

**STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE APPLICATION OF)	PRB-3777-G
COTTONWOOD WIND PROJECT, LLC,)	
HEADQUARTERED IN JUNO BEACH, FLORIDA,)	
REQUESTING AUTHORITY TO CONSTRUCT)	ORDER ON
AN 89.5 MEGAWATT WIND TURBINE ELECTRIC)	APPLICANT'S
GENERATION FACILITY AND RELATED)	MOTION TO
FACILITIES IN WEBSTER COUNTY, NEBRASKA.)	AMEND ORDER

On May 14, 2015, Cottonwood Wind Project, LLC, (“Applicant”), filed a Motion to Amend Order with the Nebraska Power Review Board (“the Board”). In its Order approving PRB-3777-G issued on October 28, 2014, the Board stated that before the approval shall become effective “a power purchase agreement for the entire electric output from the proposed facility must be executed by the Cottonwood Wind Project, LLC and the Nebraska Public Power District within one hundred and twenty days following the issuance of this order.” Applicant later filed an Amended Motion to Amend Order requesting that the Board amend its Order approving application PRB-3777-G by extending the date by which Cottonwood is required to enter into a power purchase agreement for the output from the generation facility to June 1, 2015. The Board granted the motion.

The Applicant intended to sell the electric output of the proposed generation facility to the Nebraska Public Power District (“NPPD”). NPPD has since informed Applicant that it no longer desires to attempt to complete the contractual arrangements. Applicant continues to desire to construct the proposed project, and therefore requests

that the Board amend its order to extend the time within which Applicant must enter into a power purchase agreement to October 1, 2015, and to grant Applicant leave to return to the Board prior to October 1, 2015, to substitute a new Nebraska power supplier as the party with which Applicant will enter into a power purchase agreement to sell the electric output of the proposed facility. The Board held a hearing on Applicant's Motion to Amend Order on May 22, 2015.

Counsels for both Intervenors informed the Board they do not object to the Board granting Applicant's Motion so long as Applicant is still required to enter into a power purchase agreement with a Nebraska electric power supplier for the output from the proposed facility.


The Board finds it retains jurisdiction over this matter due to the fact that the Board's Order approving the Application was conditioned on the occurrence of an uncertain future event. Since the Board's Order did not perform in praesenti, the Board finds that its Order is not yet a final judgment. Orders dependent on the occurrence of uncertain future events do not operate as final judgments from which an appeal can be taken. See *Custom Fabricators of Granite & Marble, Inc. v. Lenarduzzi*, 259 Neb. 453 (2000); *Strunk v. Chromy-Strunk*, 270 Neb. 917 (2006). The Board therefore believes it retains jurisdiction over the matter. The Board is aware that its Orders are expected to be issued expeditiously. The Board is normally required to issue its decision within sixty days after the conclusion of the hearing on the merits. Neb. Rev. Stat. § 70-1013. In this instance, the Applicant has essentially asked the Board to retain jurisdiction over this matter in order to allow considerable additional flexibility to accommodate the

Applicant's need to negotiate with one or more parties to finalize a power purchase agreement. The Board finds the provisions in § 70-1013 are a protection afforded to an Applicant to ensure the Board's timely issuance of a decision. In this instance, the Applicant is requesting that the Board retain jurisdiction over the proceeding and waives the normal sixty day requirement.

The Board finds that Applicant has shown good cause in support of its Motion.

IT IS THEREFORE ORDERED that the Motion To Amend Order filed by Cottonwood Wind Project, LLC, is hereby GRANTED. The Board's Order approving application PRB-3777-G, issued on October 28, 2014, is hereby amended by extending the time period in which Cottonwood Wind Project, LLC, has in which it must execute a power purchase agreement October 1, 2015. The Board further grants leave to Cottonwood Wind Project, LLC to designate a new Nebraska power supplier or suppliers, as that term is defined in Neb. Rev. Stat. section 70-1014.02(1), substituting the new power supplier for the Nebraska Public Power District. Applicant will notify the Board in writing no later than October 1, 2015, of the new power supplier(s) involved, after which the Board may schedule another hearing to determine how to proceed. All other provisions in the Board's original approval order issued on October 28, 2014 remain in effect and unchanged by this Order.

Dated: June 19, 2015.



Stephen M. Lichter
Chairman

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 On Applicant's Motion To Amend Order** in PRB-3777-G has been served upon the following parties by mailing a copy of the same to the following persons at the addresses listed below, via United States mail, on this 19th day of June, 2015.

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