

**STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE APPLICATION OF)	PRB-3624
THE PIERCE UTILITIES OF THE CITY OF)	
PIERCE, NEBRASKA, REQUESTING)	
AUTHORIZATION TO CONSTRUCT)	
APPROXIMATELY 1.5 MILES OF 4.16)	ORDER
KILOVOLT THREE-PHASE DISTRIBUTION)	
LINE IN PIERCE COUNTY, NEBRASKA.)	

ON THE 18th day of June, 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 28th day of April, 2010, the Pierce Utilities of the City of Pierce, Nebraska, (“Applicant”) filed an application with the Board requesting authorization to construct approximately one and one-half (1.5) miles of 4.16 kilovolt (“kV”), three-phase distribution line in Pierce County, Nebraska. (Exh. 1). The application was designated “PRB-3624.”

2. The estimated total cost of the project is \$22,940. If the project were approved, Applicant would begin construction as soon as approval is received, and estimated that the project would be complete within four to six weeks, weather permitting. (Exh. 1, page 3).

3. Applicant currently has a line that travels from the southern edge of the north half of section 23, Township 26 North, Range 2 West, Pierce County, Nebraska, and proceeds to the northern edge of section 23. The line is roughly in the center of section 23, or slightly to the east of the center of section 23. The stated purpose of the application is to allow Applicant to remove this existing distribution line and construct a replacement line that would begin at the northwestern corner of section 23 and proceed along the northern and eastern perimeter of section 23, ending at the center point of the eastern edge of section 23. Relocating the line would allow the customer farming section 23 to convert a gravity flow irrigation system to an irrigation center pivot system. The existing line would impede such a center pivot irrigation system. (Exh. 1, pages 2 and 4).

4. Because the additional one and one-half miles of 4.16 kV distribution line would be located in the retail service area of Northeast Nebraska Public Power District (“Protestant”), written notice of the filing of the application and the hearing date was provided to Protestant and Applicant via certified U.S. mail. Protestant was notified that it had the right to file a protest objecting to the approval of the application. (Exh. 2).

5. That on May 19, 2010, Protestant filed a Protest opposing the approval of application PRB-3624. (Exh. 3). In its Protest, Protestant asked the Board to deny Applicant the authority to construct the additional one and one-half miles of line described in application PRB-3624. Protestant also asked the Board to require Applicant to remove 2,670 feet of three-phase distribution line that has already been constructed in Protestant’s service area without Board approval, and to authorize Protestant to provide three-phase power to the center pivot irrigation pivot indicated in application PRB-3624.

(Exh. 3). Protestant states that it is willing and able to furnish adequate electric service to the center pivot irrigation system described in PRB-3624, and it is willing to provide power to the City of Pierce or to purchase any customers currently served by Applicant's existing line crossing the north half of section 23.

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 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 there are no records of threatened or endangered species in the vicinity of the proposed distribution line. The Commission determined that the proposed project would have "No Effect" on any state listed threatened species, and that the Commission has no objection to the project as proposed. (Exh. 4).

7. That on June 18, 2010, the Board commenced the formal evidentiary hearing to address the merits of application PRB-3624.

8. Applicant's retail service area includes the City of Pierce and territory in the immediate vicinity surrounding the City. The northern boundary of Applicant's service area begins at the midpoint of section 21 and proceeds east on the half-section line through sections 21, 22 and 23, Township 29 North, Range 2 West in Pierce County. Thus, Applicant's service area includes the southeastern quarter of section 21, and the

southern half of sections 22 and 23. Applicant's service area is surrounded by Protestant's retail service area on the west, north and east sides, while Elkhorn Rural Public Power District's service area abuts Applicant's service area on most of its southern border. (T14:21 to 15:4; Exh. 7).

9. Applicant has a distribution line that follows along the half-section line beginning just west of the midpoint of the western edge of section 23, and proceeds through sections 23 and 24. (T14:3-11; Exh. 5, page 3; Exh. 7). As previously mentioned, Applicant currently has a distribution line located in Protestant's service area that travels from the southern edge of the north half of section 23 and proceeds north to the northern edge of section 23. This line branches off of the line that follows the half-section line through sections 23 and 24. Applicant uses the line traveling north through section 23 to provide electric service to two wells used by Mr. Todd Kumm, and at least one residence in the very southern edge of section 14. Mr. Kumm also owns a gravity flow irrigation system in section 23, The original service area agreement authorizes Applicant to have this line in Protestant's service area and to serve these two loads. (T11:21-25; T23:1-12; Exh. 7). Applicant also has a line that extends approximately three eighths of a mile west from where the line through the northeast quarter of section 23 meets the northern edge of section 23. This short line extension serves a residence. (T13:19 to 14:2; Exh. 5, page 3).

10. The distribution line Applicant wishes to construct along the northern and eastern edges of section 23 would be located in Protestant's service area. (T:82:11-21; T90:11 to 91:4; Exh. 5, page 4; Exh 7).

11. Approximately two years ago Applicant constructed a distribution line extending approximately one-half mile into Protestant's service area without Protestant's consent or the Board's approval. This line is located along the right-of-way on the western edge of the north half of section 23. The line is not being used to provide electric service to any loads, and is currently not even energized. (T16:15 to 17:9; T30:21 to 31:8; T69:5 to 70:25). This line is indicated by the green line on Exhibit 5, page 4.

12. Applicant serves one or more loads in the northeast quarter of section 22 using another distribution line extension that connects to the western edge of the line that follows the half-section lines through sections 23 and 24. From the western edge of that line, which is just west of the eastern edge of section 22, the extension proceeds north approximately three-eighths of a mile. Applicant's line extension in section 22 would be removed if the Board approved the use of the existing line along the eastern edge of the north half of section 22. (T18:8 to 20:13; Exh.5, pages 3 and 4).

13. Regardless of whether the Board authorizes Applicant to construct the line requested in PRB-3624, Applicant will need to upgrade the utility poles for the line that follows along the east-west half-section line from the eastern edge of section 22 into section 24. (T20:13-23; Exh. 5, page 3).

14. One of the main purposes of the proposed line is to accommodate the needs of Todd Kumm who farms the ground in the northeast quarter of section 23. Mr. Kumm, currently uses a gravity flow irrigation system. He wishes to convert the gravity flow irrigation system into a center pivot irrigation system. He has been awarded a grant from the government to install the center pivot irrigation system. Applicant's existing north-

south distribution line through the center or northeastern portion of section 23 would interfere with the ability of a center pivot irrigation system to operate. By energizing the existing line along the western edge of section 23, and constructing a new distribution line along the northern and western edges of section 23, Applicant can remove its line through the north half of section 23 and allow Mr. Kumm's proposed center pivot irrigation system to function normally. (T20:24 to 21:25; T26:21 to 28:8; Exh 5, pages 3 and 4).

15. The line that would be removed in the north half of section 23 in order to allow the center pivot to operate properly is a structurally sound line that would not otherwise need to be replaced. (T36:11 to 37:21). Applicant also wants the line removed so it can be relocated to follow section lines, and to allow for easier access by maintenance crews. (T38:18 to 39:8; T49:7 to 50:7; T51:9-18; T52:14 to 53:5; T55:21 to 56:2). Approval of application PRB-3624 would also allow Applicant to remove that portion of the east-west line along the half-section line in section 23 that is east of where the residence of one of Applicant's customers, Mr. Bob Steele, is located. (T50:21 to 51:5; T52:7-13).

16. Applicant has been able to maintain the distribution line following the east-west half-section line in section 23 for at least the past 18 years, if not longer. (T64:22 to 65:4).

17. Another option that would allow the proposed center pivot irrigation to be used in section 23 is for Applicant to bury the distribution line along its existing route. (T78:21-23). Burying the line would involve increased costs, though. (T92:12-18).

Protestant could also wheel power to Applicant in order to serve Applicant's customers in section 24, although certain system upgrades would be necessary. (T80:10 to 82:4).

Wheeling would not cause a cost increase to the customers involved. (T103:18 to 104:14).

18. Protestant is willing and able to provide electric service to Mr. Kumm's center pivot irrigation system. (Exh. 2, page 3).

CONCLUSIONS OF LAW

19. 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 or distribution facility located in the State of Nebraska, but outside a power supplier's service area. Such approval is normally required prior to commencement of construction of facilities such as those described in application PRB-3624. Pursuant to Neb. Rev. Stat. § 70-1011, the Board has jurisdiction to conduct a hearing and either approve or deny an application for authority to construct a distribution line that would be located in another power supplier's service area when the power supplier holding the service area rights to that location objects to the approval of the project.

20. 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 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.

21. Unless the power suppliers involved come to a mutual agreement, when a power supplier proposes to construct a transmission or distribution line in another power supplier's service area, the Board must be able to make the findings set out in Neb. Rev. Stat. § 70-1011 in order to approve the application. Section 70-1011 states that "no supplier shall offer electric service to additional ultimate users outside its service area or construct or acquire a new electric line or extend an existing line into the service area of another supplier for the purpose of furnishing service to ultimate users therein without first applying to the board and receiving approval thereof, after due notice and hearing under rules and regulations of the board. Such approval shall be granted only if the board finds that the customer or customers proposed to be served cannot or will not be furnished adequate electric service by the supplier in whose service area the customer is located, or that the provision thereof by such supplier would involve wasteful and unwarranted duplication of facilities."

22. In the present matter, the Board finds that the evidence does not support a finding that the customer or customers proposed to be served cannot or will not be furnished adequate electric service by the Protestant, or that the provision of electric service to those customer or customers by Protestant would involve wasteful and unwarranted duplication of facilities. This is true whether Applicant's project would be viewed as intended to serve additional ultimate users of electricity outside its service area, or if the project would be viewed as one to construct a new electric line or to extend

an existing line into Protestant's service area in order to furnish service to ultimate users in that service area.

23. Although it is uncontested that Applicant constructed approximately 2,670 feet of three-phase distribution line in Protestant's service area along the western edge of the northwest quarter of section 23 without approval from the Board and without the consent of the Protestant, the Board at this time declines to require Applicant to remove this extension of its distribution system. The Board is hopeful that the parties can arrive at a mutually acceptable arrangement to accommodate the needs of both parties. In the event the parties can agree that Applicant may be able to use the unauthorized line, the Board does not want to require Applicant to remove the line at this time. Important to the Board's decision on this issue is that the unauthorized distribution line is not being used to serve ultimate customers in Protestant's retail service area that would otherwise be Protestant's customers, and that the line is not even energized. Although Protestant seems to be concerned that Applicant might use the line to provide service to additional customers, the Board points out that such activity is clearly prohibited by Neb. Rev. Stat. § 70-1011 unless Applicant first receives approval from the Power Review Board, and Protestant has an opportunity to object.

ORDER

That during that part of its public meeting on June 18, 2010, held subsequent to the hearing on application PRB-3624, a majority of the members of the Power Review Board (5 to 0) voted in favor of a motion to deny application PRB-3624.

IT IS THEREFORE ORDERED by the Nebraska Power Review Board, pursuant to the Board's action taken during its public meeting held June 18, 2010, that the application designated PRB-3624, for authorization for the City of Pierce to construct approximately one and one-half miles of 4.16 kilovolt distribution line in Pierce County, Nebraska be, and hereby is, DENIED.

NEBRASKA POWER REVIEW BOARD

BY: 
Michael Siedschlag, Chairman

DATED: July 16, 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-3624 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 16th day of July, 2010.

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