

STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD

IN THE MATTER OF THE APPLICATION)	SAA 316-20-A
OF THE NEBRASKA PUBLIC POWER)	
DISTRICT AND THE VILLAGE OF)	
WINNEBAGO, NEBRASKA, TO MODIFY)	
RETAIL SERVICE AREA AGREEMENT)	
316 BETWEEN THE NEBRASKA PUBLIC)	ORDER
POWER DISTRICT AND THE BURT)	
COUNTY PUBLIC POWER DISTRICT.)	

NOW on this 9th day of November, 2020, the above-captioned matter came under consideration by the Nebraska Power Review Board (the Board) and the Board, being fully advised as to the premises, finds as follows:

1. That the Nebraska Public Power District (NPPD), headquartered in Columbus, Nebraska, and the Village of Winnebago, Nebraska (Winnebago) filed an application with the Board on October 15, 2020, requesting approval of an amendment to retail Service Area Agreement 316. Service Area Agreement (SAA) 316 is an agreement between NPPD and the Burt County Public Power District (Burt Co. PPD) setting out the boundary between the two parties' retail service areas.

2. Burt Co. PPD did not consent to approval of application SAA 316-20-A.

3. That Burt Co. PPD currently holds the retail service area rights to provide electric service to the annexed territory. The application, if approved, would therefore transfer a portion of Burt Co. PPD's service area to NPPD.

4. On July 1, 2020, Winnebago enacted Ordinance No. 20-10-1. As of the date of this Order, Burt Co. PPD has not filed an action in court to challenge the validity of the annexation.

5. That on September 1, 2020, Winnebago passed Resolution No. 20-020, in which the Village sets out its interests in the service area amendment application and authorizing the Village to join NPPD as a co-applicant in SAA 316-20-A. Winnebago requests to join this application because the Village and its immediate vicinity is part of NPPD's retail service area. Winnebago wishes to have the annexed territory added to NPPD's retail service area established in retail Service Area Agreement 316. The Board accepts the resolution as essentially Winnebago's Petition for Intervention in a contested matter. The Board finds Winnebago is an interested party in this proceeding and grants the Village's request to intervene. Winnebago will be characterized as a co-applicant.

6. On October 16, 2020, the Board mailed, via certified U.S. mail, a Notice of Filing and Hearing date to the parties in this matter.

7. That on November 2, 2020, Burt Co. PPD filed a Protest in opposition to the approval of application SAA 316-20-A.

8. That on November 4, 2020, the Board's executive director and general counsel held a conference call with counsels for NPPD and Burt Co. PPD to discuss the Protest. All parties agreed that NPPD and Burt Co. PPD would submit a stipulation agreement setting out the undisputed facts in this proceeding, the general manager for the Burt Co. PPD would submit a statement in the form of a letter to the Board regarding the requested

service area transfer, and that the parties would waive a hearing in this matter and submit the matter on the pleadings. The stipulation agreement and letter statement were filed on November 6, 2020.

9. That the territory to be transferred is located on the northern boundary of the Winnebago's corporate limits. Exhibit A is a copy of Ordinance No. 20-10-1, annexing the tract of land. Exhibit B is a copy of Resolution No. 20-020. Exhibit C is a map showing Winnebago's corporate limits and the service areas in the vicinity of Winnebago, including the proposed annexed territory. Exhibit D is a metes and bounds description of the area to be transferred.

10. In the Stipulation Agreement it states there are currently no electric facilities located in the territory requested to be transferred in SAA 316-20-A, nor are there any customers currently served by Burt Co. PPD. It also states the area to be transferred is being developed by Ho Chunk, Inc. (HCI). HCI has completed extensive construction work including water, sewer, streets, and other dirt work. HCI requires electrical infrastructure and underground facilities to be installed and completed by the end of the year to comply with certain funding requirements.

11. In its letter statement, Burt Co. PPD acknowledges that if a valid annexation occurred, NPPD and Winnebago have the right to request that the Board amend service area agreement 316. The letter statement notes that it is not obvious on the face of the documents presented that a valid annexation occurred.

12. Burt Co. PPD states that it does not consider SAA 316-20-A to be in the best interest of the District or its customers. Burt Co. PPD is a member of Nebraska Electric

Generation and Transmission, which has a long-term wholesale power purchase contract with NPPD. Burt Co. PPD asserts that Application SAA 316-20-A would essentially create a situation where NPPD is competing with its wholesale contractual customer, Burt Co. PPD. Burt Co. PPD also notes that NPPD and Winnebago failed to engage in any meaningful joint planning, depriving Burt Co. PPD of the opportunity to be aware that Winnebago might annex the territory involved in this proceeding and request the territory be transferred to NPPD's retail service area.

13. The Board appreciates Burt Co. PPD's concerns over losing territory. However, Neb. Rev. Stat. section 70-1008(2) is clear. It states that "A municipally owned electric system, serving such municipality at retail, shall have the right, upon application to and approval by the [Power Review] board to serve newly annexed areas of such municipality." The Board has previously determined that a power supplier serving a municipality at retail functions as the municipally owned electric system for purposes of §70-1008(2). The request must be submitted to the Board within one year of the date of the annexation. Ordinance 20-10-1 was passed on July 6, 2020. NPPD and Winnebago therefore filed the application well prior to the one year deadline.

14. The Board is troubled by the assertion of Burt Co. PPD that NPPD and Winnebago failed to engage in any meaningful joint planning prior to the annexation involved in SAA 316-20-A. The Board makes no specific finding in this regard, but the Board reminds all parties that joint planning is a mandatory legal duty incumbent on the power suppliers involved under Neb. Rev. Stat. § 70-1008(3). This is especially true for municipalities and the suppliers holding the service area rights to municipalities, as the

districts and cooperatives with adjoining service area have no way to know when or where annexations may occur without joint planning. However, if the municipality or the power supplier holding the service area rights to the municipality does not initiate joint planning, it is incumbent on the public power district or cooperative to do so. If one party refuses to participate in the joint planning process, the remaining power supplier should notify the Power Review Board. Such joint planning would ideally occur on a periodic basis, with both parties agreeing to meet at regular intervals. Joint planning can help avoid situations like the one presented in SAA 316-20-A.

15. That during its public meeting held November 9, 2020, a majority of the Board (5 to 0) voted to approve SAA 316-20-A.

IT IS THEREFORE THE ORDER of the Nebraska Power Review Board that, pursuant to the Board's action on November 9, 2020, that retail Service Area Agreement 316 be modified as requested and described in application SAA 316-20-A, that the amendment shall become part of retail Service Area Agreements 316 between the Nebraska Public Power District and the Burt County Public Power District and that application SAA 316-20-A is hereby APPROVED.

Dated this 9th day of November, 2020.

NEBRASKA POWER REVIEW BOARD

By:



Frank Reida
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 in SAA 316-20-A was sent to the following persons at the addresses indicated by mailing a copy of the same via United States mail, first class postage prepaid, on the 9th day of November, 2020.

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