

GUIDANCE DOCUMENT NO. 15*

PROTEST FILING DEADLINE IN MICROWAVE APPLICATIONS UNDER NEB. REV. STAT. § 70-1021

I. Purpose

This policy establishes the Nebraska Power Review Board's (the Board) interpretation of how to calculate the time period in which regulated telecommunications carriers have to file a Protest in opposition to a public power district's application to construct or install microwave communication facilities. The pertinent language in Nebraska Revised Statute section 70-1021, states "The regulated carrier or carriers involved shall have ten days to file specific written protests to such application which shall set forth in detail on what points the application is being protested." The statutory language does not clarify if the ten-day deadline is calculated from the date the Board mails the Notice, or the date the regulated carrier receives the Notice.

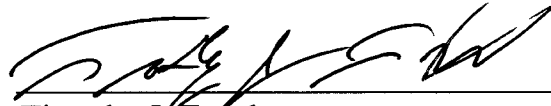
II. Power Review Board's Interpretation

The language in Neb. Rev. Stat. section 70-1021 requires that upon a public power district filing an application to construct microwave communication facilities, the Board shall give notice thereof by mail to any regulated carrier or carriers involved. It is the Board's view that a regulated carrier is "involved" if it operates in the area where the microwave communication facilities will be constructed. The statute states that the regulated carriers have ten days in which to file a written Protest opposing the Board's approval of the application. Prior to July 2022 the Board's position had been that the regulated carriers had ten days from the date the Board mailed the Notice. In an order dated July 18, 2022, in application PRB-3970-M, the Board reversed its prior precedent. The Board determined that the language is ambiguous as to when the ten-day period begins, and that the language in Neb. Rev. Stat. section 70-1021 means that regulated carriers have ten days from the date upon which the Board's Notice is received in which to file a Protest.

* This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operations of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedure Act. If you believe that this guidance document imposes additional requirements or penalties on regulated parties, you may request a review of the document.

III. Process for Providing Notice

The Board sends its Notices for microwave communication facilities via United States Postal Service certified mail with a tracking number for the Notice mailed to each carrier. The return receipt “green card” will include the date of receipt and a signature of the representative that received the mail for the regulated carrier. The date on the return receipt “green card” will be used for purposes of calculating the ten-day deadline in which to file a Protest. In the absence of a date on the return receipt “green card”, the Board will use the date the written Notice was retrieved by a representative of the regulated carrier indicated on the United States Postal Service’s online certified mail tracking system, which is part of the Postal Service’s website.



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Approved at NPRB Board Meeting September 16, 2022.