

NEBRASKA POWER REVIEW BOARD

Minutes of the 818th Meeting

April 12, 2021

The 818th meeting of the Nebraska Power Review Board (“the Board” or “PRB”) was held in the First Floor Hearing Room, Nebraska State Office Building, 301 Centennial Mall, Lincoln, Nebraska. The roll was called and present were Chairman Reida, Vice Chairman Hutchison, Mr. Grennan, Ms. Loutzenhiser, and Mr. Moen. Mr. Grennan, and Ms. Loutzenhiser were participating via videoconference on Webex, pursuant to the provisions Executive Orders 21-02 and 20-36. Executive Director Texel stated that public notice for the meeting had been published in the *Lincoln Journal Star* newspaper on April 2, 2021. The Board also made the meeting available to the public through Webex. The Webex log-in information was available on the Board’s website and was published in the *Lincoln Journal Star* notice. Executive Director Texel explained that if any member of the public wanted to speak, they could click on the “raise your hand” icon. At that time they would be unmuted, they could announce who was speaking, and they could offer their comment or question. All background materials for the agenda items to be acted on were provided to all Board members prior to the meeting and a copy of the materials was in each Board member’s notebook. The executive director announced that a copy of the Nebraska Open Meetings Act was on display on the south wall of the room for the public to review, and another copy was available in a black three-ring binder on the table at the back of the room. A copy of all materials that the Board would consider was available for public inspection on a table in the back of the room, as well as extra copies of the agenda.

The Board first considered the draft minutes from its March 8, 2021, public meeting. The Board did not receive any comments recommending changes to the draft minutes. The staff did not have any changes to suggest, either. The minutes were sent electronically to the Board members. Vice Chairman Hutchison moved to approve the minutes. Mr. Moen seconded the motion. Voting on the motion: Chairman Reida – yes, Vice Chairman Hutchison – yes, Mr. Grennan – yes, Ms. Loutzenhiser – yes, and Mr. Moen – yes. The motion carried 5-0.

The next agenda item was acceptance of the expense report for the month of March. In March there was \$24,258.05 in personal services, \$17,393.61 in operating expenses, and \$420.72 in travel expenses. The total expenses for March were \$42,072.38. Executive Director Texel noted that the Board has used 74.99% of its cash fund (not including the emergency reserve) and 75% of the fiscal year has passed. Vice Chairman Hutchison asked about the personal services limitation (PSL) category and if the Board needed to be worried that it is over the 75% mark. Ms. Loutzenhiser felt comfortable with the numbers and did not feel that there was a need to be worried. Mr. Moen moved to accept the March expense report. Vice Chairman Hutchison seconded

the motion. Voting on the motion: Chairman Reida – yes, Vice Chairman Hutchison – yes, Mr. Grennan – yes, Ms. Loutzenhiser – yes, and Mr. Moen – yes. The motion carried 5-0.

The next item on the agenda was a presentation by representatives of the Midwest Reliability Organization (MRO). Tasha Ward, MRO Senior Counsel and Director of External Affairs, along with Bryan Clark, MRO Director of Reliability Analysis, had given a presentation earlier to both executive director Texel and Ms. Birkett. The MRO is trying to give a briefing to each state regulatory entity in its jurisdiction. The website for MRO is www.mro.net. The Board members asked several questions during the briefing. One question dealt with how the organization is funded. Mr. Clark explained that each of the MRO's registered entities is assessed based on its transmission assets. Chairman Reida asked if the MRO is the entity that sets reserve margins. Mr. Clark stated that MRO does not set reserve margins. That is up to the RTO/ISO or state regulatory entity. The Board thanked Ms. Ward and Mr. Clark for their presentation.

The next item was a presentation by the Municipal Energy Agency of Nebraska (MEAN) concerning the effect of the February 2021 polar vortex event on MEAN's customers. Bob Poehling, MEAN's CEO, and Brad Hans, Director of Wholesale Operations, gave an overview of MEAN's history and what happened in the market during the polar vortex event. In the past few weeks there have been several articles related to MEAN and Nebraska electric customers who are struggling with high prices due to the polar vortex event. MEAN was created in 1981 and it currently serves around 60 communities in Nebraska, Iowa, Colorado and Wyoming. Each one of these communities is represented by a director on MEAN's Board. MEAN has long term contracts with its communities and will not see an increase in billing. However, there are several communities who utilize MEAN to purchase electricity on the SPP's next day market, but they are not voting members of MEAN. On average over the years the communities have often enjoyed below-average prices by purchasing their electricity off the open market. During the February event, though, the market price jumped from an average of \$17 per megawatt hour (mwh) to over \$1,500 mwh. This jump in prices will cause those who do not have a long-term contract with MEAN or another wholesale provider to see a significant escalation in prices, which could equate to thousands of dollars for a residential or small business customer's electric bill. MEAN's diversification helped them get through the event. MEAN has also submitted a request to the Southwest Power Pool asking why Whelan Energy Station was directed to back down its production during this event, while SPP utilities were being told to immediately drop load due to supply constraints. The Board thanked Mr. Poehling and Mr. Hans for their presentation.

The next item on the agenda was to consider McCook Public Power District's Charter Amendment 8. This application was filed on January 25, 2021. The amendment reduces the number of directors from 7 to 6 and redistributes the District's chartered

territory into 6 subdivisions. The Board is required by state law to publish notice in at least two local newspapers for three consecutive weeks prior to acting on a charter amendment. A notice of the amendment was published in the *Frontier County Enterprise* on February 18, 25 and March 4, 2021, and in the *McCook Gazette* on February 11, 18, and 25, 2021. The notice stated that any interest parties could file a protest or objection by close of business on April 5. No protests or objections were filed. Since there were no protests or objections the Board is allowed to waive a hearing. McCook PPD chose to draw its new subdivision lines under the provisions in Neb. Rev. Stat. section 70-612(1)(b). Under subsection (b) of that statute a PPD can form its subdivision boundary line without regard to population if certain requirements are met. The requirements are that the District's territory includes all or part of two or more counties, that more than fifty percent of the District's users of electricity are rural, and finally that the PRB must find that the interests of the District's rural users of electricity will not be prejudiced by the amendment. In McCook's case the District does operate in two or more counties, and the District had confirmed in its Petition that more than fifty percent of its customers are rural. Although the District is proceeding under subsection (b), Executive Director Texel asked the District's attorney to provide him with the population information in case the Board members would want to see them. He read the numbers to the Board. The population numbers in each subdivision were: 1 – 509, 2 – 535, 3 – 321, 4 – 769, 5 – 899, 6 -512. The numbers were based on 2010 Census data. The Board members pointed out that the difference between the lowest number of 321 and the highest number of 899 was significant. Vice Chairman Hutchison asked if the District had provided any information explaining why the rural customers would not be prejudiced by the population differences. Executive Director Texel said the Petition did not include such an explanation. Vice Chairman Hutchison said that he did not believe he could make a finding that the rural customers would not be prejudiced by the amendment without supporting information. He noted that if there are rural customer in subdivision 5, their votes are worth approximately one-third of what they would be if the customers lived in subdivision 3. The Board discussed the statutory requirements, the variance in population, and the possibility that some customers could potentially be prejudiced by the amendment. Chairman Reida said he also cannot make a finding that the rural customers will not be prejudiced by the amendment based on what is in the Petition alone. The other members indicated they agreed with Vice Chair Hutchison and Chairman Reida. The Board asked the staff to contact the District and request additional information regarding whether the proposed charter amendment would prejudice the District's rural customers. Vice Chairman Hutchison moved to table the vote on the McCook PPD's Petition for Charter Amendment 8 until the May meeting. Mr. Moen seconded the motion. Voting on the motion: Chairman Reida – yes, Vice Chairman Hutchison – yes, Mr. Grennan – yes, Ms. Loutzenhiser – yes, and Mr. Moen – yes. The motion carried 5-0.

The next item on the agenda was to review the draft of Guidance Document 14 that would address issues related to electric energy storage resources (ESR). Executive

Director Texel told the Board after the February meeting he had sent the draft guidance document to the Nebraska Power Association (NPA) and to two attorneys that he knew represent private developers (David Levy and David Bracht) for comments. David Levy had provided comments, and the new draft incorporated several of his suggestions. The Nebraska Power Association (NPA) provided a couple of comments and a change was made based on one of the comments. After revising the draft he sent the new version to the same parties again, but he also sent it to Mike Degan, another attorney that represents private developers. Executive Director Texel had prepared a memo summarizing the comments he had received regarding the draft document. The memo was also distributed to the NPA and the attorneys.

David Levy, an attorney that represents NextEra, was present and addressed the Board. John McClure, NPPD General Counsel, was also present and provided comments. Shelley Sahling-Zart, general counsel for LES and secretary for the NPA, participated via Webex and provided comments about the draft. Ms. Sahling-Zart noted that the public power utilities have a different standard for approval of an ESR than the private developers. The statute was created partly so that private developers could take advantage of the production tax credits that are not available to the public power utilities. The Board agreed, but said that the PRB cannot do anything about. Any changes to the approval or certification requirements would need to come from the Legislature. Mr. Degan addressed the Board via Webex and said if a privately developed renewable energy generation facility (PDREGF) was certified, then an ESR was added to that facility later, the ESR would be an addition to the PDREGF and could submit another notice for certification. Mr. Levy also took that position. Mr. Degan submitted a few comments in writing via email. The comments seemed to be more wording changes than substantive changes. The Board members discussed Mr. Degan's written comments and they all agreed they preferred the language in the current version of the draft. Vice Chairman Hutchison thought that an ESR installed as part of a PDREGF should be limited to be characterized as a generation resource (and not transmission or multi-use). One NPA comment asked what would happen if an ESR was installed as part of a generation facility, then the generation facility were later decommissioned. At that point the ESR would be free-standing and would no longer be part of the underlying generation facility. Should it then be reviewed by the PRB as a new generation resource, or should it be grandfathered because it originally followed the certification requirements in Neb. Rev. Stat. § 70-1014.02? In the draft prepared by the executive director, the ESR would be able to continue operating because it had received the appropriate approval under 70-1014.02. The Board engaged in considerable discussion on this point. The Board members said if an ESR is certified as part of a generation facility, the ESR is inextricably intertwined with the facility, and its primary purpose is to store the output of the underlying facility. The Board decided the draft should be amended to say that if the underlying generation facility is decommissioned or otherwise shut down, the ESR would fall under the PRB's jurisdiction and require approval. The Board told the executive director to add subtitles to subsections IVa, b, c & d and wanted some clarification

language added in a couple of other sections. The Board members and Mr. Levy discussed the limitation that an ESR can only have capacity equal to or less than the underlying generation facility if the ESR is to be certified as part of the underlying PDREGF. All parties agreed if the ESR were limited to the same capacity or less than the associated renewable generation facility, the ESR would be considered part of the PDREGF and covered by the same certification.

Mr. Moen asked about the language in subsection IVe. That subsection finds that if an ESR is constructed or installed at a later time than the facility with which it is associated, if the facility is not a PDREGF or approved under PURPA, a new application must be filed with the PRB to approve the ESR. Mr. Moen disagreed that the PRB should have jurisdiction over such ESR facilities. He thought that a new ESR constructed on-site with an existing generation facility would be analogous to the owner of an existing facility installing a new coal pile, natural gas or oil storage tanks, or other equipment that stores fuel, so long as the ESR does not add generating capacity to the facility. The PRB does not need to approve of a new coal pile or fuel storage tanks constructed on the site of an existing generation facility, since it is not a generation asset. The ESR only makes it possible to ensure that the facility can put electricity onto the grid consistently. So when a wind farm or solar facility cannot produce due to lack of wind or sun, the ESR could be used. Other Board members said one difference would be if both the underlying facility and the ESR were putting electricity onto the grid at the same time, the output of the facility would be greatly increased, and potentially doubled. There was considerable discussion about the interconnection agreement. Mr. Levy and Joe Lang (OPPD Director of Energy and Regulatory Affairs) told the Board that the SPP interconnection agreement would be for a set capacity amount based on the associated generation facility, so it would not be possible for the ESR and the underlying facility to both be placing their full capacity of electricity onto the grid at the same time. If the interconnection agreement was for a 200 megawatt facility, only 200 megawatts could be placed onto the grid at any one time. The Board decided to have Executive Director Texel draft the language both ways and the Board will decide which will be used when the Board approves the final version at the May 10 meeting.

The Board took a break at 12:50 p.m. The Board reconvened its meeting at 12:58 pm. All five Board members were again present.

The next item on the agenda was to consider draft comments to FERC in docket AD21-13-000. FERC will hold a Technical Conference on June 1 and 2 addressing issues of “Climate Change, Extreme Weather, and Electric System Reliability.” FERC issued a list of questions and invited parties to submit comments on some or all of the questions. At the Board’s direction, Executive Director Texel drafted comments on selected questions based on the PRB’s comments during the presentation the SPP officials had given on the Polar Vortex event at the PRB’s March 8 meeting. A draft of the comments was sent to Mr. Grennan and Mr. Krajewski, the PRB’s SPP Consultant,

both of whom provided some additional language. The draft comments sent to the Board members prior to the meeting included a copy of Mr. Krajewski's comments. The executive director told the Board he agreed with all of Mr. Krajewski's suggestions, except that he would change the word "excursions" on page 5, and instead use either "escalations" or "fluctuations", depending on exactly what thought the Board wants to convey. Mr. Grennan moved to approve the draft comments, including Mr. Krajewski's suggestions and the executive director's suggested edit. Vice Chairman Hutchison seconded the motion. Voting on the motion: Chairman Reida – yes, Vice Chairman Hutchison – yes, Mr. Grennan – yes, Ms. Loutzenhiser – yes, and Mr. Moen – yes. The motion carried 5-0.

The next item on the agenda was the executive director's report. The first item was the Southwest Power Pool (SPP) update. Mr. Grennan gave an update on the activities occurring in SPP. Mr. Grennan spoke about the utilities in the western interconnection that are examining SPP membership. He asked the other Board members if he should participate in an AC-DC Task Force that SPP is creating. The other Board members thought it would be a good idea for him to participate in this task force. The executive director Texel pointed out one thing to keep in mind is that the SPP member has a set amount of per diems that can be paid in a year. The staff will have to keep a watch on the amount so that Mr. Grennan does not go over the amount of per diem that is allowed.

Executive Director Texel next told the Board that the bid opening for the Board's SPP consultant contract was conducted virtually on March 29. The opening was run by the State Purchasing Bureau (SPB). There were two bids, but unfortunately SPB determined that one bid did not meet the basic requirements, so it was not accepted and not forwarded to the PRB. The term used by SPB is a "nonresponsive" bid. He was told the nonresponsive bid was missing the Corporate Overview section, which the RFP states is a mandatory part of the proposal. The Board has a review committee who will now review and score the bid and submit the results to SPB by April 19. Once the proposal is scored, DAS Legal and the PRB's general counsel will negotiate any terms that the bidder requested be different than what was in the RFP. The primary section requiring negotiations is the Conflict of Interest section.

The next agenda item was to discuss the bills introduced in the Legislature this session. Executive Director Texel said the only bill tracked by the staff that had significant action was LB 83. This bill changes the Open Meetings Act to allow for more meetings using virtual conferencing. The bill was placed on Final reading on April 9.

The next discussion item was a proposed amendment to Neb. Rev. Stat. § 70-663 concerning public power charter amendments. State law required public power districts (PPDs) to determine if they need to redraw their subdivision boundaries after each federal decennial census. The U.S. Census announced that its 2020 Census results are going to

be significantly delayed this year. Since the population data will be released much later in the year than ever before, it would be very difficult to certify the election subdivisions with the Secretary of State prior to the deadline of January 5, 2022. If that deadline is missed the changes will not be submitted in time for the 2022 primary elections. The statute administered by the PRB requires that charter amendments be published for three consecutive weeks, followed by a three week wait period after the last date of publication before the PRB can vote on the charter amendment. This necessarily adds six or seven weeks to the time frame to approve a charter amendment. If there is a protest or objection, there will be a hearing, which will mean a great deal more delay before the final decision on the charter amendment can be reached. The Secretary of State's office contacted Executive Director Texel about filing an amendment to 70-663 so the PRB could give conditional approval prior to the conclusion of the six-week notice period and any hearing. PPDs would have to file their charter amendments with the PRB by December 17, 2021. If a protest or objection is received, the PRB would need to conclude its hearing process and issue a final decision by March 1, 2022. The Secretary of State's office worked with the executive director to draft an amendment. The Committee with jurisdiction is holding a bill that this and other amendments for other political subdivisions could use as a vehicle to amend the applicable laws. The Secretary of State's office then provided a draft to the PRB. Executive Director Texel said the Secretary of State's office would like to know the PRB approves of the amendment, or at a minimum will not oppose it. They would prefer it if the PRB would testify in favor of the amendment. John McClure (NPPD general counsel) was not sure if he agreed with this amendment to the statute. He was concerned how a creditor would view the conditional approval and whether that would be insufficient for the PPD to obtain financing. The Board members also expressed concerns. Vice Chairman Hutchison said he was not convinced the amendment is needed. If an objection or protest is filed, and the Board would disapprove of the change, the PPD will not have time to submit a new charter amendment, so the deadline will still be missed. The other Board members asked why preliminary or estimated population figures could not be used. It was decided that Executive Director Texel and Mr. McClure would ask to meet with the Secretary of State's office to address the concerns expressed by the PRB and NPPD.

Vice Chairman Hutchison spoke about his concerns about the recent power outages due to the polar vortex event in February 2021. He asked if perhaps the Board should consider preparing a report or study of some kind on the event. Once SPP has more information available concerning the outages the Board might want to take a look at the information available and see if the Board needs to call for a report. It was stated that the SPP's report on the event is supposed to be completed sometime in July. Once this is issued that may be a good time to look at doing a study. The Board members asked if the Natural Resources Committee was planning to conduct an interim study on the event. The executive director told the Board the Committee had mentioned it might do so, but he was not aware that any further action had been taken. The Board asked the executive director to check with the Committee to see if any decision has been made.

The executive director announced that the Board's next public meetings are scheduled for May 10, June 14, and July 12, 2021.

Chairman Reida moved to adjourn the meeting. Vice Chairman Hutchison seconded the motion. Voting on the motion: Chairman Reida – yes, Vice Chairman Hutchison –yes, Mr. Grennan – yes, Ms. Loutzenhiser – yes, and Mr. Moen – yes. The motion carried 5-0. The meeting was adjourned at 3:24 p.m.

Timothy J. Texel
Executive Director and General Counsel