

**STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE APPLICATION OF)
THE NEBRASKA PUBLIC POWER DISTRICT,)
HEADQUARTERED IN COLUMBUS, NEBRASKA,)
REQUESTING AUTHORIZATION TO CONSTRUCT)
220 MILES OF 345 KILOVOLT TRANSMISSION)
LINE IN ANTELOPE, BLAINE, GARFIELD, HOLT,)
LINCOLN, LOGAN, LOUP, McPHERSON, ROCK,)
THOMAS AND WHEELER COUNTIES, AND)
A SUBSTATION IN WHEELER COUNTY,)
NEBRASKA.)

PRB-3774

ORDER

ON THE 10th day of October, 2014, 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 the transcript are to Volume II unless otherwise noted.

FINDINGS OF FACT

1. That on the 18th day of August, 2014, the Nebraska Public Power District (“Applicant”) filed an application with the Board requesting authorization to construct approximately two hundred twenty (220) miles of 345 kilovolt (“kV”), three-phase transmission line in Antelope, Blaine, Garfield, Holt, Lincoln, Logan, Loup, McPherson,

Rock, Thomas and Wheeler Counties, and a 345 kV substation in Wheeler County, Nebraska. (Exh. 1). The application was designated “PRB-3774.”

2. On September 9, 2014, Clifford A. Skiles, Jr. electronically filed a Protest and Petition For Intervention via facsimile transmission with the Board in opposition to the approval of application PRB-3774. (Exh. 9). On September 10, 2014, separate but similar Protests and Petitions For Intervention were filed via hand delivery by the Price Ranch, LLC (Robert E. Price, Managing Member) and Gracie Creek Ranch, Ltd. (Robert E. Price, Partner) (Exh. 19); Lynn A. Ballagh, Trustee of the Lynn A. Ballagh Living Revocable Trust and Amy C. Ballagh, Trustee of the Amy C. Ballagh Living Revocable Trust (Exh. 13); Ballagh Ranch, Inc. (Rowan K. Ballagh, President) (Exh. 11); Sarah A. Sortum (Exh. 21); Tonya Wilson Trust and Wilson Production Co., Inc. (Exh. 27); Adam Switzer (Exh. 23); H. Bruce Switzer and Sue Ann Switzer (Exh. 25); and the Malmsten Ranch Company (Duane L. Pelster, President) (Exh. 17). Later on September 10, 2014 another Protest and Petition For Intervention was filed by David Hutchinson, d/b/a Hutchinson Organic Ranch, Service Company of America. (Exh. 15). On September 11, 2014, a Protest and Petition For Intervention was filed by Horn Land & Cattle, Ltd. (Jeff J. Horn, Jr., Manager) (Exh. 29). On September 11, 2014, Barry Geweke entered an Entry of Appearance as counsel for all parties that had filed a Protest and Petition For Intervention except David Hutchinson/Hutchinson Organic Ranch and Price Ranch, LLC/Gracie Creek Ranch, Ltd. (Exh. 31).

3. On September 12, 2014, the Board held a hearing to address the issue of whether the persons and entities that had filed Petitions For Intervention had standing to

become parties to the proceedings. Although Neb. Rev. Stat. § 84-912.02 anticipates that the hearing officer will rule on interventions, the Board has previously instructed its hearing officer that the Board members want to reserve the right to rule on motions that will be dispositive or determinative against a party or the merits of the matter.

4. At the hearing, Tonya Wilson Trust and Wilson Production Co., Inc. withdrew its Protest and Petition For Intervention. (Volume I, T12:20 to 13:1; Exh. 32). Mr. Geweke orally informed the Board that he also represented Price Ranch and Gracie Creek Ranch. (Volume I, T12:12-14).

5. Applicant objected to the remaining Intervenors' standing. Over Applicant's objection, the Board determined all remaining parties that had filed a Petition for Intervention had standing except for David Hutchinson. The Petition for Intervention filed by David Hutchinson, d/b/a Hutchinson Organic Ranch, was therefore denied. The Board granted the Petitions for Intervention filed by all other remaining parties ("Intervenors").

6. On September 22, 2014, a prehearing conference was conducted, pursuant to written notice, via conference call to deal with clarification of the issues, including the Board's jurisdiction and types of evidence and topics that are not relevant to the proceedings, limitations on the number of witnesses, objections to proffers of known evidence, objections to and rulings regarding the issuance of requested subpoenas, and discovery orders and discovery schedule. (T103:22 to 104:5).

7. At the prehearing conference, the hearing officer clarified that the Board's approval criteria for application PRB-3774 is set out in Neb. Rev. Stat. § 70-1014.

Among numerous other rulings, the hearing officer ruled both orally at the prehearing conference and again in the written prehearing conference order, that any evidence not pertaining to the requirements in § 70-1014 is beyond the Board's jurisdiction and would be ruled inadmissible at the hearing on the merits. (Exh. 64, pages 38 to 40; Exh. 104, pages 10-11). The hearing officer specifically informed the parties that evidence offered to show the impact of the proposed line on aesthetics, or to show that the line should be built along a particular route, are not relevant and would be inadmissible. (Exh. 104, pages 11 and 14-15).

8. In the prehearing conference order, the hearing officer also ruled that evidence pertaining to the impact of the proposed project on the environment and wildlife and plants would be inadmissible unless it related to demonstrating that the Board consulted with the Nebraska Game and Parks Commission as required by Neb. Rev. Stat. § 37-807(3), or that the Commission's determination was based on mistaken information or a misunderstanding. (Exh. 104, pages 11-14).

9. At the prehearing conference and in the written prehearing conference order considerable discussion centered on the topic of the subpoenas requested by Intervenors. Intervenors requested that subpoenas be issued directed to the Applicant, the Nebraska Game and Parks Commission, the U.S. Fish and Wildlife Service, and the Nebraska Tourism Commission. (Exhs. 83 and 84). After considerable discussion on both the proper procedure for issuing a subpoena and the substantive topics addressed in the subpoenas, the hearing officer ruled that the subpoenas requested for the Nebraska Game and Parks Commission, U.S. Fish and Wildlife Service and the Nebraska Tourism

Commission requested documents that do not relate to issues within the Board's jurisdiction, have no reasonable possibility to lead to evidence which is relevant or admissible, and therefore denied the subpoenas. (Exh. 104, pages 8-9). The hearing officer granted in part and denied in part the subpoena requested for the Applicant. A subpoena duces tecum was issued for the Applicant. (Exh. 86; Exh. 104, pages 9-10).

10. That on October 10, 2014 the Board convened the formal evidentiary hearing to address the merits of PRB-3774.

11. The estimated total cost of the project is \$361,500,000. Applicant estimates construction of the transmission line and related facilities would begin in 2016 and be completed in 2018. (T201:11-13; T207:3-5; Exh. 1, page 3).

12. That those power suppliers, other than the Applicant, that the Board deemed to be potentially affected by or interested in said application were the Niobrara Valley Electric Membership Corporation, Custer Public Power District, Dawson Public Power District, K.B.R. Rural Public Power District, Midwest Electric Membership Corporation, Village of Sutherland, Western Area Power Administration, Elkhorn Rural Public Power District, Loup Valleys Rural Public Power District, Village of Thedford, and the Village of Stapleton. (Exh. 2, pages 5-6). 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. (Exh. 2).

13. Notice of the filing of the application and the hearing date was provided to the general public by publication in the *Burwell Tribune* (Exh. 4) and the *Neligh News and Leader* newspapers (Exh. 5) on Wednesday, August 27, 2014, and in the *Holt County*

Independent (Exh. 6), the *Clearwater Record-Ewing News*, the *Thomas County Herald* (Exh. 47), the *Stapleton Courier Times* (Exh. 48), the *Stapleton Enterprise* (Exh. 49) and the *North Platte Telegraph* (Exh. 50) newspapers on Thursday, August 28, 2014 (Exh. 7).

14. A certified copy of Consent and Waiver forms were offered and accepted into evidence at the hearing, as provided by law and the Board's Rules of Practice and Procedure, whereby the Dawson Public Power District (Exh. 52), the Village of Sutherland (Exh. 53), the Custer Public Power District (Exh. 54), the Elkhorn Rural Public Power District (Exh. 55), the K.B.R. Rural Public Power District (Exh. 56), the Loup Valleys Rural Public Power District (Exh. 57), the Midwest Electric Cooperative Corporation (Exh. 58), and the Niobrara Valley Electric Membership Corporation (Exh. 59) consented to the approval of PRB-3774 and waived a hearing and any and all further notice in the matter. The Western Area Power Administration, as an agency of the U.S. Department of Energy, does not formally consent to the approval of applications before state agencies, but submitted a letter stating it has no objection to the application. (Exh. 51).

15. 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 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

dated September 11, 2014 to the Board. (Exh. 60). In its letter, the Commission stated that the proposed project area is within the range of state-listed endangered American burying beetle (*Nicrophorus americanus*), blowout penstemon (*Penstemon haydenii*), whooping crane (*Grus americana*), and swift fox (*Vulpes velox*). The project area is also within the range of the state-listed threatened western prairie fringed orchid (*Platanthera praeclara*), small white lady's slipper (*Cypripedium candidum*), river otter (*Lontra canadensis*) finescale dace (*Phoxinus neogaeus*) and the northern redbelly dace (*Phoxinus eos*). The Commission noted that the project area is within the range of the northern long-eared bat (*Myotis septentrionalis*), which has been proposed to be listed as endangered by the U.S. Fish and Wildlife Service. Federally listed species are automatically included in Nebraska's state-listed species.

16. The Commission determined that the project "May affect, but is Not Likely to Adversely Affect" state listed endangered species. (Exh. 60.) The Commission did not express any objection to the Board approving the application. In a subsequent letter dated September 22, 2014, the Commission clarified that its determination also extended to state-listed threatened species, but the reference to threatened species was inadvertently omitted from the September 11, 2014 letter. (Exh. 63).

17. In its September 11 letter, the Commission pointed out that Applicant had agreed to implement certain measures or practices and procedures in order to avoid, minimize and/or mitigate the potential impact to endangered and threatened species, as set out in a letter from Applicant to the Commission dated August 26, 2014. (Exh. 106). The Commission cited and summarized the mitigation measures or practices that

Applicant had agreed to implement in the September 11 consultation letter to the Board. (Exh. 60, pages 2-3). The Commission's determination was predicated on Applicant's agreement to implement the mitigation measures described in Applicant's August 26, 2014 letter to the Commission, summarized in the Commission's consultation letter to the Board dated September 11, 2014.

18. Applicant requests authority to locate the proposed transmission line and related facilities inside a "corridor" of territory. The corridor is shown in white on Exhibit A to the Application. (Exh. 1, page 5). On the map, Applicant includes a preferred route and an alternative route for the proposed transmission line.

19. The project would consist of a 345 kV transmission line beginning at Applicant's Gerald Gentleman Station near the Village of Sutherland, Nebraska. Regardless of the exact route, the line would proceed northward to interconnect with an existing substation near the Village of Thedford, Nebraska. The existing substation near Thedford will be expanded as part of the project. Once again, regardless of the exact route, the line would proceed from the Thedford substation eastward to interconnect with an existing 345 kV transmission line that is owned and operated by the Western Area Power Administration (WAPA). The WAPA line travels north-south through the far eastern edge of the project area. A new substation would be constructed at the point where Applicant's proposed line would interconnect with WAPA's existing line. The WAPA line runs from Fort Thompson, South Dakota, to Grand Island, Nebraska. The point of interconnection would likely be in the northeast corner of Wheeler County, several miles southwest of the Village of Clearwater, Nebraska. (T175:11-21; Exh. 67,

Exh. 1, page 5).

20. An existing 345 kV transmission line connects the Gerald Gentleman Station with the area near the City of McCook, Nebraska. Another two 345 kV transmission lines travel several hundred miles east from the Gerald Gentleman Station and connect with a substation known as the Sweetwater Substation. Three 230 kV transmission lines connect Gerald Gentleman Station with the area in and around the City of North Platte, Nebraska. One 115 kV transmission line runs from just north of the Village of Maxwell, Nebraska to the Thedford substation. The 115 kV line then proceeds to the northeast out of the PRB-3774 project area. Another 115 kV line connects the North Platte area with the City of Broken Bow. The line then continues from Broken Bow to the southeast. A 115 kV loop system exists in the area near the municipalities of Ord, Albion, Norfolk, Battle Creek and Ainsworth. Except for the one 115 kV line, the transmission lines are located a significant distance south of the project area for the line proposed in PRB-3774. (T175:24 to 176:25; Exh. 67).

21. The 115 kV transmission loop system in the Ord, Albion, Norfolk, Battle Creek and Ainsworth area is fully loaded, meaning it cannot carry additional electric load. (T176:23 to 177:7).

22. Applicant has experienced a good deal of load growth due to irrigation in the area south of the project area, in the area near Ord, Albion, Norfolk, Battle Creek and Ainsworth. The proposed line in PRB-3774 would help support the increasing electric loads south of the project area through the interconnection with the existing system near Thedford. (T177:7-11).

23. The existing transmission lines in and near the project area are not capable of handling Applicant's projected future load growth. The existing 115 kV facilities in and near the project area are loaded to their limits and cannot carry any more electricity. In 2012 Applicant experienced so much load growth it set a new record for peak electric usage. Applicant even had to implement emergency operating conditions during that time in order to avoid disruption of customer electric service. Applicant has already taken some short-term actions to help the situation, such as reconductoring some of the 115 kV lines to slightly increase capacity. Applicant had to bring in mobile generators to the north central Nebraska area to ensure sufficient electric supply during peak usage periods. In the summer of 2013, Applicant had to bring in forty megawatts of diesel generators to supply the electric demand in the area. (T178:1-19). The proposed line would help alleviate the electric shortages for the area served by the Thedford substation during peak periods. Using mobile generators is not a long-term solution for meeting Applicant's peaking needs in the north central part of Nebraska. (T180:6-19; T185:14 to 186:6). The proposed line would also increase the reliability of the transmission grid in the area served by the Thedford substation, and would help alleviate transmission congestion in the larger transmission network. (T179:7-13).

24. The Grand Prairie project, a four hundred megawatt wind generation facility, will be located north of the project area in Holt County. The proposed line would be able to provide transmission services for the Grand Prairie project. (T179:14-24).

25. In addition to reducing congestion on the transmission system, the proposed line would increase the reliability of the transmission grid in north central Nebraska. The line would provide another path for moving electricity across the State in the event other large transmission lines were rendered inoperable. An example occurred in January 2007, when an ice storm caused Applicant to lose thirty-seven transmission lines, many of which were in the area around the Gerald Gentleman Station. The proposed line will provide an alternate transmission path that is geographically separated from the existing 345 kV transmission lines that are capable of moving electric power east-west across Nebraska. (T186:12 to 187:21).

26. The existing lines at Gerald Gentleman Station are fully subscribed and cannot carry additional load. The result is that Applicant sometimes cannot run the generating station at the level it would like to until the congestion is relieved. The proposed line would help to alleviate the congestion at Gerald Gentleman Station, as it provides another 345 kV transmission path into and out of the generation station. The additional transmission capacity provided by the proposed line would make the transmission grid in Nebraska, and particularly in the north central part of the State, more reliable. (T187:21 to 188:6; T189:13 to 190:11).

27. It would not be sufficient to construct a 115 kV transmission line to achieve the purposes Applicant intends with the proposed project. Applicant considered, but rejected, the idea of constructing a 115 kV line instead of a 345 kV line. (T212:25 to 213:17). Although 115 kV transmission lines are considerably less costly than 345 kV lines, their capacity to move electricity is also considerably less. A 345 kV line can carry

approximately ten times the electric energy than a 115 kV line. (T212:12-24). A 115 kV line would not have sufficient capacity to carry the load necessary to meaningfully reduce congestion in the area the proposed line would serve, nor would it have sufficient capacity to help eliminate voltage violations and thermal overloads that have occurred and are modeled to occur in Applicant's existing transmission system in the area where the proposed line would be located. (T213:18 to 216:13). It would likewise not have sufficient capacity to provide the area it serves with electricity should it be needed as an alternate transmission path for Applicant's existing 345 kV lines in the event of an emergency that renders the existing 345 kV lines in the central part of the state inoperable. Transmission 230 kV and 345 kV and higher are known as the "bulk power supply system" because those lines move large amounts of electricity from generating facilities to various areas where they are distributed to customers after reducing the electricity to lower voltages. Customers are not served directly by 230 and 345 kV transmission lines. (T217:10-18). Constructing a less expensive line with less capacity would not achieve the reliability benefits that the proposed line is intended to provide.

28. The Southwest Power Pool (SPP) is the Regional Transmission Organization approved by the Federal Energy Regulatory Commission to exercise operational control over the transmission assets in the SPP's operating area, which covers all or part of nine states, including most of Nebraska. The SPP is responsible for conducting transmission planning in its operating area. Applicant is a member of the SPP. (T148:5 to 149:2; T190:24 to 192:4; T192:14-16). The SPP prepared an Integrated Transmission Plan, 10-Year Assessment Report in 2012 (ITP-10). The line proposed in

PRB-3774 was part of the SPP's ITP-10. (T192:5 to 193:11; Exh. 69). In the study, the SPP recommended construction of the transmission line that is now the basis for PRB-3774. (T194:10-18; Exh. 69). In another SPP study, the High Priority Incremental Load Study Report issued in April 2014, the SPP recommended the construction of the 345/115 kV transformer near Thedford. (T194:19-24).

29. The SPP issued a Notice to Construct for the 345 kV line and related facilities now involved in PRB-3774 to the Applicant. A Notice to Construct is an order to build a transmission line that the SPP has determined to be needed. Applicant agreed to accept the Notice to Construct. (T194:25 to 195:4; Exhs. 72 through 79, 81 and 82).

30. The project that is now designated as PRB-3774 is commonly referred to as the "R-Plan" or the "R-Project." (T194:13-18; Exh. 80, page 3). Although SPP originally designated the R-Plan as a public policy project, the SPP Board of Directors later changed the designation to be a project that would provide economic and reliability benefits. (T199:7-18; Exh. 80, pages 3 and 10).

31. Although Applicant will pay for all the initial capital construction costs for the proposed project, pursuant to the SPP's cost allocation methodology Applicant will recoup all but approximately \$25,000,000 of the costs of the line. The other utilities that are members of the SPP will share in the cost of the line. Applicant will pay a portion of the cost of the project based on its share of the load in the SPP region. Applicant constitutes about seven percent of the load in the SPP operating area. Applicant would therefore recoup the costs associated with the project except for approximately seven percent of the total cost of the project. Applicant would recover its costs from the

SPP over the depreciated life of the project. Seven percent of the \$361,000,000 estimated total cost of the project would be approximately \$25,000,000. The other utility members of the SPP will ultimately pay the remaining 93 percent of costs, with each member utility paying an amount based on its share of the load in the SPP region. The Lincoln Electric System and the Omaha Public Power District in Nebraska are also members of the SPP. Lincoln Electric System constitutes approximately two percent of the load in SPP's system while the Omaha Public Power District constitutes about six percent. (T208:5-18; T221:2 to 222:13). Nebraska would therefore obtain a \$361,000,000 transmission asset, with Applicant paying approximately \$25,000,000, and all three Nebraska utilities that are members of the SPP together paying approximately \$54,150,000 of the total project cost.

32. There are no other 230 kV or 345 kV transmission lines anywhere in the vicinity of the proposed project. The nearest 345 kV transmission line to the proposed project runs from the Gerald Gentleman Station near Sutherland, Nebraska, to Grand Island, Nebraska. There are no other east-west 230 or 345 kV transmission lines in Nebraska between the Sutherland-Grand Island 345 kV line all the way to the South Dakota border. There are no other north-south 230 or 345 kV lines in the northern half of the State from the WAPA line on the eastern edge of Wheeler County, Nebraska, all the way to the western part of the Nebraska panhandle. (T216:14 to 217:22; Exh. 69, maps on pages 48, 53, 55-57, 60-69).

33. In addition to its impact on system reliability, an added benefit of the proposed transmission line is that it would allow Applicant to provide transmission services to any additional generation resources that might be built in the north central part of Nebraska. The north central part of Nebraska has very high wind capacity factors, making it a prime location for future wind turbine generation facilities. Applicant has already seen the addition of significant wind turbine generation facilities constructed in other areas of its operating area. Current transmission assets in the project area are fully loaded, so additional generation resources would not be able to receive transmission services without the construction of additional transmission facilities. (T217:19 to 218:8). Allowing the possibility of additional wind resources could be beneficial to Nebraska's utilities and electric ratepayers should the need arise to invest in generation resources with no emissions, such as if more stringent federal air emissions regulations were to be adopted, or if the state or federal government were to adopt a renewable portfolio standard requiring that a certain percentage of each utility's capacity or energy come from renewable generation resources. Since such emissions regulations or renewable generation portfolio standards are not currently in place, these factors are not part of the approval criteria for the project, but the ability to provide transmission services to potential generation resources of any type in the project area is an additional benefit of the project.

34. Intervenors propose that the line could generally follow Highway 20 in order to allow easier access to the line in the event of inclement weather, at least on the northern east-west portion of the line, and to allow the use of available easements.

Intervenors argue this would increase reliability and reduce costs. (T237:6 to 247:17). Highway 20 is north of Applicant's project area, and only appears in the upper right-hand corner of the maps of the project area as it proceeds further north away from the project area. (Exh. 1; Exh. 67). Applicant's witness estimated that to extend the proposed line north to follow Highway 20 would add about sixty miles of additional length to the proposed transmission line. This would add additional cost to the project somewhere in the neighborhood of \$90,000,000. (T238:5-23). The Board points out that this would also create sixty additional miles of transmission line which Applicant would be responsible to maintain. (T251:1-3).

CONCLUSIONS OF LAW

35. 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-3774.

36. 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 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. Applicant consulted with the Commission and the U.S. Fish and Wildlife Service, and has made substantial modifications to the proposed route for the line in order to mitigate, to the extent feasible, the potential for harm to threatened and endangered species, raptors and migratory birds. The Commission also pointed out that Applicant 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, 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.

37. It is in the best interests of Applicant's ratepayers and the State of Nebraska to have another bulk transmission line that increases reliability in the transmission grid in north central Nebraska. There are no current bulk transmission lines (230 kV or larger) in or near the project area. The nearest bulk transmission line to the corridor in which Applicant would build its proposed 345 kV line is a 345 kV transmission line from Gerald Gentleman Station to Grand Island, a considerable distance away from the PRB-3774 project area. The proposed project would increase reliability, relieve transmission congestion and reduce or relieve voltage violations and thermal overloads in the central Nebraska transmission grid system. The line would create grid system redundancy in

central Nebraska, providing a second pathway through which bulk power can be moved. This is extremely useful, especially in the event of a transmission line outage caused by any number of events, including an ice storm or tornado.

38. The Board therefore finds that the evidence shows the proposed transmission line will serve the public convenience and necessity.

39. Intervenors argue that at least portions of the proposed line may be inaccessible as a result of heavy snowfalls in winter and wet conditions that lead to problems such as mud and similar problems whenever heavy moisture events occur during other times of the year. Intervenors believe that placing the line along Highway 20 north of the current project area would allow greater access to the line during inclement weather due to use of the highway. The evidence indicates Highway 20 is located approximately thirty miles north of the proposed project area. Although Intervenors concede that the Board cannot direct Applicant where to site the line, Intervenors argue the decreased maintenance costs associated with following Highway 20 justify the Board denying the application and allowing Applicant to select a different project corridor than the one in the application. It is uncontested that the issue of the particular route for a line to follow is beyond the Board's jurisdiction. The Nebraska Supreme Court has been very clear on this point. In *Lincoln Electric System v. Terpsma*, 207 Neb. 289, 298 N.W.2d 366 (1980), the Court addressed the issue of whether the Board has the authority to select the particular route a transmission line must follow. In that case, the Court said, "Stated another way, the question is whether the utility which must build the line has the power to select the route, or whether the Board has that power.

We hold the utility which builds the line has the power to select the route.” *Id.* at 290, 298 N. W.2d at 367. The Court went on to state that once the Board finds that the line will serve the public convenience and necessity, “The Board has discharged its duty and has no authority to select a particular route other than that selected by the utility which the Board supervises, but does not own.” *Id.* at 292, 298 N.W.2d at 368. In the present proceeding, Intervenors argue that an alternate route, such as following Highway 20, would decrease maintenance costs and increase the ability of Applicant’s crews to gain access to the line during inclement weather.

40. In situations where there are not competing applicants to construct a transmission line, the Nebraska Supreme Court has found that the Board’s task is “to determine whether the applicant it ha[s] before it can economically and feasibly supply the electric service resulting from the proposed construction which it had found would serve the public convenience and necessity.” *In re Application of Nebraska Public Power District*, 281 Neb. 350, 356, 798 N.W.2d 572, 578-579 (2011). Intervenors essentially argue that because another route might allow for greater access to the line in inclement weather and wet conditions, an alternate route would arguably involve less maintenance costs and the Board should deny the application and require Applicant to refile its application using the most cost-effective route (or corridor) possible. The Nebraska Supreme Court has addressed Intervenors’ argument and rejected it.

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

42. The evidence demonstrates that there is a dearth of bulk transmission lines in north central Nebraska. There are no 230 kV or 345 kV transmission lines for a substantial distance from the project corridor. The maps showing transmission assets in Nebraska clearly demonstrate that in terms of bulk transmission lines, the proposed line in PRB-3774 would be the only such line through north central Nebraska. In fact, one of the purposes served by the proposed line requires it to be a significant distance from existing bulk transmission lines, particularly those moving bulk power west to east across the State. In order to provide a back-up system in the event of planned or unplanned outages, it is necessary to create sufficient distance from existing lines so that weather conditions affecting the existing lines are not likely to also affect the proposed line. It appears that the corridor chosen by the Applicant fulfills that purpose. Also, if additional commercial-size generation facilities of any type were to be located anywhere in the vicinity of the project area, there is currently insufficient transmission capacity to accommodate such generation assets. The proposed line would not duplicate existing bulk transmission lines in terms of proximity or function.

43. The Board finds that the evidence demonstrates that the proposed transmission line and related facilities will not unnecessarily duplicate other facilities or operations.

44. NPPD's application involves a corridor inside which the proposed line will be located. Applicant has identified a proposed preferred and alternate route. If the application were to be approved as submitted, the Applicant would have the authority to place the transmission line anywhere within the boundary of the corridor it so chooses.

The inclusion of the preferred and alternate route are instructional, and help the public understand where there is a high probability the line will be located, but that preliminary determination is subject to change. Applicant must therefore demonstrate that the approval criteria in Neb. Rev. Stat. § 70-1014 are met for the entirety of the territory inside the corridor. The Board finds that Applicant has met this burden.

45. The project in PRB-3774 involves an application for a line and related facilities planned and approved by the Southwest Power Pool, which is a federally-approved regional transmission organization. The SPP issued a notice to construct to the Applicant, directing it to construct the line and related facilities. Pursuant to Neb. Rev. Stat. § 70-1014, the Board must also consider information from the SPP's planning process, and may consider the benefits to the region, including Nebraska, provided by the proposed line and related facilities when determining whether to approve or deny the application. The evidence shows that the proposed transmission line and related facilities in PRB-3774 went through an extensive approval process through the SPP, culminating in issuing notices to construct the various parts of the project, including the 345 kV line and a new substation. The proposed line will primarily provide benefits in Nebraska, but the addition of a bulk transmission line where there are no similar facilities currently will also provide benefits to the region in terms of additional reliability and the ability to move bulk power around the SPP region. These factors weigh in favor of approval of application PRB-3774.

46. Intervenors assert that placement of the proposed transmission line would damage the fragile ecology in the Nebraska Sandhills and affect their livelihoods. The

hearing officer determined that evidence on this subject is beyond the Board's jurisdiction and was inadmissible. The Board agrees with the hearing officer's determination. The criteria upon which the Board must base its decision to approve or deny the application are set out in Neb. Rev. Stat. § 70-1014. Nothing in that statute gives the Board the authority to deny an application because the transmission facilities in an application filed with the Board would cause damage to the local ecosystem or to individual landowners' property. As the Nebraska Supreme Court has stated, "the PRB, as an administrative board, ha[s] 'no power or authority other than that specifically conferred upon it by statute or construction necessary to accomplish the purpose of the act.'" *In re Application of Nebraska Public Power District*, 281 Neb. 350, 356, 798 N.W.2d 572, 578 (2011), citing *Lincoln Electric System v. Terpsma*, 207 Neb. 289, 291, 298 N.W.2d 366, 368 (1980). The Board likewise has no authority to determine whether proposed electric transmission lines would cause excessive damage to an ecosystem. The Board is not unsympathetic to Intervenor's concerns. However, even if the Board were to agree with Intervenor's concerns, the Board would still lack the legal authority to deny the application based on those concerns. There may be other forums to which Intervenor can take those concerns, such as the Applicant's management and governing body. The Board is an administrative agency with limited jurisdiction. The Legislature establishes the parameters of the Board's scope of review when approving electric transmission facilities. The Legislature has not provided the Board with the authority to address Intervenor's concerns regarding the impact of transmission facilities on the local ecosystem, the environment, a landowner's property, or a business owner's income.

47. 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. (Exh. 60; Exh. 61, Exh. 63). Based on Applicant's commitments to take mitigation measures in order to avoid, minimize, and/or mitigate impacts to endangered and threatened species and other species protected under federal law, to include conducting site surveys for certain species, installation of bird flight diverters, use of sodium vapor lighting and down-shield lighting at substations, along with numerous other mitigation actions, the Commission has determined that the proposed project "may affect but is not likely to adversely affect" any endangered or threatened species or habitat critical to those species. (Exh. 60; Exh. 63). The Board believes it is reasonable to defer to the Commission's expertise. The Board therefore concludes that, due to Applicant's agreement to work with the Commission to take measures to mitigate any potential impact on threatened or endangered species, approval of the proposed transmission lines and substation 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.

48. Intervenors take the position that the Board has the authority, and perhaps even the duty, to review the determination made by the Nebraska Game and Parks Commission pursuant to Neb. Rev. Stat. § 37-807(3) regarding whether the transmission

line and related facilities might 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 to be critical, and render an independent determination as to whether the Commission's determination is correct. The Board is unpersuaded by Intervenor's arguments. The Board believes that the Legislature intended for other agencies, such as the Board, to rely on the advice provided by the Commission in this area. The Board lacks the expertise to conduct such an examination. The Commission is the agency charged with the management and protection of endangered and threatened species in Nebraska. The Board believes the Legislature expects other agencies to rely on the Commission's advice provided as a result of the consultation required by § 37-807(3), and it is therefore reasonable for the Board to defer to the Commission's determination. Both the Commission and the U.S. Fish and Wildlife Service have had numerous meetings with the Applicant dating back to 2012 regarding the proposed project. All three entities have coordinated during the past two years in an effort to narrow the project area to the corridor in application PRB-3774 and determine what mitigation measures would be necessary. Intervenor would then have the Board essentially reopen that review process and begin the analysis again. The Board finds there is no clear Legislative or judicial direction indicating that the Board is expected to conduct an analysis of the Commission's consultation response to determine if the Commission's determination is correct. Certainly, if a party were to point out that the Commission's determination was based on erroneous information, such as a misunderstanding where a project area would be located or that the Commission had reviewed the wrong

application, the Board would have an obligation to conduct an examination of the issue. But Intervenor argues that the Board should conduct a review of the Commission's substantive findings to determine if the determination is correct. The Board finds no basis upon which to accept Intervenor's argument, and declines to do so. Evidence sought in order to have the Board review the Commission's substantive decision or the basis upon which it was founded is therefore irrelevant to the proceedings and inadmissible.

49. Intervenor takes the position that evidence pertaining to the project's impact on the aesthetic beauty of the project area, the environment (including the fragile ecosystem in the Nebraska Sandhills), Intervenor's property, Intervenor's income, and the general economy in the project area and the State (particularly the tourism industry) are all relevant to the approval criteria in Neb. Rev. Stat. § 70-1014 that the application "will serve the public convenience and necessity." The Board has no reason to doubt that the project could have an impact on any or all of these issues. The Board acknowledges that the aforementioned issues raised by Intervenor are all significant issues, and that they could have a substantial impact on Intervenor. However, a demonstration that an issue has even a dramatic impact on an Intervenor does not thereby, by itself, create jurisdiction for the Board to address that issue or deny an application on that basis. The issues listed above that Intervenor raises are not the type that are normally considered by an administrative body when examining the issue of the public convenience and necessity. The term "public convenience and necessity" requires an examination of whether there is a need for the services involved in an application. It is not so broad as to

encompass any issue that might have some impact on a person or business. The Board agrees with the hearing officer's findings on this topic. As the hearing officer pointed out, when the Legislature intends for the Board to conduct a review of the economic impact of a proposed facility, that requirement is specified, as is the case in applications for Certified Renewable Export Facilities under Neb. Rev. Stat. § 70-1014.02. (Exh. 104, pages 8-9). One of the requirements in that statute is that the Board must be able to find that a qualifying facility "will provide reasonably identifiable and quantifiable public benefits, including economic development, to the residents of Nebraska or the local area where the facility will be located. . . ." Neb. Rev. Stat § 70-1014.02(2)(a)(i).

50. The Board believes its understanding of the term "public convenience and necessity" is supported by caselaw. In a case involving the same Applicant as in the present proceeding, the Nebraska Supreme Court held "[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 the public convenience and necessity require a given service to be performed.*" (emphasis added) *In re Applications of Nebraska Public Power District*, 215 Neb. 8, 18, 337 N.W.2d 107, 113-114 (1983), citing *Utilities Comm. v. Coach Co. and Utilities Comm. v. Greyhound Corp.*, 260 N.C. 43, 132 S.E.2d 249 (1963). In a case involving motor carrier services, the Nebraska Supreme Court found "The burden is on the applicant to show that the proposed service is required by public convenience and necessity. This court has consistently held that in determining the issue of public convenience and necessity, controlling questions are *whether or not*

the operation will serve a useful purpose responsive to a public demand or need; whether or not this purpose can or will be served as well by existing carriers; and whether or not it can be served by the applicant in a specified manner without endangering or impairing the operations of existing carriers, contrary to the public interest.” (emphasis added)(citations omitted). *In re Application of Petroleum Transport Service, Inc.*, 210 Neb. 411, 414, 315 N.W.2d 245, 248 (1982). *See also In re Application of Amsberry, Inc.*, 220 Neb. 353, 357, 370 N.W.2d 109, 112 (1985). In the context of an administrative agency performing oversight functions for a particular industry, the term “public convenience and necessity” generally refers to whether a service to be supplied by the applicant is needed by the public. The Board does not believe the term is intended to allow the administrative agency to take into account all possible consequences of the service or its needed infrastructure on individual citizens, the environment, tourism, or wildlife. Those are indeed important issues, but they are not part of what is understood to be meant when the Legislature uses the term “public convenience and necessity” in a regulatory context.

51. That based on the foregoing findings, Applicant is entitled to an Order approving the construction of the transmission line described in application PRB-3774.

ORDER

That during that part of its public meeting on October 10, 2014, held subsequent to the hearing on application PRB-3774, a majority of the members of the Power Review Board (5 yes, 0 no) voted in favor of a motion to approve application PRB-3774.

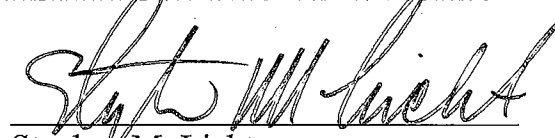
IT IS THEREFORE ORDERED by the Nebraska Power Review Board, pursuant to the Board's action taken during its public meeting held October 10, 2014, that the application designated PRB-3774, for authorization for the Nebraska Public Power District to construct approximately two hundred twenty (220) miles of 345 kilovolt transmission line in Antelope, Blaine, Garfield, Holt, Lincoln Logan, Loup, McPherson, Rock, Thomas and Wheeler Counties, and a substation in Wheeler County, Nebraska be, and hereby is, APPROVED.

IT IS FURTHER ORDERED that, pursuant to the requirements in Neb. Rev. Stat. § 37-807(3), the Nebraska Public Power District make a good faith effort to act in conformity with its agreements to mitigate the possibility of negative impacts of construction activities on endangered and threatened species that might be located in the project area, as described in the letter from the Nebraska Public Power District to the Nebraska Game and Parks Commission dated August 26, 2014 (Exh. 106) and in the letter from the Commission to the Nebraska Power Review Board dated September 11, 2014 (Exh. 60), and to continue coordination activities with the Commission as the Commission determines necessary throughout construction of the project.

Lichter (Chair), Reida (Vice Chair) Grennan, Haase and Morehouse, participating.

NEBRASKA POWER REVIEW BOARD

BY:


Stephen M. Lichter
Chairman

DATED: December 9th, 2014.

CERTIFICATE OF SERVICE

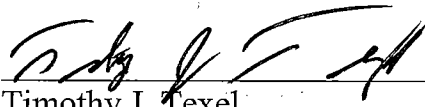
I, Timothy J. Texel, Executive Director and General Counsel for the Nebraska Power Review Board, hereby certify that a copy of the foregoing **Order** in PRB-3774 has been served upon the following parties by mailing a copy of the same to the following persons at the addresses listed below, via certified United States mail, first class postage prepaid, on this 9th day of December, 2014.

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