

**STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE APPLICATION OF)	PRB-3621
THE CITY OF MINDEN, NEBRASKA,)	
REQUESTING AUTHORIZATION TO)	
CONSTRUCT APPROXIMATELY 2.12 MILES)	
OF 69 KILOVOLT TRANSMISSION LINE)	ORDER
AND APPROXIMATELY 200 FEET OF 34.5)	
KILOVOLT TRANSMISSION LINE IN)	
KEARNEY COUNTY, NEBRASKA.)	

ON THE 17th 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.” For purposes of this Order, all references to transcript pages refer to Volume I of the hearing transcript, while all references to exhibits refer to Volume II of the hearing transcript.):

FINDINGS OF FACT

1. That on the 22nd day of April, 2010, the City of Minden, Nebraska (“Applicant” or “the City”) filed an application with the Board requesting authorization to construct approximately 2.12 miles of 69 kilovolt (“kV”), three-phase transmission line and approximately 200 feet of underground 34.5 kV three-phase transmission line in Kearney County, Nebraska. (Exh. 1). The application was designated “PRB-3621.”

2. Although the main portion of the project would be constructed as a 69 kV line, Applicant would operate the line at 34.5 kV. (T108:23 to 109:8; Exh. 1, page 1).

3. That on April 22, 2010, the Nebraska Public Power District (“NPPD”) filed a Consent and Waiver form whereby it consented to the approval of PRB-3621 and waived a hearing and any further notice in the matter. (Exh. 5). The proposed line would interconnect to an existing NPPD 115 kV substation. (T39:11-16; T78:21-22; T108:15-20; Exh. 1, page 2; Exh. 26; Exh. 36).

4. That those power suppliers, other than the Applicant, that the Board deemed to be potentially affected by or interested in said application were the Southern Public Power District (“Protestant”) and NPPD. (Exh. 2, page 4). Protestant is an interested party because approximately 3,650 feet of the proposed new overhead line would be located in Protestant’s service area. (Exh. 1, page 3). NPPD is an interested party because the proposed line would interconnect to NPPD’s transmission grid at NPPD’s substation northeast of the City. (T39:11-16; T78:21-22; T108:15-20; Exh. 1, page 2; Exh. 26; Exh. 36). Written notice of the filing of the application and the hearing date was provided to these potentially interested parties and Applicant via certified U.S. mail on April 24, 2010. The notice stated that Protestant had twenty days in which to file a Protest to the application. (Exh. 2).

5. That on May 7, 2010, the Southern Public Power District filed a timely Protest in opposition to the approval of application PRB-3621. (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 a potential approval of the 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. The Commission provided a letter to the Board stating that there are no records of threatened or endangered species in the project area, nor does there appear to be suitable habitat for any state listed species. The Commission determined that the project, if approved, would have “No Effect” on any state listed threatened or endangered species. (Exh. 4).

7. On July 21, 2010, Applicant filed an amendment to the application whereby it asked to amend paragraph 7 of its original application. The amendment modified the estimated cost of the facility from the original \$750,000 and replaced it with an estimate of \$500,000. (Exh. 6). The Board accepted the amendment. (T8:22 to 9:2).

8. On July 26, 2010, Brian Peterson and Barb Peterson (“Intervenors”) filed a Petition for Intervention in PRB-3621. (Exh. 7). Applicant filed an objection to the Petition for Intervention. (Exh. 8).

9. On August 9, 2010, NPPD filed a Withdrawal of Consent and Waiver that withdrew the Consent and Waiver it had previously filed in PRB-3621. In its withdrawal, NPPD stated that upon further review NPPD realized there are facilities owned by Protestant that could potentially most economically and feasibly supply the electric service involved, depending on the terms and conditions to which the Applicant and Protestant could agree, and thereby avoid unnecessary duplication of facilities. (Exh. 10).

In an e-mail NPPD provided additional explanation that the original Consent and Waiver had been submitted based on a conclusion that the proposed line would not duplicate NPPD's facilities and that the Applicant could economically and feasibly provide the service. NPPD acknowledged that it had failed to take into account the Protestant's facilities prior to submitting the Consent and Waiver. Since the Consent and Waiver had implications beyond just NPPD's facilities and interests, NPPD determined it should withdraw its Consent and Waiver. (Exh. 35).

10. That on August 20, 2010, the Board commenced the formal evidentiary hearing in PRB-3621. Prior to initiation of this proceeding the Board informed its hearing officer that the Board reserves the right to rule on pleadings that would be dispositive to any party's participation, such as a Petition for Intervention. Therefore, at the August 20 hearing the Board first took up the issue of whether the Intervenors had standing to participate in these proceedings. After the portion of the hearing dealing with whether Intervenors met the qualifications for Intervention, the Board ruled that the Intervenors did have standing. (T30:1-3).

11. After ruling on the Intervention, the Board reconvened its formal evidentiary hearing and proceeded to address the merits of application PRB-3621. The hearing officer ruled that the exhibits accepted during the portion of the hearing dealing with Intervenors' standing would be considered part of the record on the merits in PRB-3621. (T30:24 to 31:14).

12. Applicant currently receives its electrical power through two substations, one on the north side of the City, and one on the south side. Both substations are

supplied by the City's primary electric transmission source, which is an underground 34.5 kV transmission line¹ connecting to NPPD's substation located northeast of the City.

(T39:13-18; T42:20-23; T137:21-24; Exh. 1, pages 5-6; Exh. 26, pages 1-2; Exh. 36).

The line connecting to NPPD's substation feeds into the City from the east, or to be more specific, the northeast corner of the City. (T43:24 to 44:15; Exh. 1, pages 5-6; Exh. 26, pages 1-2; Exh 36). Applicant owns the 34.5 kV underground line that currently serves as Applicant's primary electric transmission source. (T40:10-14; T43:24-25; Exh. 1, page 5).

13. Applicant currently has the contractual right to receive backup power from a 69 kV line operated at 34.5 kV and commonly referred to as a "34.5 kV line" in the record. The line is owned by Protestant and passes through the northern portion of the City just north of Applicant's North Substation. There seems to be some confusion as to whether the backup service is provided from the west, east or potentially from either direction. Based on the evidence the Board finds that Protestant currently serves Applicant's backup power needs from the east, but Protestant is capable of supplying Applicant's backup power from either the east or the west using its 69 kV line that passes through the City. (T43:24 to 45:16; T145:17 to 150:17; Exh. 26; Exh. 36). Applicant pays Protestant approximately \$48,000 annually for the right to use the overhead line feeding into the City as a backup transmission path. (T44:6-21; T45:5-16; T72:5-11; Exh. 27; Exh. 28).

¹ Although technically electric utilities normally refer to 34.5 kV and 69 kV lines as "sub-transmission" lines, for ease of reference the Board will refer to lines carrying 34.5 kilovolts or more as "transmission" lines for purposes of this proceeding.

14. Applicant's existing 34.5 kV underground line that supplies Applicant with its primary electrical power needs was constructed approximately thirty years ago. (T40:10-13; T53:11-14; T106:14-18). The northern portion of the line is located on the east side of a county road. (T53:3-7; Exh. 26; Exh. 36). A thirty year old 34.5 kV underground transmission line is at or very near the end of its useful existence. (T106:14-21). The City has not experienced interruptions or failures with the existing line up to this point. The City would like to construct a new line before problems with the existing line begin to occur. (T40:14-21; T53:11-24; T106:21 to 107:4).

15. Beginning with the annual 2006-2007 budget, Applicant has been setting aside funds to use for the construction of a new transmission line to replace the thirty year old underground line. Applicant now holds \$500,000 to use toward building a new overhead transmission line that would serve as Applicant's new main transmission line feed. (T40:23 to 41:3; T42:24 to 43:6; T46:17 to 47:1; Exh. 31). Applicant's annual budget for its electric utility system is approximately four million dollars. Two hundred fifty thousand dollars, or 6.25% of Applicant's electric utility budget, was collected and designated for purposes of funding a replacement source for Applicant's existing 34.5 kV line. (T47:3-9; T49:23 to 50:1).

16. A portion of Protestant's 69 kV overhead transmission line referred to in paragraph 13 is located along the same county road as Applicant's existing 34.5 kV underground line. Protestant's line interconnects with NPPD's 115 kV substation northeast of the City and follows along the same route as Applicant's existing underground line southward along the county road dividing sections 5 and 6, Township 7

North, Range 4 West of the 6th Prime Meridian. Protestant's line then turns to the southwest on the north side of Highway 6 that travels through the City. (Exh. 1, page 6; Exh. 26; Exh. 36). As previously noted, although Protestant's existing line is sometimes referred to as a 34.5 kV line in the record, the line is actually 69 kV, but operated at 34.5 kV. (T146:21 to 147:3; T152:19-22; Exh. 1, page 2). Similarly, Applicant's proposed line is sometimes referred to as 34.5 kV, but the line would actually be built at 69 kV and operated at 34.5 kV. (T108:23 to 109:8; Exh. 26, page 1; Exh. 1, page 2). Protestant's existing overhead line follows the same easement as Applicant's existing underground line that connects into the northeast corner of the City. Both lines are located on the east side of the same county road. (T43:23-25; T45:20-24; T117:8 to 118:2). Protestant's 69 kV overhead line was constructed seven years ago. (T118:6-8).

17. Applicant's proposed new line would interconnect with NPPD's substation located in the southwest corner of section 32, Township 7 North, Range 4 West of the 6th Prime Meridian, then proceed southward along the same county road easement or right-of-way as Applicant's existing underground 34.5 kV line and Protestant's overhead 69 kV line, except that the proposed new line would be on the west side of the road in section 6, Township 6 North, Range 4 West, not the east side where Applicant's existing 34.5 underground line and Protestant's existing overhead 69 kV line are located. The proposed line would turn southwest on the south side of Highway 6, parallel with and just north of East 9th Street. The line would then cross East 9th Street to the south and transfer to an underground line and connect to Applicant's switching station and then proceed on

for another one-tenth (.1) mile to connect with Applicant's North Substation. (T43:3-25; T53:18-24; T116:16-25; Exh. 1, pages 1 and 5; Exh. 26, page 1).

18. The portion of the proposed line that would be located inside the City would be in Applicant's right-of-way or under Applicant's property. (T116:25 to 117:7).

19. Approximately 3,400 feet of Applicant's proposed overhead line will be located in Protestant's retail service area in section 7, Township 6 North, Range 14 West.

20. It is undisputed that Protestant's existing 69 kV line has sufficient excess capacity and is physically capable of providing the transmission needs that Applicant wishes to serve with its proposed new overhead 69 kV transmission line. (T87:21 to 88:7; T150:21 to 152:18; Exh. 3, page 2; Exh. 37).

21. Applicant does not own any generation facilities. (T50:17-19).

22. If the line proposed by Applicant in PRB-3621 were approved by the Board, Applicant intends to discontinue its agreement with Protestant to receive backup transmission service rights. (T51:6-13). Once the line proposed in PRB-3621 were energized, Applicant would from that point on not have any backup electric service for the City's needs in the event of a hazard that would render the new line inoperable, such as an ice storm or tornado. (T99:16-21).

23. If the Applicant's proposed line were disapproved by the Board, Protestant proposes and offers to serve Applicant's transmission needs by wheeling electricity over Protestant's existing 69 kV overhead line that follows the same basic route and is located on much of the same easement as both Applicant's existing 34.5 kV underground line and Applicant's proposed 69 kV line. (T57:11 to 58:8).

24. Protestant offered to provide transmission service to Applicant over Protestant's existing 69 kV overhead line for one-half of the normal sub-transmission rate of \$1.26 per kilowatt, which would essentially be the same cost to Applicant that it is currently paying to Protestant for the right for back-up service using Protestant's 69 kV line. This would amount to approximately \$48,000 per year. Protestant offered Applicant a ten-year agreement where the price for the first five years was guaranteed to remain at the proposed rate, and for the next five years Applicant's cost would be limited to half of Protestant's standard sub-transmission rate at the time. (T59:19 to 60:17; T169:19 to 172:25; Exh. 29, page 1). Applicant's City Council found the terms of this offer unacceptable. (T59:11-18; T168:18 to 169:8). The primary reason Applicant found the offer unacceptable is over concerns about what would happen to the fees after the initial five years. Applicant was concerned that the wheeling fees could rise substantially after the initial five year period, based on what is paid by another municipality to Protestant for wheeling fees. Applicant also did not want to be permanently obligated to Protestant for its transmission needs. (T60:14 to 61:10; T62:22 to 63:3). Protestant's sub-transmission rate is determined using a standardized methodology based on costs and demand. (T170:5-13).

25. Unless otherwise negotiated and agreed upon between the parties, if Protestant were to provide Applicant's primary transmission service using Protestant's overhead 69 kV line, Protestant would normally be expected to be responsible for the costs associated with maintenance of its line. When calculating the costs of the proposed

69 kV overhead line, Applicant did not include the costs it might incur to maintain the line. (T64:10 to 65:12).

26. Applicant is concerned that if Protestant were to provide Applicant's transmission needs with Protestant's existing 69 kV line, and Protestant were to upgrade its facilities and begin operating them at 69 kV instead of 34.5 kV, this would cause Applicant to incur costs of up to two million dollars to upgrade its interconnecting facilities so that it would be compatible with Protestant's reconfigured system. (T77:20 to 79:6; T131:21 to 132:13; T155:9-22). Applicant's concerns are at least partly based on information provided at a preliminary planning meeting in April 2010, and a handout presentation given out at the meeting. The handout and materials presented at the meeting were not part of an approved, scheduled transmission construction or upgrade plan. The proposals discussed were not final, and it was not certain whether the provisions set out in the proposed plan would be carried out or not. (T76:4-24; Exh. 30, pages 1-4 and 43). The preliminary transmission planning document to which Applicant refers (Exh. 30) was not submitted to a sub-transmission committee and NPPD's wholesale partners for approval, which are part of the process normally required prior to approval of a final transmission plan. (T154:17 to 155:1). Protestant has no immediate plans to convert operation of its transmission facilities in the Minden area from 34.5 kV to 69 kV. (T152:19 to 153:4; Exh. 29, pages 2-3). If Protestant were to convert operation of its facilities to 69 kV, it would not occur until at least 2019, unless there would be a large increase in load growth requiring an upgrade. If the load growth was caused by Applicant's customers, Applicant would need to convert to 69 kV to meet the increased

demand. (T165:4 to 166:8). If Protestant were to operate its transmission facilities at 69 kV, it would be predicated on NPPD recommending or requiring that Protestant operate its facilities at 69 kV, based on load growth in the area and NPPD plans to upgrade or operate its own facilities at 69 kV in the area. It is not in NPPD's ten-year transmission plan to convert its facilities in the Minden area to operate at 69 kV. (T152:19 to 154:4).

27. Applicant is a customer of NPPD, purchasing its wholesale electrical power needs from NPPD. (T95:2-4; T106:12-14). If Applicant were to construct its own replacement line and not use Protestant's line, and then NPPD were to upgrade its system to 69 kV at some point in the future, Applicant would be required to upgrade its interconnecting facilities to be compatible with NPPD's substation northeast of the City that supplies Applicant's power and at least a portion of Protestant's power. Applicant does not believe NPPD would convert the facilities involved to operate at 69 kV. (T78:23 to 79:6).

28. If Applicant were to construct the new overhead 69 kV transmission line requested in PRB-3621, the line would be susceptible to hazards such as ice storms. If an event such as an ice storm were to occur and damage or destroy all or part of the line, the repair costs incurred would be borne by Applicant. (T96:17-25). If Protestant's 69 kV line through the City, which provides back-up power to Applicant, were to be damaged from a hazard such as an ice storm or tornado, Applicant is currently not responsible for the costs of any needed repairs. (T97:15-20). What the maintenance costs may be on a new overhead line such as the one Applicant proposes in PRB-3621 is unknown. (T158:25 to 159:4).

29. If the line requested in PRB-3621 were to be approved by the Board, Applicant will issue a request for bids to construct the line. Applicant is not certain that the bids would be under the \$500,000 amount that Applicant has in reserve to pay for the line. (T102:15 to 103:7). It is reasonable to believe that the actual cost could be twenty percent above or below Applicant's final estimate of \$500,000. (T110:16-22). If the bids did come in above \$500,000, Applicant would either take funds away from other construction projects or postpone building the line. (T102:15-22).

CONCLUSIONS OF LAW

30. 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 those described in application PRB-3621.

31. 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 a possible 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.

32. Whether it is reasonable and prudent for Applicant to find a replacement source of transmission for its existing underground 34.5 kV line that serves as

Applicant's primary source of power is not a contested issue in this proceeding.

Applicant's existing underground 34.5 kV line is thirty years old. It is at the end of its useful life and needs to be replaced with an alternate transmission source or Applicant will likely face outages and eventually failure of the underground line. The Board finds that for Applicant to make arrangements for an alternative source of transmission services that has the necessary capacity and reliability to provide Applicant with its primary electrical power needs is reasonable and prudent.

33. 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 criteria 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 (5th 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). In evaluating the public convenience and necessity of the project proposed in PRB-3621, the Board acknowledges the finding in the previous paragraph

that it is reasonable and prudent for Applicant to find an alternative transmission source to replace its aging 34.5 kV underground line that currently is Applicant's primary source of electrical power. The evidence adduced at the hearing indicates that it is only a matter of time before Applicant's existing underground line begins to fail, and once it begins to fail it is reasonable to believe that such failures will quickly become more common, which would obviously be detrimental to Applicant's ratepayers. (T106:21 to 107:4). Making arrangements for an alternative transmission source for Applicant's primary electrical power needs is therefore necessary. Both the alternatives addressed in this proceeding, Applicant's proposed project and the use of Protestant's existing line, would address the issue of how to provide an alternative transmission path to replace Applicant's aging underground line. Therefore, the Board concludes that either option 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" Applicant believes that one factor demonstrating that its proposed project would be the most economical method to provide the necessary transmission service is that it has already accumulated all or most of the funds necessary to pay for the project. This would mean that Applicant's ratepayers would not have to take on additional debt service in order to fund the estimated \$500,000 cost for the project. If the Board were to adopt such an argument, it could render the review intended under § 70-1014 virtually meaningless, at least as far as whether an applicant can most economically supply the electric service. If

utilities with sufficient time before a project is required could simply include the costs of a proposed project into their rate base years in advance, then claim that the project is economical because they have sufficient funds held in reserve, the Legislature's intent in § 70-1014 would be frustrated. The ratepayers would have already had their rates increased to pay for a project that may not be the most economical. The cost would simply be built into the rates beforehand instead of incurred subsequent to the Board's approval of a project. If an applicant cannot most economically supply the electric service resulting from a proposed project, it is equally true that an Applicant's ratepayers would benefit from having the accumulated reserve funds returned in the form of a rebate or reduced rates, for Applicant to invest the funds, or for Applicant to use the funds for additional needed maintenance or construction projects that would otherwise need to be paid for through rate increases.

35. In the present situation, Applicant estimates that the proposed line would cost \$500,000. In Applicant's initial estimate, which was later withdrawn with the Board's approval, Applicant estimated the cost to be \$750,000. (Exh. 1, page 3; Exh. 6, page 2). The Board accepts the revised estimate, but such a large change in the estimated cost in just three months demonstrates the fluctuations in the prices of materials involved and the difficulty of precise estimates. There is no guarantee that Applicant's ratepayers will not have to provide additional funding for the proposed line.

36. In arriving at its figures, and for future planning purposes, it appears that Applicant assumes it would have no meaningful costs to maintain the new line. This is certainly possible, especially with a new line. However, it is equally possible that

Applicant could incur substantial maintenance costs if the area were to experience an ice storm or tornado. Such events could cause severe damage to an overhead line and require Applicant to need additional funds to maintain the line. Protestant's line is also susceptible to these same risks. However, if Applicant constructed the proposed overhead line, it would assume all risks associated with such events. If Applicant were to use Protestant's line, either Protestant would be solely responsible for the maintenance and repair costs, or Applicant would agree contractually to pay for a portion of the costs. Whichever would occur, Applicant's exposure would almost surely be greater were it to assume all such risk by owning its own line.

37. Applicant currently has an agreement whereby Protestant provides backup transmission services to the City for approximately \$48,000 per year. Protestant's offer is to provide Applicant with its primary transmission service using Protestant's existing overhead 69 kV line for the same price as the backup service, guaranteed for five years. After that Protestant will provide the service for the next five years for fifty percent of whatever its standard sub-transmission wheeling rate is at the time. If Applicant were to apply its accumulated \$500,000 toward paying for the use of Protestant's existing 69 kV line, Applicant would be able to pay for its transmission needs for approximately ten years. This is not even taking into account that Applicant could have additional funds by investing its accumulated reserves until needed to pay Protestant.

38. Applicant is concerned that if Protestant were to provide Applicant's primary transmission service using Protestant's existing 69 kV line, and Applicant were to decide to begin operating its system at 69 kV instead of 34.5 kV, Applicant would

have to upgrade its transmission system to make it compatible with Protestant's reconfigured system, and this could cause Applicant to incur costs of up to two million dollars. However, the testimony indicates that neither Protestant nor NPPD have any immediate plans to convert their systems to operate at 69 kV, at least for the next ten years. If the Board were to deny application PRB-3621 and Protestant were to serve Applicant's transmission needs, and then Protestant later notified Applicant that it was going to upgrade its system to operate at 69 kV, Applicant is not precluded at that time from filing an application with the Board to allow it to construct a line like the one proposed in PRB-3621, based on this material change in circumstances. It would not be appropriate for the Board to base its analysis of whether the Applicant can most economically and feasibly supply the power needed on speculative information from a preliminary planning document, especially when the testimony indicates that neither Protestant nor NPPD have any approved plan to convert their transmission facilities in Applicant's area to 69 kV, and do not intend to engage in such a conversion within at least the next nine to ten years. (T76:4-24; T152:19 to 154:4; Exh. 30).

39. Applicant's engineer recommended that Applicant construct the proposed line instead of using Protestant's existing line. His recommendation was founded primarily on the costs involved. As previously discussed, Applicant assumes it would not have any significant debt service for the cost to construct the line. If Protestant's line were used, after five years it is unknown precisely what Protestant's wheeling charges would be. (T132:19 to 133:21; T141:25 to 142:9). However, Applicant's engineer did not indicate that he took into account that if Applicant were to use Protestant's existing

line, Applicant would have \$500,000 available with which it could pay wheeling fees for many years to come, to reduce or offset increases to its ratepayers' electric rates, or to invest. It is also somewhat speculative whether the cost of the proposed line would actually be limited to only \$500,000. The final actual cost could potentially be as much as twenty percent higher than Applicant's estimate. In arriving at its conclusions, Applicant also predicts that its new overhead 69 kV line would require no maintenance during the first five years of its existence. (T134:24 to 135:2). While certainly possible, this is by no means a certainty. Were Applicant to experience an ice storm or tornado, the line could need extensive repairs, and Applicant could incur significant costs to repair or replace portions of the line. The area where Applicant is located experienced an ice storm that impacted Applicant's system during or sometime around the 2006-2007 time frame. (T96:17-22). No one can predict when such an event could occur again, but the fact that it occurred only a few years ago demonstrates that the possibility of such an event is much more than merely theoretical. Were Applicant to use Protestant's line to supply its ongoing transmission needs, Applicant would not incur direct additional costs to repair or replace the line owned by Protestant in the event of an occurrence such as an ice storm, absent contractual provisions where Applicant agreed to assume some of those costs.

40. The Board notes that the Legislature stated that the Board must be able to find that an applicant can most economically and feasibly supply the electric service resulting from the proposed construction. Clearly, the Legislature intended that when an alternative to the proposed project is available, as is true in the present situation, the

Board should compare and weigh the two alternatives against each other. The Board finds that the evidence does not demonstrate that Applicant can most economically and feasibly supply the electric service that would result from the proposed transmission line.

41. Although the line proposed by Applicant would be overhead, and therefore easier to repair in an emergency than an underground line, it is reasonable and prudent for an electric utility to have a backup power source where that is accessible and economically prudent. (T128:2-11). If the Board were to approve Applicant's proposed line, Applicant would then cancel its contract with Protestant for backup electric service using Protestant's existing 69 kV line that passes through the City. Whether to do so is admittedly a calculated risk. The proposed line would be new, and the fact that it would be overhead would make it easier to access and repair during an emergency. But it is also true that having redundancy greatly increases the reliability for Applicant's ratepayers. Even Applicant's engineer admitted that having access to back-up sources of power might be considered preferable. (T128:17 to 129:3). Applicant does not have generation resources to use in case its transmission line failed. Were the proposed line not approved, and Applicant were to wheel its electricity over Protestant's existing line, Applicant would still have its underground line northeast of town, which may well remain energized as a backup transmission source. (T138:20-23). If something were to happen to Protestant's line to the east of the City, Protestant could still feed power into the City from the west. Although perhaps not determinative in this proceeding, such redundancy serves the best interests of Applicant's customers by providing adequate,

reliable electric service consistent with sound business practices, as anticipated by the Legislature in § 70-1001.

42. Turning to the last criteria stated in § 70-1014, 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.” One of the Legislature’s primary purposes for creating the Board and its areas of authority was to ensure that Nebraska’s consumer-owned electric utilities do not engage in projects that would unnecessarily duplicate the existing facilities of other consumer-owned utilities. In Chapter 70, Article 10, the Legislature stated it thus:

“In order to provide the citizens of the state with adequate electric service at as low overall cost as possible, consistent with sound business practices, it is the policy of this state to avoid and eliminate conflict and competition between public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives in furnishing electric energy to retail and wholesale customers, to avoid and eliminate the duplication of facilities and resources which result therefrom, and to facilitate the settlement of rate disputes between suppliers of electricity.”

Neb. Rev. Stat. § 70-1001. The Nebraska Supreme Court, citing the above policy language, stated “It was clearly the intention of the Legislature that the public corporations of the state engaged in the generation, transmission, and distribution of electrical energy should eliminate conflict and competition among themselves and to

prevent duplication of facilities and resources which result in a higher cost of electrical energy to the ultimate user.” City of Auburn v. Eastern Nebraska Public Power Dist., 179 Neb. 439, 444-445, 138 N.W.2d 629, 635 (1965).

43. In the present situation, Applicant proposes to construct a 69 kV overhead line, operated at 34.5 kV, that interconnects with NPPD’s 115 substation northeast of the City. The line would then proceed southward on the west side of a county road for 1.33 miles. The line would then turn southwest and proceed parallel to East 9th Street on the North side of the road for about one-half mile. East 9th Street is parallel to and just south of Highway 6. The line then crosses East 9th Street to the south and transfers to an underground line. The underground line would be 34.5 kV, and would proceed one-tenth of a mile west along the south side of East 9th Street and interconnect with Applicant’s existing switching station. The line would then proceed another one-tenth of one mile west and interconnect with Applicant’s existing 34.5 kV North Substation. (Exh. 1, page 2; Exh. 26, page 1-3; Exh. 36). Similarly, Protestant’s existing line is a 69 kV line, operated at 34.5 kV, that interconnects with the same NPPD 115 kV substation northeast of the City. Protestant’s line then proceeds southward along the same county road as Applicant’s proposed line, except that Protestant’s line is located on the east side of the road. Protestant’s line then proceeds southwest on the north side of Highway 6 past Applicant’s switching station and 34.5 kV substation. Protestant’s line is already interconnected to Applicant’s substation in order to provide backup power to Applicant. (T148:19 to 149:15; Exh. 26, page 1; Exh. 36). Both Applicant’s proposed line and

Protestant's existing line are the same voltage (69 kV, operated at 34.5 kV) and both would be overhead lines. The route that Applicant's proposed line would follow closely mirrors the pathway of Protestant's already existing 69 kV line. It is uncontested that Protestant's line has sufficient capacity to handle Applicant's load now and into the reasonably foreseeable future. Protestant has offered to allow Applicant to use the additional capacity on its line for a fee. It is difficult to conclude that two lines with such similarities, closely following the same basic pathway, are not duplicative. Based on the evidence, the Board finds that the proposed transmission line described in PRB-3621 would constitute an unnecessary duplication of facilities or operations.

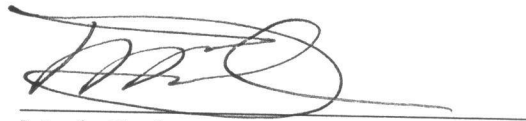
ORDER

That during that part of its public meeting on September 17, 2010, held subsequent to the August 20, 2010 hearing on application PRB-3621, a majority of the members of the Power Review Board (3 yes, 0 no) voted in favor of a motion to deny application PRB-3621.

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-3621, for authorization for the City of Minden, Nebraska, to construct approximately 2.12 miles of 69 kilovolt transmission line and approximately 200 feet of 34.5 kilovolt transmission line in Kearney County, Nebraska be, and hereby is, DENIED.

NEBRASKA POWER REVIEW BOARD

BY:



Mark Graham
Vice Chairman

DATED: November 8, 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-3621 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 8th day of November, 2010.

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