service and be more cost-effective to build its proposed line and eliminate these issues. (T87:20 to 88:7).

16. Applicant's primary objective for the proposed new line is to increase the reliability for its customers in the northeast portion of its service area. If a portion of the existing line constructed in approximately 1939 were to be damaged or destroyed by an

event such as a tornado or ice storm, Applicant could supply its customers served by that portion of the existing line by feeding power to it using the proposed new line from another direction. Applicant plans to leave the existing line in service. Applicant has been and intends to continue to replace poles and conductors as necessary to do so. (T22:12-13; T43:7-15). If the proposed new line were to provide the primary service for new customers, the existing line could act as a back-up, or what Applicant calls a “loop feed,” for those customers. Thus, the proposed new line would enhance the reliability for the entire northeast portion of Applicant’s service area. (T22:3-15; T38:9 to 40:1; T42:4 to 43:6).

17. Applicant has approximately twelve retail customers it serves inside the portion of Protestant’s service area that separates Applicant’s service area east of Jansen from the non-contiguous service area further to the northeast. The proposed project in PRB-3608 would complete a loop of distribution line that could be used to serve those customers if a portion of the existing line were damaged, destroyed or failed due to age. (T24:2-13; Exh. 10).

18. Applicant’s distribution system experienced ice damage in the year previous to filing its application with the Board. Jefferson County, one of the counties in which Applicant operates distribution facilities, was declared a disaster area due to the severe damage. (T12:24 to 13:3).

19. The evidence indicates there may be some confusion what the total cost would be for Applicant to construct the proposed line. In the application, Applicant indicated the total estimated cost to construct the entire eight miles of line would be

\$210,000. (T30:2-5; Exh. 1, page 3). Applicant's Electrical Line Superintendent testified that he prepared the cost estimate, and thought the estimate included the cost for the necessary materials, but did not include labor for the City's personnel to construct the line. (T28:18 to 29:11; T30:23-25). Applicant provided the Board with a detailed description, both in testimony and in an exhibit, of the materials necessary for its proposed line and the cost for each item, down to the cost of the clamps and bolts. (T30:6-17; Exh. 8). The prices on the detailed list are an average cost for three wholesalers commonly used by Applicant for its inventory needs. (T37:8-13). Applicant's list showing the inventory needed to build the entire eight miles and the price for the materials indicates the cost for the entire eight miles would total \$115,637.28. (Exh. 8). Applicant's estimate indicates the cost for the inventory needed for the two miles of line that would be located in Protestant's service area would be \$28,909.32. Both the \$115,637.28 and \$28,909.32 estimates assume that Applicant would use 22 poles per mile. (T31:11-15; Exh. 8, page 2). If only 20 poles per mile were used, the cost of the materials needed for the project would be reduced to \$109,732.80 and \$27,433.20 for the entire eight miles and the portion in Protestant's service area, respectively. (T31:8-16; Exh. 8). Applicant's detailed cost estimate for materials alone, using the higher estimate of 22 poles per mile, came to \$115,637.28, while Applicant's total cost estimate for the project was \$210,000, leaving a difference of \$94,362.72. Upon examining the cost for the materials compared to total cost estimate Applicant had provided to the Board, Applicant's Electrical Line Superintendent clarified that he had evidently included additional costs for labor and unexpected costs in the overall cost



estimate. (T31:5-7). Despite the apparent confusion on this topic, the Board finds that the additional \$94,362.72 was originally intended to cover the cost of labor and unanticipated expenses. Thus, the Board finds that total estimated cost of the project, including labor, if Applicant uses 22 poles per mile, is \$210,000.

20. The cost of the project could even be reduced from Applicant's initial estimate. If Applicant used 20 poles per mile instead of 22, it would reduce the cost of the materials for the entire project from \$115,637.28 to \$109,732.80, leaving a difference of \$5,904.48. Applicant prefers using 22 poles to create shorter spans between poles. Applicant's Electrical Line Superintendent also testified that he checked the price of the poles on the day prior to the hearing, and the price had gone down to \$236, instead of the \$255 used for the detailed written estimate. The Board acknowledges that Applicant's figures are estimates, based on the price at a particular time, and such prices are subject to market fluctuations. The Board points this out to demonstrate that Applicant's final materials cost could be slightly lower than the estimated prices. It is also true that the price could rise slightly. The Board points out that such increases or decreases in market price for electric utility materials may also affect the cost of Protestant's proposal.

21. Applicant intends to pay the cost of the project by using its part of its rate stabilization fund, without a need to raise its rates. The fund has a sufficient balance to pay for the estimated cost of the project. (T36:15 to 37:17). There is no evidence that Applicant raised its rates previously in order to increase the balance of the rate stabilization fund specifically to pay for this project.

22. By following Highway 136 for most or all of the proposed line's route, Applicant reduces costs by using the available right-of-way, by not having to remove trees along the path, and by having a basically straight route, without sharp turns. (T39:2-8).

23. Protestant has a 69 kV sub-transmission line, operated at 34.5 kV, that enters Applicant's service territory at the half-section line of the eastern edge of section 35, Township 4 North, Range 4 East and proceeds south to the southeast corner of section 35. The line then proceeds along the eastern boundary of sections 2, 11, 14, 23, and then crosses the road and proceeds along the western boundary of sections 25 and 36, all in Township 3 North, Range 4 East. (T26:6-24; T53:3-8; Exh. 10; Exh. 12).

24. In order for Protestant to provide alternate or backup service to the northeast portion of Applicant's service area by interconnecting Protestant's 69 kV line to Applicant's 15 kV line, it would require the construction of a new substation. The substation would need to be somewhere along the portion of Protestant's 69 kV line located inside Applicant's service area along the eastern boundary of sections 11, 14, and 23, Township 3 North, Range 4 East, probably somewhere in the vicinity of the northeast corner of section 14. (T39:21 to 40:12; T54:20 to 55:2; Exh. 10; Exh. 12). Protestant would also need to build additional segments of sub-transmission line to connect, or tie, its line that passes through Applicant's service area to the rest of Protestant's transmission system. Protestant would need to build segments along the eastern boundary of section 26 and the northern half of section 35, Township 4 North, Range 4 East, along the western edge of section 25, Township 3 North, Range 4 East, and along

the southern boundary of section 16 (or northern boundary of section 21), Township 3 North, Range 5 East. The segments of line along sections 26 and 35, and along section 25, have existing lines in place on which the new connecting lines or ties could be underbuilt. (T53:12 to 54:14; Exh. 12). Protestant would therefore need to construct a substation and approximately three and one-half miles of sub-transmission line, some of which could be underbuilt on existing support structures.

25. There is no direct evidence that Protestant's 69 kV line has sufficient excess capacity to accommodate the additional load in order to serve Applicant's customers if its line were connected to Applicant's distribution system. However, Protestant makes the assertion that the line does have sufficient capacity in its Protest, and Applicant did not contest the assertion.

26. Protestant estimates that it could construct the necessary substation and transmission additions for approximately \$200,000, including labor. (T70:5-16). It is not clear what materials are included in this estimate, or the costs for those materials. Protestant estimates that its costs are close to \$50,000 to construct one mile of three-phase line. (T69:5-14). No breakdown is provided to show the difference between the newly constructed connecting line and that which could be underbuilt. It appears that to build the three miles of line needed to interconnect Protestant's and Applicant's transmission systems under Protestant's proposal, it would cost approximately \$150,000. There is no specific testimony dealing with the cost to construct the needed substation, but taking Protestant's estimated total cost of \$200,000 and subtracting the estimated cost of the lines would indicate the substation might cost approximately \$50,000. Protestant

would also charge Applicant a sub-transmission fee, which would be about 83 cents per megawatt. Protestant estimates this would amount to an additional \$800 per month. (T56:5-9). Protestant believes there are multiple ways its alternative service could be configured. (T72:2-6).

27. As an alternative to Applicant building its proposed line, Protestant would prefer that Applicant and Protestant agree to trade certain service territory. Protestant would like to transfer to Applicant a substantial tract of Protestant's territory south of the City, as indicated by light green shading on Exhibit 12. Protestant would then acquire Applicant's current non-contiguous service area northeast of the City where Applicant wishes to construct the line proposed in PRB-3608. Applicant is not interested in Protestant's proposed service area trade. (T59:5-22; T84:14 to 87:1). Applicant believes it lacks the appropriate equipment to serve a large rural area with terrain that is difficult to access. (T86:5-23).

### **CONCLUSIONS OF LAW**

28. Pursuant to Neb. Rev. Stat. §§ 70-1012, 70-1013, and 70-1014, the Board has jurisdiction to conduct a hearing and either approve or deny an application for authority to construct a transmission facility located in the State of Nebraska, but outside a power supplier's service area. Such approval is required prior to commencement of construction of facilities such as the portion of the project describe in application PRB-3608 that is located outside Applicant's retail service area.

29. The Board has complied with the requirements under Neb. Rev. Stat. § 37-807(3) to consult with and request the assistance of the Nebraska Game and Parks

Commission in order to utilize the Board's authority in furtherance of the purposes of the Nebraska Nongame and Endangered Species Act, and to insure that the approval of a proposed transmission line would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Commission to be critical.

30. The first requirement for the Board's approval of a new transmission line set out in Neb. Rev. Stat. § 70-1014 is that "the application will serve the public convenience and necessity . . . ." Meeting the public convenience and necessity is a question that must be addressed on a case-by-case basis. There are no set criterion upon which the Board is to base its decision. One description is that "'public convenience' refers to something fitting or suited to the public need." Black's Law Dictionary 1105 (5<sup>th</sup> Ed. 1979). In describing the term, the Nebraska Supreme Court has stated "[W]hat constitutes 'public convenience and necessity' is primarily a fact question with a number of imponderables to be taken into consideration. The facts in each case must be separately considered, and from those facts it must be determined whether public convenience and necessity require a given service to be performed." In re Applications of Nebraska Public Power Dist., 215 Neb 8, 18, 337 N.W.2d 107, 114 (1983), citing Utilities Comm. v. Coach Co. and Utilities Comm. v. Greyhound Corp., 260 N.C. 43, 132 S.E.2d 249 (1963).

31. It is not contested that Applicant will need to rebuild or repair its existing line that provides service to its service area northeast of the City, and in particular that portion that is northeast of the Village of Jansen. (T60:11-14). Applicant has a need to

provide an alternate distribution pathway to provide reliable service to its customers in the northeast portion of its service area. It is therefore reasonable and prudent for Applicant to make arrangements for an alternative source of transmission services that can provide service to its customers in its northeast service area in the event a segment of its existing line should fail.

32. In evaluating the public convenience and necessity of the project proposed in PRB-3608, the Board acknowledges the finding in paragraph 31 that it is reasonable and prudent for Applicant to provide an alternative transmission pathway for its customers served by its existing line in operation since 1939. The parties agree that the age and condition of the line dictate that it must be rebuilt or repaired. To accomplish this without interfering with customer service, it is necessary to take some step such as to construct Applicant's proposed line or interconnecting with Protestant's transmission system to provide for an alternate pathway for customers served by Applicant's existing line.

33. Applicant's proposed project would increase reliability in the northeast part of its service area. It would create a "loop feed" so that Applicant could supply power to customers east of any portion of the existing line that may fail. For example, if the portion of the existing line along the eastern boundary of the north half of section 25, Township 3 North, Range 3 East, were to be damaged or destroyed, the customers along the remainder of the line to the northeast would be left without electricity until repairs could be made. This would affect approximately 185 customers. (T32:12-18). If the proposed line were to be built, all those customers to the northeast could be supplied by

using the new line, which would energize the existing line from its interconnection near Ellis. This would provide Applicant's customers now served by a radial line with additional redundancy and greatly increased reliability. This is true whether the existing line is in its current aged condition, or if it were to be rebuilt. The Board therefore concludes that the distribution line proposed in Applicant's application would serve the public convenience and necessity.

34. Under the provisions set out in Neb. Rev. Stat. § 70-1014, the Board must also be able to find "that the applicant can most economically and feasibly supply the electric service resulting from the proposed construction or acquisition . . . ." The language indicates that in a contested proceeding the Board will compare the proposals from each of the parties when considering whether the Applicant can most economically and feasibly supply the electric service.

35. In this proceeding, the Applicant estimates it can construct its entire proposed distribution line project to create a "loop feed" for \$210,000. If it were to use 20 poles per mile instead of 22, the price would be approximately \$204,095 (taking into account the \$5,905 reduction in the cost of materials for 20 poles shown on Exhibit 8). Protestant estimates it could construct its substation and three one-mile transmission interconnections for \$200,000. Protestant did not provide the Board with any details regarding the prices for its materials, how many poles or towers it would use per mile, or any other specific information regarding how it arrived at its estimate. Although the Board has no reason to doubt Protestant's estimate, the Board is left to compare Applicant's estimate supported by specific cost information with Protestants estimate that

lacks any such detailed background information. Given the overall cost of the projects, and that the figures are only estimates, the difference between the two estimates are relatively negligible.

36. The Board also acknowledges that Applicant is using an estimate based on 22 poles per mile due to the increased reliability factor and its experience in using that configuration. The Board is unwilling to penalize Applicant for taking the precaution of reducing the span between its poles to increase the strength of its line, especially when the Protestant did not provide the Board with particulars regarding the configuration or materials needed for its proposed project. This is particularly so because the difference between the two costs estimates is at most \$4,000 to \$10,000 in a project estimated to total at least \$200,000.

37. The Board also acknowledges that a cost estimate is a snapshot in time. Market price variations in the needed materials could make Applicant's estimate equal to or perhaps even lower than Protestant's at any given time. Applicant's Electrical Line Superintendent, who prepared Applicant's cost estimate, testified that when he prepared his detailed estimate, apparently sometime on or before August 19 according to the date on the exhibit, the price of each pole was \$255. When he checked the price of the poles the day before the hearing the price had dropped to \$236. (T30:13-15, Exh. 8). Using the \$236 figure, Applicant's overall cost estimate on the date of the Board's evidentiary hearing would have actually been reduced to \$206,656 (using 22 poles per mile) or \$201,055 (using 20 poles per mile). This only further demonstrates that the estimates were essentially equal. As previously mentioned, the comparison is made more difficult



because the Board does not know any details concerning Protestant's costs. The Board does not know how many poles would be used for Protestant's transmission interconnections or the details of how Protestant determined the cost to construct an underbuilt line. Similarly, the Board can only assume that the cost of the substation needed in Protestant's proposal can be determined by subtracting the amount of the transmission interconnection costs from Protestant's overall estimate.

38. Another factor in the cost is that if Protestant were to construct its interconnections and substation, the Applicant would incur a subtransmission charge of approximately \$800 per month. (T56:3-9). Given that the parties' cost estimates vary by only a few thousand dollars, this charge would make it more economical for Applicant to construct its line within only a few months.

39. The Board also takes into account that the reason this matter is before the Board is that the Applicant will pass through approximately two miles of Protestant's service area between the Villages of Jansen and Harbine. Applicant would like to connect its proposed new line at the eastern edge of its service area boundary east of the Village of Jansen, in section 30, Township 3 North, Range 4 East. (Exh. 10; Exh. 12). Under Nebraska law a utility does not require Board approval to construct a line located entirely within its own service area. The Board points out that Applicant could avoid the need for Board approval entirely by beginning its "loop feed" distribution line project at the western edge of its non-contiguous service area just west of the Village of Harbine. (Exh. 8; Exh. 12). Applicant's proposed line would begin at the southwest corner of section 30, allowing Applicant to connect its new line with the existing line that proceeds

north and approximately 1 ½ miles south. (T22:1-15; Exh. 1, page 5; Exh. 10, Exh. 12). This configuration would allow Applicant to have a distribution line loop for its customers served by the northern line passing through Protestant's service area. If Applicant were to create a loop feed beginning near the western edge of its non-contiguous northeast service area that includes the Village of Harbine and the unincorporated community of Ellis, the existing line passing through Protestant's service area would remain a radial feed. Although Protestant's proposal would allow Applicant's customers to be supplied with power from the east in the event of an outage, the Board believes Applicant's proposal is feasible, and allows Applicant to retain control of its entire distribution system. It does not make sense to force Applicant into a situation where it must either create a loop feed entirely in its own non-contiguous territory, thereby leaving approximately three miles of line as a radial feed, or to have Protestant provide its power from the east and charge Applicant a monthly fee. These decisions are involved in this proceeding only because Applicant's proposal requires it to build two miles of line in Protestant's service area in order to create a more robust loop feed.

40. Given the above information regarding a comparison of the two proposals, the Board finds that the Applicant can most economically and feasibly supply the electric service resulting from the proposed construction project.

41. The last criteria stated in § 70-1014 is that the Board must be able to find that the applicant can most economically and feasibly supply the electric service resulting from the proposed project "without unnecessary duplication of facilities or operations." Applicant's proposed project would create a second line to provide redundancy in the

system, allowing Applicant to serve its customers in the northeast portion of its service area from an alternate distribution pathway in the event that a portion of Applicant's existing line built in 1939 were to fail for some reason. This would create what Applicant refers to as a "loop flow." Protestant alleges that the proposed line duplicates Applicant's existing line. (T60:9-10). Although the project would create a second line to serve a certain area of Applicant's service territory, it has an entirely different purpose than the existing line. The new line will create a backup to provide greatly increased reliability for Applicant's retail customers in its northeast service area, and make rebuilding Applicant's existing line easier. The approximate two-mile section that would be located in Protestant's service area allows for greater reliability in the northeast area, and to Applicant's customers located along the existing line passing through Protestant's service area. The line could also be used to supply any new customers in Applicant's northeast service area that would be located closer to the proposed line.

42. Protestant also alleges that Applicant's proposed line would duplicate Protestant's existing facilities and resources. (T60:7-17); Exh. 3, pages 2 and 3). However, in order to create a back-up system for Applicant's northeast customers, Protestant's alternative requires the construction of a substation and approximately three one-mile transmission additions, which amount to essentially the same cost as Applicant's proposal. The proposed additions to Protestant's system are not existing facilities, and the similarity in costs demonstrates that they are no less consequential than Applicant's proposed line.

43. Based on the foregoing, the Board finds that Applicant's proposed line would not create an unnecessary duplication of facilities or operations.

44. One of Protestant's proposed solutions to obviate the need for Applicant to construct its proposed line is for Protestant and Applicant to trade service territory. Under the proposal, Applicant would acquire a large tract of territory south of the City, while Protestant would acquire the non-contiguous portion of Applicant's service area northeast of the City. Although this would provide a solution if both parties wished to pursue it, the Applicant is not interested in such a trade. Applicant explained its rationale concerning why it is not interested in such a trade. Applicant believes it lacks the proper equipment or personnel to service the large and primarily rural territory Protestant would have it acquire. Applicant is designed to handle lines that follow section lines and roadways. (T86:5-24). Although Protestant's proposal may be reasonable, Applicant provided an equally reasonable rationale why it finds the proposal unacceptable. The Board appreciates Protestant's attempts to offer creative solutions to the parties' differences. However, this Board is not in a position to mandate the acceptance of a particular equitable solution. It is this Board's obligation to review and either approve or deny an application according to the criteria in Neb. Rev. Stat. § 70-1014.

### **ORDER**

That during that part of its public meeting on September 17, 2010, held subsequent to the August 20, 2010 hearing on application PRB-3608, a majority of the members of the Power Review Board (4 yes, 0 no) voted in favor of a motion to approve application PRB-3608.

IT IS THEREFORE ORDERED by the Nebraska Power Review Board, pursuant to the Board's action taken during its public meeting held September 17, 2010, that the application designated PRB-3608, for authorization for the City of Fairbury, Nebraska, to construct approximately eight (8) miles of 15 kilovolt distribution line in Jefferson County, Nebraska, two (2) miles of which are located outside the City's retail service area and require Board approval, is hereby APPROVED.

NEBRASKA POWER REVIEW BOARD

BY:   
Michael Siedschlag  
Chairman

DATED: December 10, 2010.

CERTIFICATE OF SERVICE

I, Timothy J. Texel, Executive Director and General Counsel for the Nebraska Power Review Board, hereby certify that a copy of the foregoing **Order** in PRB-3608 has been served upon the following parties by mailing a copy of the same to the following persons at the addresses listed below, via certified United States mail, first class postage prepaid, on this 10<sup>th</sup> day of December, 2010.

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Timothy J. Texel