

**STATE OF NEBRASKA  
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE APPLICATION OF	)	<b>PRB-3628</b>
THE NEBRASKA PUBLIC POWER DISTRICT	)	
HEADQUARTERED IN COLUMBUS,	)	
NEBRASKA, REQUESTING AUTHORIZATION	)	
TO CONSTRUCT 37 MILES OF 115 KILOVOLT	)	<b>ORDER</b>
TRANSMISSION LINE AND A 115 KILOVOLT	)	
SUBSTATION IN BOONE AND WHEELER	)	
COUNTIES, NEBRASKA.	)	

ON THE 18<sup>th</sup> 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 all 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 24<sup>th</sup> day of May, 2010, the Nebraska Public Power District (“NPPD”) filed an application with the Board requesting authorization to construct approximately thirty-seven (37) miles of 115 kilovolt (“kV”) transmission line in Boone and Wheeler Counties, Nebraska, and a 115 kV substation in Wheeler County, Nebraska. (Exh. 9). The application was designated “PRB-3628.”
2. The estimated total cost of the project is \$20,202,859. NPPD estimates construction of the project line would be completed in the summer of 2012. (Exh. 9, page 3). The purpose of the line is to provide electric service to an oil pipeline pumping station owned

by the TransCanada Corporation (“TransCanada”) that will be part of the TransCanada Keystone XL pipeline. (Exh. 9, page 1).

3. That those power suppliers and entities, other than the applicant, that the Board deemed to be potentially affected by or interested in said application were the Loup Valleys Rural Public Power District (“Loup Valleys RPPD”), the Village of Petersburg, Nebraska, the Village of Ericson, Nebraska, and the Western Area Power Administration (“WAPA”). Written notice of the filing of the application and the hearing date was provided to these potentially interested parties and NPPD via certified U.S. mail. (Exh. 10; Exh. 15).

4. Notice of the filing of the application and the opportunity to request and participate in a hearing was provided to the general public by publication in the Petersburg Press and Albion News newspapers on Wednesday, June 2, 2010 (Exhs. 11 and 13, respectively), and in the Spalding Enterprise newspaper on Friday, June 4, 2010 (Exh. 12). All three publications are legal newspapers serving the general area where the proposed transmission line and related facilities would be located.

5. That no Petitions to Intervene or Protests were filed with the Power Review Board concerning this application.

6. That on June 18, 2010, the Board commenced the formal evidentiary hearing on PRB-3628. For purposes of the hearing, the Board consolidated the hearings for applications PRB-3627, PRB-3628 and PRB-3629. Because all three applications were filed by NPPD to construct transmission lines and substations to serve oil pipeline pumping stations to be built by the TransCanada Corporation for its Keystone XL pipeline, the Board determined that the interrelated nature of the subject matter and the parties warranted holding one consolidated hearing instead of three separate hearings. (T7:10-15, T8:1-5). The Board

had provided notice of the filing of the application and the possibility of a hearing on June 18, 2010 in its Notice of Filing dated May 27, 2010. (Exh. 10). The Board later determined that a formal evidentiary hearing was warranted in applications PRB-3627, PRB-3628 and PRB-3629, and a Notice of Hearing was mailed to the interested parties on June 10, 2010. (Exh. 15). The Board's Rules of Practice and Procedure require twenty days notice be provided to the parties involved when multiple hearings are consolidated. To the extent that less than twenty days notice was provided that the hearings for PRB-3627, PRB-3628 and PRB-3629 would be consolidated, NPPD waived the twenty days notice requirement. (T12:5-13).

7. That Consent and Waiver forms were offered and accepted into evidence at the hearing before the Board, as provided by law and the Board's Rules of Practice and Procedure, whereby the Loup Valleys RPPD and the Cornhusker Public Power District consented to the approval of PRB-3628 and waived a hearing and further notice in the matter. (Exhs. 16 and 17, respectively).

8. That WAPA submitted a letter notifying the Board that it does not object to the construction of the project described in application PRB-3628. (Exh. 8).

9. 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 transmission line and related facilities 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 NPPD consulted with the Commission and the U.S. Fish and Wildlife Service throughout the course of its activities to determine the best route for the line. The Commission advised NPPD on potential impacts to threatened and endangered species, as well as other species protected under federal law such as the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. NPPD incorporated the information provided by the Commission into its routing process in order to avoid impacts to threatened and endangered species when possible. (Exh. 14).

10. The Commission informed the Board that the project corridor and preferred and alternate routes are within the ranges of the following four threatened or endangered species: a) American Burying Beetle (*Nicrophorus americanus*), b) Whooping Crane (*Grus americana*), c) Western Prairie Fringed Orchid (*Platanthera praeclara*), and d) Small White Lady's Slipper (*Cypripedium candidum*). (Exh. 14, page 2).

11. The Commission informed the Board that NPPD has agreed to determine if suitable habitat for each of the above-mentioned species is present along the final route of the line and where the substation will be located. If suitable habitat is present, NPPD will conduct additional surveys to determine if the listed species are actually present. If any of the above-listed species are found to be present, NPPD will consult with the Commission to develop conservation measures to mitigate or eliminate potential impacts. NPPD has also agreed to install "bird diverters" on certain portions of the line if necessary. (Exh. 14).

12. The Commission determined that the project in PRB-3628 “may affect but is not likely to adversely affect” state-listed threatened or endangered species. Due to the steps NPPD has taken to work with the Commission on the route of the line, and the steps to which NPPD has agreed to take once the final route is determined, the Commission determined that “we have no objection to the proposal as currently planned.” (Exh. 14, page 3).

13. The purpose of the proposed line and substation is to provide electric service to a pumping station in the Keystone XL pipeline, to be constructed by the TransCanada Corporation. TransCanada plans to build or install a large oil pumping station roughly one mile east of the Village of Ericson, Nebraska. The pumping station will be located on or near the midpoint of the southern edge of section 13, Township 21 North, Range 12 West, in Wheeler County, Nebraska. (Exh. 9, page 4). The new oil pumping facility involved in PRB-3628 will be known as “pumping station number 23.” (T20:24-25; Exh. 9, page 2; Exh. 29; Exh. 31, pages 6-7). The proposed substation described in PRB-3628 will be located just to the east of the pumping station. (Exh. 9, page 4). It will be known as the “Ericson Substation.” (Exh. 9; Exh. 29). The pumping station will be part of an interstate, and international, pipeline that will transport oil from Tar Sands, Alberta, Canada, to the Gulf of Mexico region of the United States. (T15:6-14; Exh. 27).

14. The proposed 115 kV transmission line would be located in a corridor starting at the existing Petersburg substation, which is approximately three miles east of the Village of Petersburg, Nebraska, and proceeding westerly and several miles south to the proposed new substation and pumping station number 23 near the Village of Ericson. (Exh. 9, page 4).

15. That the proposed transmission line would be located in the retail service areas of Loup Valleys RPPD and Cornhusker PPD. Pumping station number 23 would be located in the Loup Valleys RPPD's service area, and would be a retail customer of the Loup Valleys RPPD. (T21:5-11; Exh. 29). Loup Valleys RPPD is a wholesale customer of NPPD. (T21:12-14).

16. The proposed transmission line would be a radial line dedicated to providing electric service to the Keystone XL oil pumping station number 23. (T26:3-10; Exh. 29).

17. TransCanada and NPPD have entered into a contract whereby TransCanada has agreed to reimburse NPPD for approximately 94 percent of the cost of the facilities that will be constructed in order to serve pumping station number 23. (T23:13-21; Exh. 9, page 3). Under the terms of the contract, TransCanada will pay NPPD approximately \$650,000 per month for ten years. (T23:22 to 24:3). Transmission lines of the size involved in PRB-3628 (115 kV) are normally expected to operate for thirty to fifty years, so TransCanada's monthly payments for ten years will be paid well before the new transmission line would be expected to be taken out of service. (T24:19-25). NPPD will pay the remaining amount, which would be close to six percent of the costs associated with the project. The project involves minor betterment costs to NPPD's transmission grid system that are not attributable to the transmission line and substation, which is one reason why NPPD is not requiring TransCanada to pay 100% of the costs associated with the pumping station project. (T24:4-9).

18. In the event that TransCanada would terminate the pipeline project prior to completion, obviating the need for the new transmission line and substation, the contract between TransCanada and NPPD requires TransCanada to reimburse NPPD for all costs

incurred in the project up to the date of termination. The contract also requires TransCanada to reimburse NPPD for costs associated with retiring the project, such as removal of the portion of the line constructed prior to the pipeline termination date. (T24:10-18).

19. NPPD conducted a study to examine alternatives to determine the best method to provide service to the pumping stations involved in applications PRB-3627, PRB-3628 and PRB-3629. This was known as the “Keystone XL Phase 2 Radial Transmission Analysis Study.” (Exh. 31). NPPD’s study determined that the best way to provide service to pumping station number 23 was by constructing a 115 kV transmission line from NPPD’s existing substation near Petersburg, Nebraska to the pumping station. The study indicated that Loup Valleys RPPD’s subtransmission grid was not strong enough to serve the twenty-two megawatts of load that the pumping station will require. (T19:23 to 20:25). NPPD also determined it would not be feasible or economically advantageous to try to serve pumping station 23 from WAPA’s 345 kV line located in the general vicinity. (T18:15 to 19:7; T22:2-5). Overall, the study supports the project as submitted in application PRB-3628. (T26:9-12; Exh. 31).

### **CONCLUSIONS OF LAW**

20. 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 line and related facilities 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-3628.

21. The Board’s Rules of Practice and Procedure, Title 285, Nebraska Administrative Code, Chapter 3, section 22 provide for the consolidation of hearings where

two or more proceedings are legally or factually related, unless any party would be prejudiced thereby. The Board finds that the applications for PRB-3627, PRB-3628 and PRB-3629 are factually related and involve the same parties. NPPD did not object to the consolidation of the three hearings. The Board finds that no party would be prejudiced by the consolidation of the hearings. The Board finds that consolidation of the three hearings saves time and expense for both NPPD and the Board.

22. 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 transmission line and related facilities 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. NPPD consulted with the Commission and the U.S. Fish and Wildlife Service, and has incorporated the Commission's input into its project decisions regarding the route to be used and steps to be taken in order to mitigate, to the extent feasible, the potential for harm to threatened and endangered species and migratory birds. The Commission also pointed out that NPPD has agreed to install marking devices on the line in selected areas in order to increase visibility and reduce the chances of bird collisions. The Board believes it is reasonable to defer to the expertise of the Commission and the U.S. Fish and Wildlife Service in concluding that Applicant has taken the necessary and prudent steps to avoid harm to at least threatened or endangered wildlife and vegetation as a result of



this project, and that the Board's approval of the proposed transmission line and related facilities, to the extent feasible and reasonably possible, would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of the critical habitat of such species.

23. The Board finds that NPPD's ratepayers are protected financially and will not be materially harmed or affected by the proposed line due to the contract between NPPD and TransCanada whereby TransCanada has agreed to pay approximately 94 percent of the cost of the facilities needed to provide electric service to pumping station number 23.

24. The Board finds that the evidence shows the proposed transmission line, substation and related facilities will serve the public convenience and necessity.

25. The Board finds that the evidence demonstrates that NPPD can most economically and feasibly supply the electric service resulting from the proposed transmission line and substation.

26. The Board finds that the evidence demonstrates that the proposed project will not unnecessarily duplicate other facilities or operations.

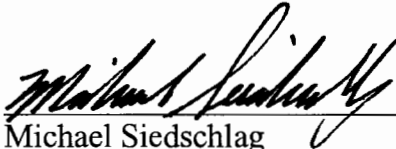
27. That based on the foregoing findings, NPPD is entitled to an Order approving the construction of the transmission line and substation described in application PRB-3628.

### **ORDER**

That during that part of its June 18, 2010, public meeting held subsequent to the hearing on application PRB-3628, a majority of the members of the Power Review Board, by a vote of 5 to 0, voted in favor of a motion to approve application PRB-3628.

IT IS THEREFORE ORDERED by the Nebraska Power Review Board that, pursuant to the Board's action taken during its public meeting held June 18, 2010, application PRB-3628 for authorization to construct approximately thirty-seven (37) miles of 115 kilovolt transmission line in Boone and Wheeler Counties, Nebraska and a 115 kV substation in Wheeler County, Nebraska be, and hereby is, APPROVED.

NEBRASKA POWER REVIEW BOARD

BY:   
Michael Siedschlag  
Chairman

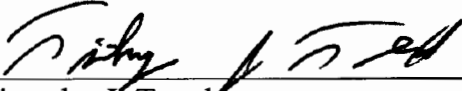
DATED: July 16, 2010.

**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-3628 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 16<sup>th</sup> day of July, 2010.

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