

**STATE OF NEBRASKA  
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE APPLICATION	)	<b>PRB-4031</b>
OF THE CHEYENNE LIGHT, FUEL AND POWER	)	
COMPANY, HEADQUARTERED IN CHEYENNE,	)	
WYOMING, REQUESTING AUTHORIZATION	)	
TO CONSTRUCT 7.39 MILES OF 230 KILOVOLT	)	<b>ORDER</b>
TRANSMISSION LINE AND A SUBSTATION	)	
IN SCOTTS BLUFF COUNTY, NEBRASKA	)	

On the 31<sup>st</sup> day of May, 2024, 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 May 3, 2024, the Cheyenne Light, Fuel and Power Company (CLFP), headquartered in Cheyenne, Wyoming, filed an application with the Board requesting authorization to construct 7.39 miles of 230 kilovolt (kV) transmission line and a substation in Scotts Bluff County, Nebraska. (Exh. 1). The application was designated “PRB-4031.”

2. The proposed location of the 230 kV transmission line will follow the south section line of sections 9-11, Township 22 North, Range 58 West, then northeast to just

northwest of the midpoint of section 12, Township 22 North, Range 58 West, then proceed east through sections 7 and 8, Township 22 North, Range 57 West, then turning north to just northwest of the midpoint of section 5, then generally northeast through sections 4 and 5, Township 22 North, Range 57 West, and ending at the proposed Bluffs Substation near the southern boundary of section 33, Township 22 North, Range 57 West, all in Scotts Bluff County, Nebraska. The proposed 230 kV substation would be located approximately five miles east of the Village of Lyman, Nebraska. (Exh. 1, pages 5 and 30; Exh. 15).

3. The total project, which continues into the State of Wyoming, consists of approximately 285 miles of transmission line. Only that portion of the project to be located in Nebraska is part of application PRB-4031. (T60:10-21; Exh. 1, pages 2, 5 and 6).

4. If approved by the Board, construction on the portion of the project located in Nebraska would begin immediately or soon after approval, with an expected completion date of December 31, 2024. (Exh. 1, pages 2-3).

5. That those power suppliers, other than the applicant, that the Board deemed to be potentially affected by or interested in application PRB-4031 were the Nebraska Public Power District, Roosevelt Public Power District, Tri-State Generation and Transmission Association, Inc., and the Western Area Power Administration – Rocky Mountain Region. Written notice of the filing of the application, the hearing date, and the opportunity to file a Petition for Intervention or Protest was provided to these potentially interested parties and CLFP via certified U.S. mail. (Exh. 2).

6. Notice of the filing and the opportunity to file a Petition for Intervention to participate in the proceeding was provided to the general public by publication of a notice in the Scottsbluff *Star-Herald* newspaper on Wednesday, May 11, 2024. (Exh. 3). The publication is a legal newspaper with circulation in the general area where the proposed transmission line would be located.

7. That no Petitions for Intervention or Protests were filed with the Board concerning application PRB-4031. (T10:22 to T11:3; T15:3-5).

8. 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 their habitat which is determined by the Commission to be critical. The Commission provided a letter to the Board dated May 28, 2024, informing the Board that the proposed project area is within the range of the state-listed endangered Swift Fox. The consultants working for CLFP on the project agreed on behalf of CLFP to conduct site surveys prior to construction to avoid adverse impacts to Swift Fox. Based on the agreement to conduct site surveys, the Commission determined that the project “May Affect, but is Not Likely to Adversely Affect” Swift Fox, and the Commission did not object to the Board’s approval of the project. The consultant working with CLFP independently completed an Environmental Review Report to coordinate with the

Commission as to potential effects of the project on endangered or threatened species. Since the hearing did not proceed to consideration of the merits of the project, neither the consultation letter nor the Environmental Review Report were offered into evidence at the hearing.

9. CLFP is a privately-owned Wyoming corporation that provides electricity to customers in Wyoming. It is a wholly-owned subsidiary of Black Hills Corporation. CLFP operates under the trade name Black Hills Energy. (T8:24 to 9:1; T29:20 to T32:10; Exhs. 1, page 24; Exh. 11 and Exh. 17). CLFP has no retail service territory in Nebraska. (Exh. 13). CLFP does not provide electricity to any wholesale or retail customers in the State of Nebraska. (T39:1-12; T55:20 to 56:10; Exh. 1, page 24). CLFP does not own any generation facility in the State of Nebraska. (T59:16-22; Exh. 16).

10. The Black Hills companies provide electricity to customers in Colorado, South Dakota and Wyoming. (Exh. 12, page 24; Exh. 13). The other related companies doing business as Black Hills Energy do not provide electricity to wholesale or retail customers in Nebraska.

11. Black Hills Power Company (BHPC) owns an existing 230 kV transmission line that travels from the Nebraska-South Dakota border to the Stegall Substation in the general vicinity of the City of Scottsbluff, Nebraska. (T40:3 to 41:9; T76:2-19; Exh. 1, page 25; Exh. 14 and Exh. 15). In March 1975 the Black Hills Power and Light Company, which later became BHPC, filed an application for authority to construct a 230 kV line from the Nebraska-South Dakota border to the Stegall Substation. The Board found that it had jurisdiction over the application, and the Board approved the

application. (Exhs. 8 and 9).

12. When the Board considered application PRB-2030, the Board's primary controlling statutes in Chapter 70, article 10 did not provide a definition of what constituted an "electric supplier" in the State of Nebraska. A definition for the term "electric supplier" was created by the Nebraska Legislature in Legislative Bill 302 in 1981. The definition in LB 302 stated "Electric suppliers shall mean any legal entity supplying, producing or distributing electricity within the state for sale at wholesale or retail." (Exh. 10). The Board's current statute defining the term "electric supplier" is almost identical to the language in LB 302. The current definition, codified at Neb. Rev. Stat. § 70-1001.01(2), states "Electric supplier or suppliers of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail."

13. The proposed transmission line in PRB-4031 will be known as the "Sweet Grass-Bluffs" transmission line. It will interconnect with an existing 230 kV transmission line owned by Black Hills Power Company at a proposed new substation to be known as the "Bluffs Substation." The proposed Sweet Grass-Bluffs line will then transmit electricity from the Bluffs Substation to the Nebraska-Wyoming border, and then on to customers in Wyoming. (T52:2-20; Exh. 1, pages 5 and 25; Exh. 14; Exh. 15). The proposed Sweet Grass-Bluffs line will not interconnect with the transmission grid owned by any other electric utility operating in the State of Nebraska. The primary purpose of the proposed Sweet Grass-Bluffs transmission line is to allow CLFP to move electricity generated in South Dakota and Wyoming through Nebraska to its customers in

Wyoming, allowing CLFP to bypass transmission facilities owned by the Western Area Power Administration (WAPA) and avoid the need to schedule or pay for the use of WAPA's transmission facilities. CLFP currently uses WAPA's transmission facilities to transmit electricity from the Stegall substation to the Nebraska-Wyoming border. (T56:22 to 57:15; Exh. 1, page 26).

14. At its hearing held on May 31, 2024, the Board first addressed the issue of whether it has jurisdiction over PRB-4031.

15. CLFP submitted a written notice certifying that CLFP is in compliance with the critical infrastructure protection requirements issued by the North American Electric Reliability Corporation. (Exh. 17). To the extent CLFP may be required to comply with the provisions of Neb. Rev. Stat. §§ 70-1001.01(7) and 70-1012(2), it has done so.

### **CONCLUSIONS OF LAW**

16. 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 an electric supplier commencing construction of transmission facilities.

17. The terms "electric supplier or suppliers of electricity" are defined to mean "any legal entity supplying, producing or distributing electricity within the state for sale at wholesale or retail." Neb. Rev. Stat. § 70-1001.01(6).<sup>1</sup> For purposes of this order the

---

<sup>1</sup> The Board notes that due to the enactment of multiple bills during the 2024 legislative session that add to or amend the definitions in §70-1001.01, the Revisor of Statutes renumbered the subsections in § 70-1001.01 in early June 2024. The definition of the term "electric supplier" was previously set out in subsection (3) of § 70-1001.01.

Board will refer to the term “electric supplier.”

18. It is undisputed that CLFP is a privately owned Wyoming corporation and wholly owned subsidiary of Black Hills Corporation. (Exh. 1, page 24; Exh. 11). CLFP is therefore a legal entity.

19. CLFP does not own any generation sources in Nebraska. (T59:16-22; Exh. 16). CLFP is therefore not engaged in producing electricity in the State of Nebraska.

20. In its commonly used sense, to supply a product is “To make available for use; provide” or to “To furnish or equip with.” *American Heritage Dictionary* 815 (3<sup>rd</sup> Edition 1994). Similarly, another definition is “to furnish or provide (what is needed) to (someone).” *Webster’s New World Dictionary* 648 (4<sup>th</sup> Edition 2013). CLFP does not currently furnish or make electricity available directly to any customer in Nebraska, and would not do so if the proposed Sweet Grass-Bluffs 230 kV transmission line were to be built. (T39:1-12; T55:20 to 56:10; Exh. 1, page 24). Therefore, based on the evidence adduced at the hearing, CLFP is not engaged in supplying electricity within the State of Nebraska, and would not supply electricity to any customers if the proposed line were to be built.

21. In this context, to engage in distributing a commodity is to provide it to customers for their use. This seems to indicate providing electricity to end-use customers, but it could also potentially include wholesale customers. The term “distribute” is understood to mean “to give out in shares” or “to spread out.” *Webster’s New World Dictionary* 192 (4<sup>th</sup> Edition 2013), or “To divide and give out in portions” or “To deliver or hand out.” *American Heritage Dictionary* 248 (3<sup>rd</sup> Edition 1994). As

stated previously, CLFP is not currently engaged in delivering electricity to any wholesale or retail customers in the State of Nebraska, and would not do so if the proposed Sweet Grass-Bluffs 230 kV transmission line were to be built. Therefore, CLFP is not engaged in distributing electricity within the State of Nebraska, and would not be engaged in distributing electricity within Nebraska if the transmission line that is the basis for application PRB-4031 were to be built.

22. The language in Neb. Rev. Stat. § 70-1012 limits the Board's jurisdiction to those entities that are electric suppliers operating in Nebraska. The statute states "(1) Before any electric generation facilities or any transmission lines or related facilities carrying more than seven hundred volts are constructed or acquired *by any supplier*, an application, filed with the Board . . . shall be approved by the board." (emphasis added). Exercise of the Board's jurisdiction is predicated on the entity wishing to build a transmission line being an electric supplier within Nebraska. By adding the definition of the term "electric supplier" to the Board's controlling statutes in 1981, the Legislature restricted the Board's jurisdiction to those parties that fall under the definition.

23. The Board's Order in PRB-2030 created precedent for the Board finding that it has jurisdiction over a transmission line proposed to be built in the State of Nebraska when the entity involved was not engaged in producing electricity in the state, and likewise not engaged in supplying or distributing electricity to any customers at wholesale or retail in Nebraska, nor would it do so if the project were to be built. However, the Board's ruling in PRB-2030 is easily distinguishable from the context of the current application. When the Board addressed PRB-2030, there was no statutory

definition of the term “electric supplier.” The Board therefore understandably determined it had jurisdiction over a transmission line to be built in Nebraska. After the Legislature provided a definition of the term “electric supplier” that included specific limitations, the Board is able to determine with a great deal more certainty what parties the Legislature intended would fall under the Board’s approval jurisdiction.

24. The Board finds that since CLFP does not meet the definition of an “electric supplier” in Neb. Rev. Stat. § 70-1001.01, the Board’s jurisdiction over CLFP and its proposed transmission line and substation do not attach under § 70-1012. Due to this, the Board must dismiss the application for lack of jurisdiction.

25. CLFP indicated to the Board that it understands that if the company were to begin providing service to any customers at wholesale in Nebraska, CLFP may at that time become an electric supplier in Nebraska, which would require CLFP to file an application with the Board to approve the use of the transmission line described in PRB-4031 for that purpose. (T42:3 to 43:2; T64:5-9).

26. In preparation for the hearing and possible action on CLFP’s application, the Board complied with its obligation to coordinate with the Nebraska Game and Parks Commission under Neb. Rev. Stat. § 37-807(3) in furtherance of the purposes of the Nebraska Nongame and Endangered Species Act. However, the language in § 37-807(3) states that “All other state agencies shall, in consultation with and with the assistance of the commission, utilize their authorities in furtherance of the purposes of the act . . . by taking such action necessary to insure that actions authorized, funded or carried out by them do not jeopardize the continued existence of such endangered or threatened species .

...” Since the Board lacks jurisdiction over CLFP’s application and project, and the Board will not take action to authorize the project, the Board also lacks authority to issue any order or impose requirements regarding threatened or endangered species under Neb. Rev. Stat. § 37-807(3).

### **ORDER**

That during that part of its public meeting on May 31, 2024, held subsequent to the hearing pertaining to application PRB-4031, a majority of the members of the Power Review Board, by a vote of 3 to 0, voted in favor of a motion to find that the Power Review Board lacks jurisdiction over application PRB-4031.

IT IS THEREFORE ORDERED by the Nebraska Power Review Board that, pursuant to the Board’s action taken during its public meeting held May 31, 2024, application PRB-4031 for authorization to construct 7.39 miles of 230 kilovolt transmission line and a substation in Scotts Bluff County, Nebraska, be and hereby is, **DISMISSED FOR LACK OF JURISDICTION.**

Hutchison (Chair), Austin and Leigl, participating.

Vice Chairwoman Gottschalk did not participate in the hearing or the decision. Board member Moen recused himself from any involvement in the deliberation or decision on this matter.

Dated this 13<sup>th</sup> day of July, 2024.



\_\_\_\_\_  
Chuck Hutchison  
Chairman

### CERTIFICATE OF SERVICE

SARA Birkett, Paralegal  
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-4031 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 17<sup>th</sup> day of July, 2024.

Douglas J. Law  
Associate General Counsel  
Cheyenne Light, Fuel & Power Co.  
1731 Windhoek Drive  
Lincoln, NE 88512

Sara Birkett  
\_\_\_\_\_  
~~Timothy J. Texel~~ SARA Birkett