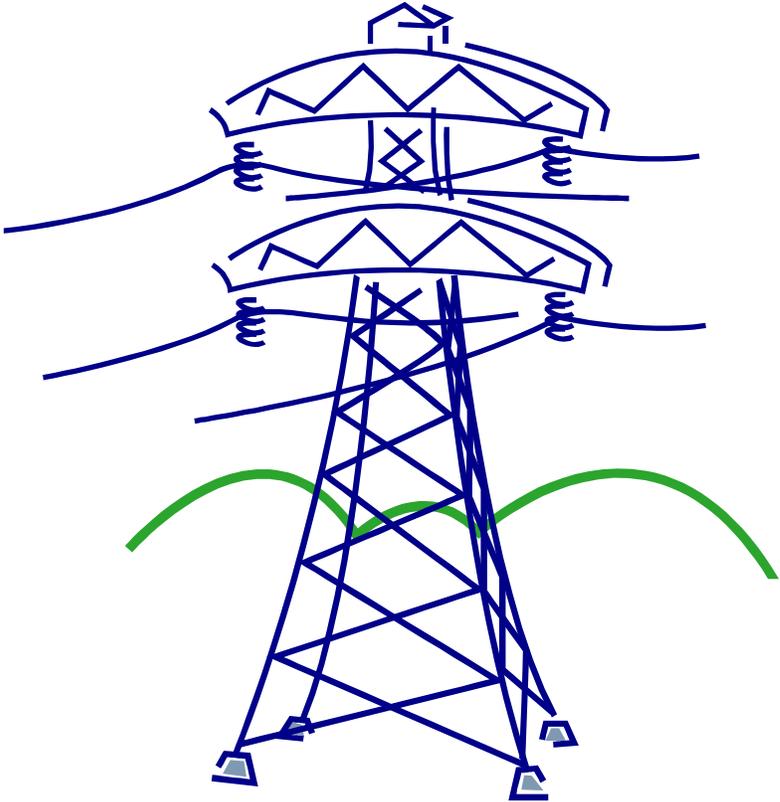


**NEBRASKA**  
**POWER REVIEW BOARD**  
**ORIENTATION MANUAL**



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# Chapter 1 BOARD ROLES AND RESPONSIBILITIES

## AGENCY MISSION AND OVERVIEW

The overall mission of the Power Review Board (hereafter referred to as “the Board”) can probably be best summarized by citing the following statutory language:

**70-1001. Declaration of policy.** In order to provide the citizens of the state with adequate electric service at as low overall cost as possible, consistent with sound business practices, it is the policy of this state to avoid and eliminate conflict and competition between public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives in furnishing electric energy to retail and wholesale customers, to avoid and eliminate the duplication of facilities and resources which result therefrom, and to facilitate the settlement of rate disputes between suppliers of electricity.

The Board was created in 1963 by Neb. Rev. Stat. section 70-1003. Its primary responsibilities are for the regulation of electrical power suppliers operating in the State of Nebraska and to operate as a quasi-judicial forum to resolve disputes between power suppliers. The Board strives to facilitate negotiated resolutions of conflicts between power suppliers, and in limited circumstances between power suppliers and customers. When a negotiated settlement is not possible, the Board will conduct a hearing. Most new generation facilities (some renewable facilities are exempt), and all transmission facilities located outside a power supplier’s service area, must be approved by the Board prior to commencement of construction or acquisition. The Board is the approval authority and official repository for all service area agreements, public power district charters, and applications to construct or acquire generation and transmission facilities.

The Board is entirely cash funded, which means it receives no funds from general tax revenues. The Board’s operating funds are received from assessments levied on power suppliers operating in the State of Nebraska.

## BOARD ROLES AND RESPONSIBILITIES

### BOARD COMPOSITION, STAFF AND OPERATIONS

#### Board Composition

Requirements for the Board's basic composition are set out in the following pertinent statutory language:

**70-1003. Nebraska Power Review Board; establishment; composition; appointment; term; vacancy; qualifications; compensation; jurisdiction; officers; executive director; staff; report.** (1) There is hereby established an independent board to be known as the Nebraska Power Review Board to consist of five members, one of whom shall be an engineer, one an attorney, one an accountant, and two lay persons . . . Members of the board shall be appointed by the Governor subject to the approval of the Legislature. . . . No more than three members of the board shall be registered members of that political party represented by the Governor.

Board members serve four-year terms and cannot serve more than two consecutive terms. Unlike many other boards and commissions, the Power Review Board has no geographic requirements or limitations concerning the residency of its board members.

#### Staff

The Board's full-time staff is currently comprised of three employees – an executive director, a business manager, and a paralegal.

The executive director is the administrative head of the agency and manages the day-to-day operations of the Board, under the general parameters established by the Board. He or she hires and manages the staff, and oversees all facets of the agency's functions. The executive director acts as hearing officer for evidentiary and contested hearings conducted by the Board. He or she is the primary point of contact when dealing with representatives of Nebraska's power industry and the public. The executive director serves at the pleasure of the Board and is responsible solely to the Board.

The business manager has primary responsibility over all aspects of the agency's accounting and financial operations. The business manager is the primary staff member involved in handling all receipts, deposits, payments, purchases, supplies and employee benefits information.

The paralegal assists the executive director in managing the Board's legal functions. The paralegal's duties includes initial processing of applications, reviewing applications for compliance with statutory criteria and the Board's rules of practice, corresponding with

## BOARD ROLES AND RESPONSIBILITIES

representatives of Nebraska's power suppliers concerning required filings, drafting some orders and certificates of approval, preparing information for the Board prior to public meetings, maintaining and updating various forms and stored information, and assisting in the preparation and distribution of the biennial and net metering reports.

Together, the staff provides the basic support needed for the Board to conduct its regulatory and quasi-judicial functions efficiently and appropriately.

### Board Offices

The Board's offices are located on the lower level (basement) of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. As the Board members are not full-time and normally only come to the offices for the public meetings and hearings, the Board members do not have their own offices. The Board's mailing address is:

Nebraska Power Review Board  
P.O. Box 94713  
Lincoln, NE 68509-4713

or

Nebraska Power Review Board  
301 Centennial Mall South – Lower Level  
Lincoln, NE 68509-4713

### Board Meetings

The Board conducts its formal work during public meetings, usually held once a month in Lincoln. There is no requirement that the Board hold a meeting each month. On very rare occasions the Board has held two meetings in one month. Meetings are occasionally held in other parts of the state. The date, location and start time for meetings are issues left up to the Board's discretion, as long as meetings are held within the State of Nebraska. It has been the Board practice for at least the past several years to set the meeting date on a specific day of each month, such as the fourth Friday of each month. The staff resets meeting dates for the specific days when the designated date falls on a state or federal holiday. For at least the past fifteen years, the Board has held its meetings on a Friday, in order to accommodate the schedules of the members. On rare occasions the Board has decided to meet on other days of the week.

Reviewing and ruling on applications normally comprises the majority of the Board's business. These applications are presented in a standardized format described in the Board Rules of Practice and Procedure. A more detailed description of the application

## BOARD ROLES AND RESPONSIBILITIES

process is found in Chapter 4, “How the Board Regulates.” In addition to regular business meetings, Board members also sometimes attend other meetings, conferences and functions related to the power industry. Examples are Nebraska Power Association conferences and American Public Power Association’s annual convention. Board members are often invited to other functions such as receptions and meetings. A timeline of annual meetings is included in the Appendix.

### PRB Budget

Revenue for the Board’s normal operating budget comes entirely from direct assessments levied against power suppliers operating in the State of Nebraska. Although the Legislature establishes the Board’s appropriation (funding level), the Board does not receive any general fund appropriations derived from tax revenue. The business manager compiles the data for the annual assessments based on the projected budget. The proposed assessment figure is then submitted to the Board for approval. The Board’s budget timeline is dictated by the state fiscal year, which runs from July 1 to June 30.

The following are the general steps in the budgeting process:

- MID-JULY: Business manager and executive director begin budget process, using instructions from the Nebraska Department of Administrative Services.
- AUG. – SEPT.: Proposed budget is reviewed by Board members.
- MID-SEPT.:  
1) Board formally approves its budget request.  
2) Budget request is submitted to Governor’s Budget Office.
- SEPT. - JAN.: Governor’s office prepares overall State budget; adjustments in Board’s budget are made, if necessary.
- JANUARY: Governor submits proposed State budget to the Legislature.
- JAN. – FEB.: Legislature’s Appropriations Committee conducts budget hearings. The Board’s executive director may testify before the Committee.
- MARCH - MAY: Legislature approves overall State Budget.
- AFTER APPROVAL:  
1) Board approves its assessment figure.  
2) Governor must approve the Board’s assessment figure.  
3) The Board sends assessments to each Nebraska power supplier. In 2017 the assessment figure was set at 11.7782105 cents per \$1,000 gross revenue.

## BOARD ROLES AND RESPONSIBILITIES

### Hearings

Board members vote to approve or deny applications, but sometimes a hearing must be held before the Board can make its final decision. Some hearings are mandatory, while others are left up to the Board's discretion. In some situations, a hearing may not be mandated by statute or regulation, but the Board has historically made it a practice to conduct a hearing on all such applications.

Examples of when a hearing must be held (or by practice always has been held):

- \* Applications for transmission lines extending outside a power supplier's service area where the adjoining power supplier does not consent to the construction project. (Mandatory)
- \* Before voting to approve or deny an application for a new generation facility. The Board has historically held an evidentiary hearing on all commercial-size applications for generation facilities, even when no protest is filed. (Historical Practice)
- \* A protest is filed opposing the approval of a Petition to Amend a public power district's charter amendment. (Mandatory)
- \* On applications to modify retail or wholesale service area agreements when other affected power suppliers do not consent. (Mandatory)
- \* Formal request by an intervenor or party with a vested interest in an application or petition. (Mandatory)
- \* When a formal complaint is filed by a power supplier's customer under the provisions of section 70-1017. (Mandatory, assuming the Board has jurisdiction and the party can demonstrate that it has standing.)
- \* Whenever changes are proposed to the Board's rules and regulations. (Mandatory)

Examples when a hearing may be held:

- \* Applications for transmission lines extending more than one-half mile outside a power supplier's service area when the adjoining power supplier consents to the project, but the Board believes additional information is needed.

## BOARD ROLES AND RESPONSIBILITIES

- \* Applications for very small generation facilities where the output will be sold to third parties, and no utility or party with standing objects.
- \* On a Petition to amend a public power district charter when no protests are filed, but where the Board believes additional information is needed.
- \* To accept plans or reports prepared by the Nebraska Power Association.

Once it is determined that a hearing is necessary, the executive director will coordinate with the Board members to determine an appropriate hearing date and location. Hearings are normally held in conjunction with the Board's monthly public meetings. The Board will convene the public meeting, recess in order to conduct the hearing, deliberate, then reconvene the public meeting. The Board may take action to approve or disapprove of the application during its public meeting, but is not required to do so because the Board is acting in its quasi-judicial capacity. For contested matters, the Board will normally take the matter under advisement, request briefs from the parties, and defer the final decision until its next public meeting.

### Appeals

Although it is an administrative agency, the Board operates in a quasi-judicial capacity when rendering most of its decisions. Appeals of final decisions issued by the Board are filed directly with the Nebraska Court of Appeals. (See Neb. Rev. Stat. section 70-1016).

## GENERAL RESPONSIBILITIES

In addition to creating the Board and providing for its funding, Chapter 70, Article 10 establishes the Board's primary responsibilities. It does so initially in section 70-1001, which sets forth a policy statement that reflects the Board's overall purpose.

The Board does not regulate in the same way as many other administrative agencies. The purpose served by many other agencies is to initiate enforcement actions against the regulated persons or entities over which it has authority, issuing cease and desist orders, and in many instances levying fines and/or revoking licenses or certifications. The Board does not normally operate in such a capacity. The purpose of the Board is oriented more toward a quasi-judicial function of resolving conflicts between power suppliers or ensuring that certain criteria are met when facilities are constructed or when public power district charters are amended. The Board's role is often to provide a forum in which conflicts and grievances between power suppliers can be decided. The Board provides a more expedient and cost effective forum than the court system. In very limited circumstances the Board has authority to conduct hearings when ratepayers file complaints against power suppliers. The Board also acts as a repository for certain filings that create permanent documentation of information such as service area

## BOARD ROLES AND RESPONSIBILITIES

boundaries and transmission/distribution line extensions. These records are then available to both power suppliers and the public.

Nebraska is the only state where a regulatory agency does not approve changes to power suppliers' retail electric rates. Nebraska allows rate decisions to be made by the elected officials with oversight responsibilities for that entity. These include the directors of the public power districts and cooperatives, city councils, village boards, and boards of public corporations formed under the Municipal Cooperative Financing Act (such as the Municipal Energy Agency of Nebraska).

### Regulatory Responsibilities

Nebraska law provides the Board with jurisdiction in the following areas involving the electric power industry:

- \* Approval of retail and wholesale service areas and any amendments thereto;
- \* Construction or acquisition of transmission lines that are located outside a power supplier's service area;
- \* Construction or acquisition of electric generation facilities;
- \* Construction of microwave communication facilities; and
- \* Approval of public power district charters and any amendments thereto.

A more detailed examination of the responsibilities in each of these areas follows in Chapter 4, "How the Board Regulates."

### Advisory Opinions on Rates

Although the Board does not approve electric rates or formally regulate them, the Board is authorized to serve in an advisory capacity when there is a dispute between suppliers over rates for service (see Neb. Rev. Stat. section 70-1018). Board records indicate this authority has only been utilized once, within the first few years after the Board's creation.

### Planning Responsibilities

In addition to its regulatory responsibilities, the Board also is authorized by statute to undertake studies of the power industry in order to provide a statewide perspective of future power needs for Nebraska. There are three reports involved: 1) the coordinated long-range power supply plan; 2) the annual load and capability report; and 3) the research and conservation report.

## BOARD ROLES AND RESPONSIBILITIES

The requirements for the coordinated long-range power supply plan are set out in Neb. Rev. Stat. section 70-1025. This plan is intended to be a detailed analysis of both the current status of the industry's generation and transmission assets and capabilities, and provide a forecast of what the state's power needs will be and how those needs will be met for the next twenty years. The Board cannot request a new power supply plan more often than biennially.

The requirements for the annual load and capability report is set out in Neb. Rev. Stat. section 70-1025(3). The report shows statewide utility load forecasts and the resources available to meet those loads for the next twenty years.

The requirements for the research and conservation report are set out in Neb. Rev. Stat. section 70-1026. This report examines industry programs related to energy conservation such as renewable energy sources and load management. The Board cannot request a new report more often than biennially.

Under Neb. Rev. Stat. section 70-1024, the Board is to designate a representative organization responsible for preparation of the reports. If the Board believes that no representative organization is willing or capable of preparing the long-range power supply plan, the Board can prepare the plan itself by using consultants, and assess the costs against Nebraska's power suppliers. The Board has designated the Nebraska Power Association as the representative organization to compile the reports. Board records indicate the option of preparing the reports by the Board itself has never been utilized.

### Conditions Certain Report

Another report that the Board is authorized to prepare is a report examining the conditions that indicate whether retail competition in Nebraska's electric industry would benefit Nebraska's citizens. This report includes such topics as comparing Nebraska's wholesale electricity prices to the prices in the region, whether a viable wholesale electricity market exists in the region, and monitoring deregulation activities at the federal level and in other states. The conditions to be monitored and related enabling legislation is found Neb. Rev. Stat. section 70-1003(5) to (8). From 2000 to 2010 this report was required to be prepared annually. In 2010 the statute was amended removing the annual requirement and instead leaving it up to the Board's discretion when preparation of the report is warranted.

### Biennial Report to Governor

Every two years the Board is required to publish a biennial report which is submitted to the Governor with copies sent to the Clerk of the Legislature and the State Energy Office. The report basically provides an overview of the Board's activities and data on

## BOARD ROLES AND RESPONSIBILITIES

expenditures during the biennial period. The specific requirements for the Board's biennial report are set out in Neb. Rev. Stat. section 70-1003(4).

### OVERALL ROLE OF THE POWER REVIEW BOARD

In addition to the functions described in the statutes, the Board plays an important role in establishing the overall climate of the state's electrical industry. Specifically, the Board serves as a forum for industry representatives to work through problematic areas or to examine power issues from a statewide perspective. The Board can also serve as an informal catalyst to encourage industry representatives to solve conflicts in a manner that best serves the ratepayers.

### TIMELINE FOR INTERNAL BOARD RESPONSIBILITIES

JANUARY	Election of officers for the upcoming calendar year.
FEBRUARY	Send out Accountability and Disclosure Forms to Board members.  Legislative Budget Hearing before the Appropriations Committee.  Confirm that Accountability and Disclosure Forms are filed by March 1.
MARCH	Staff sends out form to all electric suppliers to obtain their gross revenue figures.
JUNE	Approve assessment figure setting the next fiscal year's budget.
JULY	Board considers approval and acceptance of the annual load and capability report.  Consider whether to call for a long-range coordinated power supply plan, but not more often than biennially.
AUGUST	The Board prepares the annual performance evaluation of the executive director and general counsel.
SEPTEMBER	Final review and submission of the budget to the Governor's Budget Office and the Legislative Fiscal Office.

## **CHAPTER 2 HISTORICAL PERSPECTIVE**

### **HISTORY OF PUBLIC POWER IN NEBRASKA**

Municipally-owned electric systems have operated in Nebraska since 1887, when Crete established its own system with generation capacity to serve its own needs. The Nebraska Legislature, recognizing the advantages of municipally-owned electric utilities, authorized cities to establish and maintain electric systems in 1889. From 1902 to 1926, the number of municipal electric plants increased from 11 to 282, constituting the largest number of municipally-owned light and power plants in the nation.

Probably the most important reason for the development of public power was that municipal electric systems served their ratepayers at lower rates than private utilities. Private utilities gained momentum in the late 1920's and early 1930's, partly due to some questionable business practices such as artificially lowering rates to put municipal electric systems out of business. Most of the municipalities had their own generating resources and were unwilling to give them up. Since most of the electrical load was in municipalities, the private utilities were unable to obtain a dominant market share.

The further development and expansion of public power was spurred by the need for jobs and irrigation due to the depression and the drought of the early 1930's. In 1933, the Nebraska legislature passed the Enabling Act (Nebraska Enabling Act of 1933 (Senate File 310)) that allowed and authorized the formation of public power and irrigation districts as public corporations and political subdivisions of the state. This provided the need for authorization to obtain money from the Reconstruction Finance Corporation.

Three main hydroelectric power districts (Loup River Public Power District, Platte Valley Public Power & Irrigation District, and Central Public Power & Irrigation District) were developed in the early 1930's, operating independent of each other. The Public Works Administration (PWA) encouraged these districts to enter into joint operating agreements to contract for loads, then insisted on it in 1940 as a prerequisite to obtain refinancing. Since these districts were primarily concerned with generation, Consumers Public Power District (Consumers) was formed to market power. Consumers was, in contrast with the existing hydroelectric generators, a power district with no indebtedness. This allowed Consumers to issue revenue bonds and begin purchasing the private utilities in the state. In 1946, the final transfer to Omaha Public Power District (OPPD) of the Nebraska Power Company, ordered to dissolve under the Public Utility Company Holding Act, was effected and the conversion to public power was complete.

The U.S. Rural Electrification Administration (U.S. REA) was created in 1935 to facilitate the extension of electric service to rural America. Rural electric cooperatives and rural public power districts were organized in the 1930's, 1940's, and 1950's. It became evident that investor-owned and municipal electric utilities would not provide

## HISTORICAL PERSPECTIVE

service in most rural areas because they did not believe it was economically feasible. Furthermore, they did not appreciate the need for rural electric service. This occurred even though the U.S. REA first offered loans to existing electric utilities to finance construction of rural lines.

Of the first 36 rural electric systems organized in Nebraska, 13 were organized as cooperatives. At the same time the U.S. REA was established in 1935, about seven percent of Nebraska's farms were receiving central station electric service, mostly from municipal electric systems' rural lines. By 1958, there were 95,050 farms, almost 95 percent of the total, being served by U.S. REA-financed rural electric systems.

Concurrently with the establishment of the U.S. REA, the Nebraska Rural Electric Association (NREA) was established to help bring electric service to rural Nebraska. The NREA originally assisted its member systems in standardizing line construction to reduce costs, obtaining construction loans from the U.S. REA, expediting arrangements with hydroelectric power districts for wholesale bulk power, assisting in obtaining power from alternative sources such as municipals until the hydroelectric power districts were completed, and acting as a clearinghouse for information. The NREA also continued to provide electric inspectors for rural homes and businesses. In the early years, it employed between 15 and 20 electric inspectors who provided inspection services for five years.

Through the 1940's the market for electricity grew dramatically, more than doubling from 1939 to 1948. After the initial early years of growth, the industry entered a period where it experienced growing pains and conflict. The lack of long-range planning and coordination of the industry in the State was coupled with inadequate generating capacity and transmission capability.

Nebraska's public power industry has undergone major changes over the past several decades. The power industry that serves Nebraska today bears some resemblance to the structure that existed in 1960, but it is quite different.

As an example, some of the principal utilities in the early 1960's were:

- Nebraska Public Power System (NPPS)
- Loup River Public Power District (Loup)
- Platte Valley Public Power & Irrigation District (Platte Valley)
- Consumers Public Power District (Consumers)
- Central Nebraska Public Power & Irrigation District (Central)

Most of the above names are unfamiliar to people today, since three of the five no longer exist, and Consumers Public Power District underwent a name change and is now the Nebraska Public Power District.

## HISTORICAL PERSPECTIVE

The Loup, Platte Valley, and Central districts were co-owners of NPPS, which was the state's power generation and transmission agency outside the Omaha area. The major retail utility was Consumers, which had customers in both urban and rural areas. It operated the electric systems in approximately half of Nebraska's incorporated municipalities. In 1949 Central withdrew from the management of NPPS, and Platte Valley and Loup operated the system. All of Central's electric output was sold to NPPS.

During the 1960's the structural order within the power industry changed, and the framework was established for what exists today. Several municipal utilities, the rural power districts, and the Legislature played a part in this change.

An interim study initiated by the Legislature in 1961 determined that Nebraska's power industry was plagued by three major problems, namely: duplication of facilities and functions, service area disputes, and rate controversies (Nebraska Unicameral, 72<sup>nd</sup> Legislature, Legislative Resolution 35 (1961)).

In 1963 the Legislature created the Nebraska Power Review Board to address the problems of duplication and service area disputes. Legislation aimed at resolving rate controversies by forcing consolidation, or merger, of several utilities failed to pass. Two years later, however, the Legislature passed a consolidation law called the "Grid Bill" (Nebraska Unicameral, 75<sup>th</sup> Legislature, Legislative Bill 764 (1965)). The Grid Bill mandated the merger of the four agencies mentioned earlier: Loup, Platte Valley, Consumers, and NPPS. Excluded from this merger were OPPD and an area in western Nebraska served by Consumers. However, the Nebraska Supreme Court later declared the law unconstitutional (see Wittler v. Baumgartner, 180 Neb. 446, 144 N.W.2d 62 (1966)).

In the early 1960's Consumers entered the power generation and transmission field, with construction of conventional power plants and an experimental nuclear plant at Hallam, Nebraska. Consumers continued to be the catalyst of change by consolidating power agencies through voluntary agreements.

First, Consumers acquired Loup's ownership interest in NPPS. Then Consumers merged with Platte Valley, which eliminated Platte Valley and NPPS as separate entities. Consumers completed these mergers and officially changed its name to the Nebraska Public Power District (NPPD) on January 1, 1970. NPPD worked diligently to consolidate its role as the major power generation, transmission, and distribution agency serving Nebraska outside the Omaha area.

The concerns of the 1960's leading to legislative interest in the public power industry centered on the structure of the industry and various disputes among the utilities. Legislative interest in the 1970's centered on energy costs and industry performance.

## HISTORICAL PERSPECTIVE

For example, in the 1970's the Legislature hired three consultants to study the power industry. (The consultants and dates of their report were O'Brien and Gere Engineers (1976), Adam Kubik (1977), and John Dunn (1978)). Their studies resulted in no major legislative actions. The power industry structure they recommended is essentially what exists today:

<u>Major Generating Power Districts:</u>	Nebraska Public Power District Omaha Public Power District Central Nebraska Public Power & Irrigation District Loup River Public Power District
<u>G &amp; T's:</u>	Nebraska Electric Generation & Transmission Cooperative, Inc. (Nebraska G & T) Tri-State Generation and Transmission Association, Inc. (Tri-State)
<u>Rural Electric Systems:</u>	37 -- Twenty-six systems are organized as public power districts and eleven as cooperatives. Of the eleven cooperatives serving Nebraska customers, eight have headquarters outside Nebraska.
<u>Municipalities:</u>	122 (55 own generating facilities)

In the 1960's, terms such as "battling utilities" and "warring power districts" were common in news stories and the comments of political leaders and editorial writers. Local and statewide political fights among utilities occurred virtually every legislative session. Lawsuits among utilities appeared at times to be the normal way of doing business.

There is very little of this today. All segments of the electric power industry work together through the Nebraska Power Association (NPA). NPA traces its origins back more than 30 years. Its predecessor, the Nebraska Power Industry Committee, was created at the urging of the Legislature to help resolve power industry problems. Today, NPA works to resolve differences and facilitate dialogue and compromises.

### Creation of the Power Review Board

The Nebraska Power Review Board was created in the electric industry climate of the 1960's. The power industry had been experiencing a period of relatively steady but fast growth following World War II. Because of the growth, conflicts were arising among power districts in the state, and as previously stated, numerous lawsuits were being filed.

## HISTORICAL PERSPECTIVE

Nebraska citizens and members of the legislature saw a need for regulatory control over this expanding industry. The 1961 Nebraska Legislature established two committees: The Nebraska Public Power Committee (NPPC) composed of representatives of public power districts, and the Legislative Council Committee on Public Power, composed of state senators.

These committees were asked to study power industry problems and to recommend solutions for these problems. Although no legislation was introduced as a direct result of these particular studies, they did provide the basis for L.B. 220, which was enacted by the Nebraska Legislature in 1963.

The primary aim of L.B. 220 was to solve recurring disputes among power suppliers over service territory. The legislation also attempted to deal with rate issues by giving the Board some jurisdiction over rate disputes, although the jurisdiction was advisory only.

### **HISTORY OF THE POWER REVIEW BOARD**

Nebraska is unique in that it is the only state in the nation in which all of its electric power suppliers are consumer-owned. This is commonly referred to as “public power.” The large majority of Nebraska’s power suppliers are political subdivisions of the state, namely public power districts and municipalities. Cooperatives are non-profit corporations owned by their respective ratepayers, but they are not political subdivisions of the State of Nebraska.

The history of the public power movement and the philosophies behind it are summarized in the 1963 publication of the University of Nebraska’s School of Journalism entitled “*Public Power in Nebraska: Depth Report No. 2.*” A history of the Board, written in 1983, is *The Nebraska Power Review Board: Regulating a Publicly-Owned Electric Industry.*

#### Early Years

The immediate priority for the first Board was to establish areas in which the various suppliers had exclusive rights in which to operate. These became known as service areas. The document that created a service area became known as a service area agreement. Most of the service area agreements were completed by the first Board, but a few agreements were completed in later years due to the need to resolve ongoing disputes among the affected parties.

As of April 2011, there are 366 active service area agreements between Nebraska’s power suppliers (a total of 417 such agreements have been created, but 51 have been terminated). These agreements are essential because they strictly define the area in which

## HISTORICAL PERSPECTIVE

each specific supplier can provide retail electric service, thus eliminating overlapping service areas and eliminating most disputes over who can serve any particular customer.

During the following years, the Board turned its attention from settling disputes over service areas to specific customers. These disputes arose when two different power suppliers had transmission lines in close proximity to a proposed customer. Even though the customer might be located in one power supplier's service area, another power supplier might have a transmission line geographically closer to the proposed customer and therefore would file an application for permission to run a line into the first power district's service area in order to serve that customer.

The Board's various determinations concerning this topic created guidelines for power suppliers to follow when contemplating providing service to a customer not located in its service area, but close to one of its transmission or distribution lines.

A third important component of L.B. 220 granted the Board the authority to regulate construction of generation and transmission facilities in Nebraska. This authority was granted so that the Board could restrain suppliers from building generation capability when it was not truly needed, thus avoiding a surplus of electrical power, and unnecessarily raising the electric rates for the power supplier's customers.

## **CHAPTER 3 THE ELECTRIC INDUSTRY IN NEBRASKA**

### **INTRODUCTORY OVERVIEW**

There are several different categories of power suppliers in Nebraska. These include:

- \* Municipalities
- \* Agencies formed under the Nebraska Municipal Cooperative Financing Act
- \* Non-profit cooperatives
- \* Rural public power districts
- \* Large public power districts with generation facilities
- \* Public power and irrigation districts

#### Municipalities

Most of the municipalities are relatively small in size and provide power to their communities by purchasing it at wholesale and then selling it to the municipality's customers at retail. Several dozen municipalities own generation units intended only to be used during peak periods. A few of the municipalities, such as the City of Lincoln and the City of Grand Island, own large baseload generation facilities or the rights to output from other generation facilities.

#### Agencies formed under the Nebraska Municipal Cooperative Financing Act

Currently, the only agency formed under the Nebraska Municipal Cooperative Financing Act is the Municipal Energy Agency of Nebraska (MEAN). MEAN is part of the Nebraska Municipal Power Pool. It was organized in 1980 to secure power supply for its members and provide related administrative and technical services. MEAN combines the capacities of a number of municipally-owned plants with WAPA power and purchased power. It supplies power and energy to approximately 40 municipalities in Nebraska, Colorado, Iowa, Kansas and Wyoming. MEAN's member municipalities owns numerous generating facilities, and MEAN has capacity rights to output from the coal-fired Laramie River Station in Wyoming and the Walter Scott Unit # 4 near Council Bluffs, Iowa. NMPP supplies related energy services to approximately 75 municipal systems in Nebraska, Colorado, Iowa, Kansas, South Dakota and Wyoming.

#### Non-profit cooperatives and rural public power districts

The cooperatives and rural public power districts both operate in the same basic way, purchasing their electric power needs at wholesale from large generators and then distributing the electrical energy to their customers at retail. Public power districts are political subdivisions of the State, while cooperatives are not-for-profit private entities. Most of the geographic territory of the state is served by cooperatives and rural public power districts.

## THE ELECTRIC INDUSTRY IN NEBRASKA

Tri-State Generation and Transmission Association, Inc., a non-profit wholesale electric energy supplier headquartered in Denver, Colorado, furnishes wholesale power to six of the power suppliers located in the far western part of Nebraska.

### Large Public Power Districts with Generation Facilities

Nebraska Public Power District is the largest wholesale supplier of electricity in Nebraska. It furnishes wholesale energy to 24 of the rural public power districts and cooperatives. It also provides electricity at wholesale to 52 municipal systems, and at retail to approximately 85 municipal systems. NPPD has nuclear, coal, natural gas and wind generation resources.

The Omaha Public Power District (OPPD) is the largest retail public power district in the state. Although it is primarily a retail power supplier, it owns numerous generation facilities and has some wholesale customers. OPPD serves all or part of 13 counties in the southeast portion of the state. It has nuclear, coal, oil, gas-fired and landfill gas resources, and purchases power from the Western Area Power Administration (WAPA).

Loup River Public Power District owns two hydroelectric generation facilities in eastern-central Nebraska, although the district purchases most of its power from NPPD. Loup's retail service area includes the City of Columbus, Nebraska, and other municipal systems in the nearby area.

### Public Power and Irrigation Districts

Central Nebraska Public Power and Irrigation District generates electricity through hydroelectric sources such as Kingsley Dam. It sells its entire output to NPPD and has no retail customers. It also operates an irrigation and canal water distribution system that serves 119,000 acres.

### Distribution

Distribution entities provide power to the ultimate consumer at retail. In some cases, these are the same entities that are involved in the generation and transmission of power as well. Distribution utilities have service areas in which they have the exclusive right to provide service, and also have a general obligation to provide service to all customers.

The rural public power districts and electric cooperatives supply the majority of the rural areas in Nebraska. At the present time, there are 30 rural electric systems headquartered in Nebraska. With a few exceptions, most of the rural electric systems have joined together to obtain their power supply through two generation and transmission cooperatives, Tri-State G & T for western Nebraska and Nebraska Electric Generation & Transmission Cooperative (Nebraska G&T) for the eastern two-thirds of Nebraska.

## THE ELECTRIC INDUSTRY IN NEBRASKA

Many municipalities own their distribution system and lease the facilities to the power supplier providing retail service to that municipality. These are known as “leased towns.” In 1972 bonds issued to purchase facilities of privately-owned companies were retired. Some municipal electric systems were taken over by municipalities. Most of the towns leased their facilities to NPPD or the utility then serving the town. In 1999 NPPD and its rural wholesale customers underwent a “realignment” whereby NPPD transferred its service area right to municipal systems to the local rural public power districts in whose service area the town was located. The contracts involved typically provide the municipalities that lease their distribution system with about ten percent of the retail revenues as a lease payment.

### Related Support Organizations

These organizations were established to negotiate costs for power and provide numerous services to their members. They consist of:

**Nebraska G & T** purchases power for most of the rural electric systems.

**Nebraska Rural Electric Association (NREA)** provides administrative and technical services to most of the rural public power districts and cooperatives.

**League of Nebraska Municipalities** provides administrative and technical services to its municipal members.

**Nebraska Power Association (NPA)** was established to provide a forum for Nebraska’s electric utility industry to discuss issues, work cooperatively, and provide services to all utilities in the State. It also works directly with the Board to complete statutorily-mandated power supply plans and transmission and energy conservation studies. It is also a forum through which the power industry can take a collective stance on pending legislation.

### Additional related organizations include:

Rural Electric Supply Cooperative (RESCO), Federated Rural Electric Insurance Exchange, American Public Power Association (APPA), National Rural Electric Cooperative Association (NRECA), Electric Power Research Institute (EPRI), Mid-Continent Area Power Pool (MAPP), Southwest Power Pool (SPP), National Rural Utility Cooperative Finance Corporation, Western Area Power Administration (WAPA), and Mid-West Electric Consumers Association.

Some of the services provided include employee training services, joint power supply planning, governmental services, power contracting, software development, central purchasing and legal services.

# THE ELECTRIC INDUSTRY IN NEBRASKA

## ACRONYMS FOR ELECTRIC INDUSTRY

### State Entities

Central	- Central Nebraska Public Power & Irrigation District
DEQ	- Nebraska Department of Environmental Quality
DWR	- Nebraska Department of Water Resources
LES	- Lincoln Electric System
Loup	- Loup River Public Power District
MAPP	- Mid-Continent Area Power Pool
Nebraska G& T	- NE Electric Generation & Transmission Cooperative
Norris	- Norris Public Power District
NPA	- Nebraska Power Association
NPPD	- Nebraska Public Power District
NREA	- Nebraska Rural Electric Association
OPPD	- Omaha Public Power District
PRB	- Power Review Board
PSC	- Public Service Commission

### Regional Entities

MEAN	- Municipal Energy Agency of Nebraska
NMPP	- Nebraska Municipal Power Pool
MISO	- Midwest Independent System Operator
OMS	- Organization of MISO States (part of MISO)
Tri-State	- Tri-State Generation & Transmission Cooperative
RSC	- Regional State Committee (part of the SPP)
SPP	- Southwest Power Pool
WIRAB	- Western Interconnection Regional Advisory Body

### Federal Entities and National Organizations

AEC	- Atomic Energy Commission
APPA	- American Public Power Association
DOE	- U.S. Department of Energy
DOH	- U.S. Department of Health
EIA	- U.S. Energy Information Administration
EPA	- U.S. Environmental Protection Agency
FCC	- Federal Communications Commission
FEMA	- Federal Emergency Management Agency
FERC	- Federal Energy Regulatory Commission
ICC	- Interstate Commerce Commission
NARUC	- National Association of Regulatory Utility Commissioners
NRC	- Nuclear Regulatory Commission

## THE ELECTRIC INDUSTRY IN NEBRASKA

- NRECA - National Rural Electric Cooperative Association
- REA - U.S. Rural Electrification Association
- SPP - Southwest Power Pool
- WAPA - Western Area Power Administration

## **CHAPTER 4 HOW THE BOARD OPERATES**

### **INTRODUCTION**

The previous sections of this manual have provided narratives describing what the Board does and the industry framework within which it operates.

This section deals with how the Board fulfills its duties. This section provides a brief overview of the procedures that are followed by the Board from the filing of an application through the Board's final decision.

### **APPLICATIONS FOR APPROVAL TO CONSTRUCT GENERATION AND TRANSMISSION FACILITIES**

#### Procedures Involved

The most common type of application filed with the Board is a request to approve transmission lines and related facilities. It should be noted that the term "transmission," as it is used in the Board's statutes, is used generically and includes transmission, sub-transmission and distribution lines. Applications for generation facilities follow the same basic procedures as those for transmission lines, but are far less common.

A power supplier wishing to construct a generation or transmission facility will normally coordinate with other interested utilities in the pertinent geographic area. If the facility is being constructed by more than one entity, the application can be filed by several parties jointly. Joint applications are commonly used for generation facilities where several utilities have joined together to own or operate the project. Transmission projects almost never involve a joint application.

If a new transmission line or related facilities will be located entirely within a power supplier's retail service area, no Board approval is required and nothing needs to be filed with the Board.

If a proposed transmission line will extend ½ mile or less outside the applicant's service area and the power suppliers holding the service area rights to the area in which the proposed line would be located consent to the project, no formal Board approval is required. However, the Board still requires that an application be filed with the Board in order to create a record of the project involved and the consent. In these circumstances, the Board's executive director and general counsel can administratively approve the application. The executive director's administrative approval consists of a letter confirming that the application was properly completed and that all necessary Consent and Waiver forms have been filed with the Board.

## HOW THE BOARD OPERATES

The Board must vote to approve construction of all transmission lines that will extend over ½ mile in length outside an applicant's service area. If the necessary Consent and Waiver forms are not filed with the Board, a hearing must be held on the application.

Depending on the timing of when the application is submitted, the Board's staff will place an uncontested application on the agenda for consideration at the Board's next meeting. The Board's rules of practice and procedure do not establish a specific deadline in order to be on the next Board's agenda, but the Board's standard practice is to require that an application be received ten business days prior to the next meeting in order to be placed on the agenda for that meeting. This is done to allow the staff sufficient time in which to review the application and work with the applicant to correct any problems that may be found in the application or the Consent and Waiver Forms. The Board's executive director can waive this deadline for good cause.

When the application is received at the Board's office, the executive director and/or paralegal review it for completeness and then summarize his/her findings on an application checklist.

If the application is for a generation or large transmission facility, a hearing date is set. Such a hearing will normally be held on such applications regardless of whether the necessary Consent and Waiver forms have been submitted. A Notice of Filing and Hearing Date, along with a copy of the application, is sent via certified mail to the applicant and any other parties the Board deems to be potentially interested. Normally interested parties will include the power supplier holding the service area rights to the area in which a generation or transmission facility would be located, and other large generators that could supply the power or transmission capability. In the case of generating facilities, it has been the Board's practice to provide notice to all power suppliers owning generating facilities within approximately 50 miles of the proposed generation facility. Guidance Documents 8 and 9 set out what entities the Board deems to be interested and are therefore entitled to notice when an application is filed. Such parties do not need to show standing to object or intervene in a proceeding, as the Board has already determined the entity is an interested party. The hearing date is normally scheduled to be held on the same day as a Board meeting.

Public notice of the filing and the hearing date is then published in a newspaper with general circulation in the area where the new facility would be located, or that covers a large part of the applicant's service area, whichever is deemed more appropriate. If a business or member of the public files a Petition in Intervention in order to protest or object to the proposed facility, a hearing before the Board or the Board's hearing officer will be held to determine whether the proposed intervenor has standing. If standing is granted, the intervenor becomes a party to the proceedings.

## HOW THE BOARD OPERATES

### GENERATION AND TRANSMISSION APPLICATIONS – APPROVAL CRITERIA

#### Conventional Facilities

In order to be approved, Neb. Rev. Stat. section 70-1014 states that an applicant for a generation or transmission facility must provide sufficient evidence for the Board to make the following findings:

- 1) The application will serve the public convenience and necessity.
- 2) The applicant can most economically and feasibly supply the electric service resulting from the proposed facility (often referred to as the “lowest cost standard”).
- 3) The resulting facility will not unnecessarily duplicate existing facilities or operations.

#### Primary Statutes Involved

**70-1012. Electric generation facilities and transmission lines; construction or acquisition; application; approval; when not required.** (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 and containing such information as the board shall prescribe, shall be approved by the board, except that such approval shall not be required (a) for the construction or acquisition of a transmission line extension or related facilities within a supplier's own service area or for the construction or acquisition of a line not exceeding one-half mile outside its own service area when all owners of electric lines located within one-half mile of the extension consent thereto in writing and such consents are filed with the board, (b) for any generation facility when the board finds that (i) such facility is being constructed or acquired to replace a generating plant owned by an individual municipality or registered group of municipalities with a capacity not greater than that of the plant being replaced, (ii) such facility will generate less than twenty-five thousand kilowatts of electric energy at rated capacity, and (iii) the applicant will not use the plant or transmission capacity to supply wholesale power to customers outside the applicant's existing retail service area or chartered territory, (c) for acquisition of transmission lines or related facilities, within the state, carrying one hundred fifteen thousand volts or less, if the current owner of the transmission lines or related facilities notifies the board of the lines or facilities involved in the transaction and the parties to the transaction, or (d) for the construction of a qualified facility as defined in section 70-2002.

(2) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

## HOW THE BOARD OPERATES

**70-1013. Electric generation facilities and transmission lines; application; hearing; waiver; appearances; objections; amendments.** (1) Upon application being filed under section 70-1012, the board shall fix a time and place for hearing and shall give ten days' notice by mail to such power suppliers as it deems to be affected by the application. The hearing shall be held within sixty days unless for good cause shown the applicant requests in writing that such hearing not be scheduled until a later time, but in any event such hearing shall be held not more than one hundred twenty days after the filing of the application and the board shall give its decision within sixty days after the conclusion of the hearing. Any parties interested may appear, file objections, and offer evidence. The board may grant the application without notice or hearing, upon the filing of such waivers as it may require, if in its judgment the finding required by section 70-1014 or 70-1014.01 can be made without a hearing. Such hearing shall be conducted as provided in section 70-1006. The board may allow amendments to the application, in the interests of justice.

(2) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

**70-1014. Electric generation facilities and transmission lines; approval or denial of application; findings required; regional line or facilities; additional consideration.**

(1) After hearing, the board shall have authority to approve or deny the application. Except as provided in section 70-1014.01 for special generation applications, before approval of an application, the board shall find that the application will serve the public convenience and necessity, and that the applicant can most economically and feasibly supply the electric service resulting from the proposed construction or acquisition, without unnecessary duplication of facilities or operations.

(2) If the application involves a transmission line or related facilities planned and approved by a regional transmission organization and the regional transmission organization has issued a notice to construct or similar notice or order to a utility to construct the line or related facilities, the board shall also consider information from the regional transmission organization's planning process and may consider the benefits to the region, which shall include Nebraska, provided by the proposed line or related facilities as part of the board's process in determining whether to approve or deny the application.

(3) A privately developed renewable energy generation facility is exempt from this section if it complies with section 70-1014.02.

**70-1014.02** This statute allows parties constructing or installing “privately developed owned renewable energy generation facilities” to file certain certifications and avoid the need to go through the Board’s normal hearing process. If the required certifications are filed 30 days prior to commencing construction, the executive director sends a letter

## HOW THE BOARD OPERATES

confirming receipt and that the facility is exempt from the Board's normal approval requirements. It is a rather lengthy statute, so it is not set out here in its entirety.

### APPLICATIONS TO APPROVE AMENDMENTS TO RETAIL SERVICE AREA AGREEMENTS

#### Introduction

A service area provides a power supplier with the exclusive rights to provide retail electric service and construct transmission lines within a designated geographic area. That power supplier is then obligated to provide electric service to all customers in that territory, unless it can be shown it is not economically feasible to do so.

As of March 2018, there are 353 active service area agreements between Nebraska's power suppliers (a total of 419 such agreements have been created, but 66 have been terminated). The original written agreements and accompanying maps are retained at the Board's offices. Almost all of the agreements were established within the first three years following the Board's creation in 1963.

Problems and conflicts sometimes arise over these service area agreements. To address these issues, Nebraska law requires that the adjoining power suppliers engage in joint planning. Joint planning is a process that normally occurs between municipalities and public power districts. Its purpose is to encourage communication and coordination between parties with adjacent service areas, particularly to make transfers based on annexations proceed more smoothly and with less cost and infrastructure modifications on the part of both suppliers.

#### Procedures Involved

When an application to amend a service area agreement is received, the Board's staff will review the application to make sure that it is complete and complies with all requirements set out in the statutes and in the Board's rules of practice and procedure.

If the application was filed jointly by both parties to the agreement, then the application will be placed on the agenda for the Board's next public meeting. If the application was received less than ten business days prior to the next meeting, it may be placed on the agenda for the following meeting. The Board's staff will send a letter confirming receipt of the application and notifying the parties at which Board meeting the application will be considered. If there are any problems with the application, the Board's staff will work with the power suppliers to correct them.

If one party filed the application unilaterally, a Notice of Filing is sent via certified mail to the other adjoining power supplier that is a party to the service area agreement. The adjoining power supplier has twenty days in which to file a protest objecting to the

## HOW THE BOARD OPERATES

approval of the application and stating its reasons for the protest. If any other party affected by the application wishes to participate in the proceeding, they will need to file a Petition in Intervention. The hearing officer will schedule preliminary hearings as necessary to address motions and other preliminary matters.

If the adjoining power supplier files a protest, a hearing is scheduled. Hearings are normally scheduled on the same day as an upcoming public meeting. The Board will send a Notice of Hearing to both the Applicant and the Protestant. After the hearing is concluded and the Board renders its decision, the executive director will draft a Findings of Fact, Conclusions of Law, and Order reflecting the Board's decision for the Board chairman's signature. If the chairman did not participate in the decision or was not part of the majority, the vice chairman will sign the order. The Order will be mailed to the parties via certified mail.

### Amendments to Retail Service Area Agreement Applications -- Approval Criteria

Joint Applications. If both parties to an agreement filed a joint application, and the Board's staff has confirmed it is complete, the parties are generally entitled to approval. The Board must be able to find that the transfer of customers or facilities will not impair the rights of bondholders or mortgage holders.

Municipal Annexations. If the application was filed by a municipality requesting that territory annexed by the municipality be incorporated into its service area, the municipality is generally entitled to approval. The following criteria must be met in service area agreement modifications based on an annexation:

- 1) The annexation must be facially valid. The municipality will file a copy of the annexation ordinance with the Board. Note: The Board does NOT have the authority to rule on whether the annexation was valid. If there is a question about the validity of the annexation, a court must rule on that issue.
- 2) The application must be filed within one year of the annexation action. After one year passes, any action by the municipality to acquire service area rights will no longer be entitled to approval under the municipal annexation procedure.
- 3) The transfer will not impair the rights of bondholders or mortgage holders.

Contested Applications (not based on an annexation or filed more than one year after an annexation). If the party from whom customers or facilities would be taken contests the approval of the application, then the Board will hold a hearing. To approve the application, the Board would need to find that:

## HOW THE BOARD OPERATES

- 1) The customers involved cannot or will not be furnished adequate electric service by the power supplier holding the service area rights to the customer or territory involved, OR;
- 2) If the power supplier holding the service area rights to the customer or territory involved were to provide electric service to that customer or territory, it would constitute wasteful and unwarranted duplication of facilities to do so.

### Primary Statutes Involved

**70-1002.01. Suppliers of electricity; agreements; wholesale electric energy; submission to board; considerations; investigation; approval; effect.** All suppliers of electricity, including public power districts, public power and irrigation districts, individual municipalities, registered groups of municipalities, electric membership associations, and cooperatives, shall have authority to enter into written agreements with each other limiting the areas in which or the customers to which a party to the agreement shall provide or sell electric energy at wholesale.

**70-1007. Establishment of service areas; board; orders; policy consideration.** After the hearing, the board shall make an order establishing the service areas in the matter covered by the notice...It shall give such consideration as is appropriate in each case to the following:

- (1) The supplier best able to supply the load required;
- (2) The most logical future supplier of the area;
- (3) The desires of the supplier with respect to loads and service areas it wishes to serve;
- (4) The ability to provide service at costs comparable to other suppliers in the service area and the immediate costs to the ultimate consumers involved in the transfer; and,
- (5) The ability of the supplier to cope with the problems of expanding loads and increased costs.

**70-1011. Suppliers; service outside area; application for approval; when granted; applicability of section.** Except by agreement of the suppliers involved, no supplier shall offer electric service to additional ultimate users outside its service area or construct or acquire a new electric line or extend an existing line into the service area of another supplier for the purpose of furnishing service to ultimate users therein without first applying to the board and receiving approval thereof, after due notice and hearing under rules and regulations of the board. Such approval shall be granted only if the board finds that the customer or customers proposed to be served cannot or will not be furnished adequate electric service by the supplier in whose service area the customer is located, or that the provision thereof by such supplier would involve wasteful and unwarranted

## HOW THE BOARD OPERATES

duplication of facilities. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

### MISCELLANEOUS PROCEDURAL ISSUES

#### PRB Hearings

If a hearing before the Board is not contested, it will be an evidentiary hearing. The purpose for these hearings is for the applicant to provide sufficient evidence for the Board to find that the application meets the approval criteria set out in the pertinent statute. In the case of generation and transmission facilities, the criteria are set out in Neb. Rev. Stat. section 70-1014. If another utility or one or more intervenors file an object to the approval of the application, the hearing is contested. Contested hearings are conducted much like a court proceeding. Specific hearing procedures are set out in the Board's Rules of Practice and Procedure.

The Board's executive director and general counsel acts as the hearing officer for all Board hearings. He or she will rule on preliminary matters filed by the parties and on objections raised during the hearing. The Board has directed the hearing officer that it reserves the right to rule on dispositive motions — ones that will effectively end the matter, or end the matter for a particular party. These would include such motions as a Motion to Dismiss and most Petitions in Intervention.

A copy of the application is provided to all Board members so they have an opportunity to review it prior to the hearing.

As previously mentioned, the Board will normally schedule a hearing in conjunction with one of its public meetings. On the day of the hearing, the Board begins its public meeting and continues until the time set for the hearing. The Board then takes a break or recess from its public meeting. The contested or evidentiary hearing will then be convened. The hearing will be held, after which the hearing officer will adjourn the hearing. If the hearing is not concluded that day, the hearing officer will recess the hearing and schedule it to reconvene at a later date, usually on the same date as the Board's next public meeting.

Following the conclusion of the hearing, the Board will reconvene its public meeting. The Board then will normally consider the agenda item of whether to approve the facility involved, or give its decision on a formal complaint, etc. The Board has the opportunity to discuss the matter, and then may take a roll call vote. On complicated matters, the Board will often request the parties to submit briefs summarizing their arguments and legal authorities.

When acting on a matter following a hearing, the Board is acting in its quasi-judicial capacity. The Board therefore can deliberate in private and issue its decision in much the

## HOW THE BOARD OPERATES

same manner as a court. The Board's custom is to place the matter on the agenda and vote on the matter in order to provide the parties with a preliminary answer. This allows the parties to proceed without delay on transmission and generation projects. It should be pointed out that the Board's written order is actually the Board's final decision in a proceeding, not the vote during the public meeting.

Following the Board's vote, the executive director and general counsel will draft an order setting out the Board's Findings of Fact, Conclusions of Law, and Order. The draft order will be provided to the Board members for their comments and corrections. The Board members that were not in the majority are provided an opportunity to submit a dissenting opinion. After the Board's decision is finalized, the Board's chairman will sign the final order (or the vice chairman will sign it if the chairman was not in the majority) and it will be mailed to the parties via certified mail. It is this written order that forms the basis upon which a party can appeal the Board's decision. Appeals of Power Review Board decisions are filed directly with the Nebraska Court of Appeals. See Neb. Rev. Stat. section 70-1016.

### Ex Parte Communications

Once a contested application is filed with the Board, state law does not permit the Board members or the hearing officer to have ex parte communications with any party to the matter or to another party having an interest in the application. An ex parte communication is defined as an oral or written communication not on the record in a contested case when all parties involved in the matter did not receive notice of the meeting or discussion. See Neb. Rev. Stat. sections 84-901(4) and 84-914(6).

### Consent and Waiver forms

A Consent and Waiver Form is a document whereby a power supplier that is an interested party or potentially interested party to an application formally notifies the Board that it consents to the Board approving the application, it stipulates the applicant can meet the approval criteria, it waives its right to receive further notices regarding the matter, and that it waives its right to a hearing. Consent and Waiver forms are part of the process for generation and transmission applications. The most common situations are when a power supplier wants to construct a transmission or distribution line that will be located in the service area of another power supplier, or that a utility wants to serve a customer in another utility's service area because it has a line much closer to the customer. Normally one power supplier cannot "invade" another supplier's retail service area by building transmission or distribution lines inside that service area, or to serve a customer located in another utility's service area. But it is common for the supplier holding the service area rights to submit a Consent and Waiver form showing that it does not object to the project.

## **HOW THE BOARD OPERATES**

If the power supplier holding the service area rights to the affected area does not submit a Consent and Waiver form, then the matter is normally considered contested. The Board must then schedule a hearing and provide all potentially interested parties with formal written notice of the application. If the power supplier holding the service area right does not file an objection or protest with the Board after receiving notice, then the Board can conduct an evidentiary hearing where the applicant provides the Board with evidence that it meets the appropriate approval criteria. In the case of generation and transmission projects, the criteria are set out in Neb. Rev. Stat. section 70-1014.

Intervenors and parties with a vested interest in a certain application can also cause a hearing to be held.

## **CHAPTER 5 PRB PLANNING AND REPORTS**

### **INTRODUCTION**

Although the Board was initially designed to regulate the structural aspects of the electric industry and provide a non-judicial forum where Nebraska's consumer-owned utilities can take their disputes, national events since then brought new dimensions to the Board's responsibilities.

The Board is required to submit a Biennial Report, providing details of the Board's activities during each two-year period. The report is submitted to the Governor, the State Energy Office, and the Clerk of the Legislature. The Board also must file an annual load and capability report, showing statewide utility forecasts and generating resources available to supply the State's power needs for the next 20 years.

In 1981, the Nebraska legislature gave the Board an important role in coordinating planning for the state's overall electrical energy needs. The Board was given the responsibility for producing a Coordinated Long-Range Power Supply Plan. The power supply plan is useful because it requires an examination of Nebraska's power supply needs at the statewide level, instead of each power supplier examining these needs based only on its own customers' needs. In 1981 the Board was also given the responsibility to prepare a Research and Conservation Report, which examines programs created by Nebraska's power suppliers concerning such topics as conservation measures, research and development, renewable resources, and load management. In 2000, the Legislature enacted legislation requiring the Board to submit an annual report to the Governor and the Legislature's Natural Resources Committee examining specific conditions in the electric industry in Nebraska and the surrounding region that would indicate if retail competition would benefit Nebraska's citizens. In 2010, the Legislature amended the statute leaving it up to the Board's discretion when and if the conditions certain report should be prepared, instead of an annual requirement. See LB 797, section 1 (2010).

When the Legislature added the duty to prepare a Power Supply Plan, Research and Conservation Report, and Annual Load and Capability Report, it added a provision allowing the Board to designate a representative organization that would be responsible for preparation of these reports. If the Board believes the representative organization is unwilling or unable to prepare the reports, the Board has the authority to levy a special assessment on Nebraska's power suppliers to pay for the costs of preparing the reports by using Board staff and consultants. The Board has historically designated the Nebraska Power Association as the representative organization responsible for preparation of the Long-Range Power Supply Plan, Research and Conservation Report, and the Annual Load and Capability Report. The statute setting out the provisions regarding the representative organization is Neb. Rev. Stat. section 70-1024. The statute states:

## PRB PLANNING AND REPORTS

### **Section 70-1024. Power supply plan; board; powers and duties; special assessment.**

The board shall, prior to October 1, 1981, designate the representative organization responsible for the preparation and filing of those reports required pursuant to sections 70-1025 and 70-1026. The board may utilize a preexisting representative group from the industry if such group is willing to perform the task in the prescribed time and manner. The board shall prepare and publish the long-range power supply plan itself; if the board determines that no representative group is willing to complete such a study or that the product of any group so assembled has substantial deficiencies or cannot be completed by the prescribed date. The board shall have the power and duty to levy a special assessment in the manner described in section 70-1020 to defray the costs of such power supply plans, if the board must produce such power supply plan by itself or with consultants.

### BIENNIAL REPORT

Every two years, the Board must submit a report providing details of its activities to the Governor, with copies to be filed with the Clerk of the Legislature and the State Energy Office. The report is required to include information on nine topics set out in Neb. Rev. Stat. section 70-1003(4). The Board also makes a copy of the report available to each member of the Legislature, each public power district and larger municipal power suppliers and cooperatives. The pertinent part of the statute requiring the biennial report states as follows:

### **Section 70-1003. Nebraska Power Review Board; establishment; composition; appointment; term; vacancy; qualifications; compensation; jurisdiction; officers; executive director; staff; report.**

\* \* \*

(4) The board shall publish and submit a biennial report with annual data to the Governor, with copies to be filed with the Clerk of the Legislature and with the State Energy Office. The State Energy Office shall consider the information in the Nebraska Power Review Board's report when the State Energy Office prepares its own reports pursuant to sections 81-1606 and 81-1607. The report of the board shall include:

- (a) The assessments for the fiscal year imposed pursuant to section 70-1020;
- (b) The gross income totals for each category of the industry and the industry total;
- (c) The number of suppliers against whom the assessment is levied, by category and in total;
- (d) The projected dollar costs of generation, transmission, and microwave applications, approved and denied;

## PRB PLANNING AND REPORTS

- (e) The actual dollar costs of approved applications upon completion, and a summary of an informational hearing concerning any significant divergence between the projected and actual costs;
- (f) A description of Nebraska's current electric system and information on additions to and retirements from the system during the fiscal year, including microwave facilities;
- (g) A statistical summary of board activities and an expenditure summary;
- (h) A roster of power suppliers in Nebraska and the assessment each paid; and
- (i) Appropriately detailed historical and projected electric supply and demand statistics, including information on the total generating capacity owned by Nebraska suppliers and the total peak load demand of the previous year, along with an indication of how the industry will respond to the projected situation.

### LONG-RANGE COORDINATED POWER SUPPLY PLAN

The Board is authorized to request the representative organization to prepare a Power Supply Plan no more often than biennially. The most recent Long-Range Coordinated Power Supply Plan was completed by the Nebraska Power Association in 2003, although at its March 18, 2011 meeting the Board requested the NPA to prepare a new report. The report examines three main issues: 1) identify all generation facilities over 25 megawatts, 2) identify all existing or proposed transmission lines 230 kV or larger, and 3) identify all planned generation and transmission facilities needed to serve the estimated power supply demands for the next twenty years. The controlling statute is Neb. Rev. Stat. section 70-1025, which states:

**70-1025. Power supply plan; contents; filing; annual report.** (1) The representative organization shall file with the board a coordinated long-range power supply plan containing the following information:

- (a) The identification of all electric generation plants operating or authorized for construction within the state that have a rated capacity of at least twenty-five thousand kilowatts;
- (b) The identification of all transmission lines located or authorized for construction within the state that have a rated capacity of at least two hundred thirty kilovolts; and
- (c) The identification of all additional planned electric generation and transmission requirements needed to serve estimated power supply demands within the state for a period of twenty years.

## PRB PLANNING AND REPORTS

(2) Beginning in 1986, the representative organization shall file with the board the coordinated long-range power supply plan specified in subsection (1) of this section, and the board shall determine the date on which such report is to be filed, except that such report shall not be required to be filed more often than biennially.

(3) An annual load and capability report shall be filed with the board by the representative organization. The report shall include statewide utility load forecasts and the resources available to satisfy the loads over a twenty-year period. The annual load and capability report shall be filed on dates specified by the board.

### ANNUAL LOAD AND CAPABILITY REPORT

The Board's representative organization is required to submit an annual load and capability report to the Board. The most recent version of the report is included in the Board's Biennial Report. The report examines statewide utility load forecasts and the generating resources available to satisfy those needs for the next twenty-year period. Each Nebraska power supplier, certainly those with generation resources, conducts its own study to determine the load growth in its service territory, and whether its generation resources are adequate to meet those projected needs. The Annual Load and Capability Report requires those power suppliers to evaluate this information on a statewide basis. The pertinent part of the statute involved states the following:

#### **Section 70-1025. Power supply plan; contents; filing; annual report.**

\* \* \*

(3) An annual load and capability report shall be filed with the board by the representative organization. The report shall include statewide utility load forecasts and the resources available to satisfy the loads over a twenty-year period. The annual load and capability report shall be filed on dates specified by the board.

### RESEARCH AND CONSERVATION REPORT

The Research and Conservation Report is intended to examine issues related to energy conservation, load management, and use of renewable energy resources. As with the Long-Range Coordinated Power Supply Plan, the Board can ask the representative organization to prepare this report no more than biennially. The most recent Research and Conservation was completed by the Nebraska Power Association in 2003, although at its March 18, 2011 meeting the Board requested the NPA to prepare a new report. The Research and Conservation Report has at least in recent history been prepared in conjunction with the Long-Range Coordinated Power Supply Plan. Neb. Rev. Stat. section 70-1026 sets out the information that must be covered in the report:

## PRB PLANNING AND REPORTS

**70-1026. Power supply plan; research and conservation report; contents.** The representative organization shall file, at the request of the board but no more often than biennially, a research and conservation report, which shall include the following information relative to programs enacted by the representative organization and its members:

- (1) Research and development;
- (2) Energy conservation;
- (3) Load management;
- (4) Renewable energy sources; and
- (5) Cogeneration.

### CONDITIONS CERTAIN REPORT

In 2000, the Nebraska Legislature passed a bill requiring the Board to submit an annual report to the Governor and the Legislature's Natural Resources Committee examining the conditions in the electric industry that indicate if retail competition would benefit Nebraska's citizens. This is referred to as the "Conditions Certain" report, or occasionally it is still referred to as the "LB 901" report. LB 901 is a reference to the legislative bill number in 2000 that created the requirement and parameters of the Conditions Certain report. In 2010, the Legislature amended the statute so that whether the report should be prepared and whether a hearing should be held is now left up to the Board's discretion, instead of a mandatory annual requirement. See LB 797, section 1 (2010).

Under the Conditions Certain process, the Board may hold a public meeting to receive input on whether conditions in the electric industry indicate that retail competition would benefit Nebraska's ratepayers. A synopsis of the input received is then included in the Conditions Certain report. To date there has been very little or no public interest in these public hearings. This was one factor in the decision to remove the annual requirement.

If the Board determines the report should be prepared, the Board is authorized to establish working groups of interested parties. When the Board prepared the report on an annual basis, it created five groups of technical experts drawn from Nebraska's electric industry. These are known as "Technical Groups" 1 through 5. There is a technical group for each of the five conditions that are to be examined under Neb. Rev. Stat. section 70-1003(6). The Board also established a "Review Group." The Review Group is comprised of many interested parties, including government agencies, environmental groups, representatives of customer groups such as retail, commercial, and agricultural, electric industry officials, utility personnel, consumer groups, etc. The purpose of the Review Group is to review the draft of the report and provide input and suggestions from a non-technical perspective.

## PRB PLANNING AND REPORTS

When the report was prepared annually, a consultant was retained to coordinate the preparation of the report. The consultant did not draft most of the report, but rather worked with the technical group members to prepare the report, and incorporated the input from the Review Group. The report was issued in October. The Board chose this timeframe because it allowed the report to be given to the Governor and state senators early enough that it could be reviewed and any resulting legislation could be drafted prior to the next legislative session in January. The statute setting out the requirements for the report, including the five technical groups, is as follows:

**Section 70-1003. Nebraska Power Review Board; establishment; composition; appointment; term; vacancy; qualifications; compensation; jurisdiction; officers; executive director; staff; report.**

\* \* \*

(5) The board may in its discretion hold public hearings concerning the conditions that may indicate that retail competition in the electric industry would benefit Nebraska's citizens and what steps, if any, should be taken to prepare for retail competition in Nebraska's electricity market. In determining whether to hold such hearings, the board shall consider the sufficiency of public interest.

(6) The board may, at any time deemed beneficial by the board, submit a report to the Governor with copies to be filed with the Clerk of the Legislature and the Natural Resources Committee of the Legislature. The report may include:

- (a) Whether or not a viable regional transmission organization and adequate transmission exist in Nebraska or in a region which includes Nebraska;
- (b) Whether or not a viable wholesale electricity market exists in a region which includes Nebraska;
- (c) To what extent retail rates have been unbundled in Nebraska;
- (d) A comparison of Nebraska's wholesale electricity prices to the prices in the region; and
- (e) Any other information the board believes to be beneficial to the Governor, the Legislature, and Nebraska's citizens when considering whether retail electric competition would be beneficial, such as, but not limited to, an update on deregulation activities in other states and an update on federal deregulation legislation.

(7) The board is authorized to establish working groups of interested parties to assist the board in carrying out the duties set forth in subsections (5) and (6) of this section.

## **PRB PLANNING AND REPORTS**

### **ANNUAL NET METERING REPORT**

In 2009 the Legislature enacted LB 436, which requires each retail distribution utility to produce an annual net metering report. The report provides specific information about net metering facilities in the State of Nebraska. Each of the utilities provides a copy of its report to the Board, which acts as a clearinghouse for the aggregate information. The Board sends a postcard to each retail distribution utility in late January or early February requesting the needed information. The Board's staff then collects this data and provides it to the Natural Resources Committee. The statute involved states the following:

70-2005 Annual net metering report; contents.

Beginning March 1, 2010, and on each March 1 thereafter, each local distribution utility shall produce and publish on its web site, or if no web site is available, in its main office, and provide to the Nebraska Power Review Board an annual net metering report that shall include the following information:

- (1) The total number of qualified facilities;
- (2) The total estimated rated generating capacity of qualified facilities;
- (3) The total estimated net kilowatt-hours received from customer-generators;  
and
- (4) The total estimated amount of energy produced by the customer-generators.

## CHAPTER 6

### ANNUAL CALENDAR OF MEETINGS

1. National Rural Electric Association----- FEBRUARY
2. Municipal Power Pool/Municipal Energy Agency of  
Nebraska Annual Meeting ----- FEBRUARY
3. National Association of Regulatory Utility Commissioners’  
Winter Committee Meetings ----- FEBRUARY
4. League of Municipalities Utilities Section  
Annual Conference ----- APRIL
5. American Public Power Association Annual  
National Conference ----- MAY/JUNE
6. National Association of Regulatory Utility Commissioners’  
Summer Committee Meetings ----- JULY
7. Tri-State G and T Annual Meeting ----- AUGUST
8. American Public Power Association Legal Seminar ----- OCTOBER
9. National Association of Regulatory Utility Commissioners’  
Annual Convention ----- NOVEMBER
10. Nebraska Rural Electric Association Annual Meeting ----- DECEMBER
11. Nebraska Power Association Statewide Meeting ----- DATE VARIES

## PRB GUIDANCE DOCUMENTS

### ANNUAL AGENDA ITEMS

**January:** Election of Board Officers.

**February:**

**March:** Board members and executive director must file statement of Financial Interest (NADC Form C-1) with the Accountability and Disclosure Commission by March 1.

**April:**

**June:** Decide whether the Board will give the executive director the cost-of-living raise that will be received by classified employees (if classified employees will receive a cost-of-living raise that year).

Determine whether there is a need to encumber funds for next year.

Approve assessment figure and amount of reserve funds to be used for the Board's budget for the next fiscal year.

**July:** Approve annual load and capability report (per section 70-1025(3)).

Prepare Biennial Report for Governor in even-numbered years.

**August:** Board prepares executive director's annual performance evaluation. A copy of the evaluation must be provided to the DAS State Personnel Director, per section 81-11,104.

**September:**

**October:**

**November:**

**December:**

## **PRB GUIDANCE DOCUMENTS**

\* Guidance documents are advisory in nature but are 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.

### **GUIDANCE DOCUMENT NO. 1\***

#### **TEMPORARY APPROVAL OF APPLICATIONS TO CONSTRUCT TRANSMISSION LINES IN EMERGENCY SITUATIONS**

##### **I. Purpose.**

This policy establishes the procedure by which temporary approval of applications to construct transmission/distribution lines can be given to Nebraska power suppliers when an emergency situation exists, pending review of the application by the full Board.

##### **II. Policy Applicability and Definitions.**

A. This policy shall apply to all applications filed with the Board for authority to construct electric transmission or distribution lines.

B. The term “emergency” or “emergency situation” as used in this policy shall be interpreted broadly to mean those situations where a customer or power supplier will likely face financial loss, inability to act due to weather, danger to health or safety, or other peril caused by delaying commencement of construction until the Power Review Board’s next scheduled meeting, or insufficient time in which to call a special meeting of the Board.

1. An illustrative example of an emergency situation would be where electrical power is needed immediately to operate or restore operation to a stack pump or irrigation pivot during summer conditions, while the next Board meeting may be a week or more in the future. Without immediate electric service, the loss of livestock or crops is possible or even likely.

##### **III. Procedure for Emergency Situations.**

A. Contact with Power Review Board.

## PRB GUIDANCE DOCUMENTS

1. When the Board receives an application requesting emergency consideration, or when the power supplier contacts the Board's staff, the executive director will make a determination whether he believes an emergency situation exists. If a consent and waiver form will be necessary to avoid a hearing, the Board must also receive a consent and waiver form.

2. If the executive director believes an emergency situation exists, he will contact the Board Chair.

### B. Temporary Approval

1. The Board Chair is authorized to determine if the power supplier should be given temporary approval to begin construction of the transmission or distribution project.

2. The executive director will notify the power supplier of the Board Chair's decision. This notification may be sent via facsimile transmission.

3. If the Board's Chair is unavailable or cannot be reached, the Board's Vice Chair is authorized to make the determinations set out in paragraph B.1 (above).

4. If the Board's Chair and Vice-Chair are both unavailable or cannot be reached, the executive director is authorized to make the determinations set out in paragraph B.1 (above).

### IV. Restrictions

A. No emergency approval shall be given in those circumstances where consent of an interested utility is required in order to avoid the need for a hearing on the matter, but no such consent for construction and waiver of hearing has been received. In those circumstances, a hearing must be held before construction may begin.

### V. Time Limits on Temporary Approval

A. The temporary emergency approval given in situations under this policy are expected to be rare, only in those situations where an electric customer, applicant for electric service, power supplier, or other interested person or entity faces a likelihood of harm, economic or otherwise, if construction cannot begin prior to the Board's next public meeting.

## **PRB GUIDANCE DOCUMENTS**

B. The approval given under this policy in no way replaces or supplants the official approval required to be obtained by the Power Review Board as a whole. The temporary approval is only effective until the board can act on the matter. The matter shall be placed on the agenda for the Board's next available public meeting, in compliance with all legal requirements.

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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB meeting on August 25, 2000.

## **PRB GUIDANCE DOCUMENTS**

### **GUIDANCE DOCUMENT NO. 2\***

#### **RECONDUCTORING OF LINES**

##### I. Purpose.

This policy establishes the Board's policy regarding whether the "reconductoring" of electric transmission lines performed by power suppliers requires an application to be filed with the Board. When "reconductoring" constitutes general maintenance, it eliminates the need for the Board to approve the "reconductoring" process.

##### II. Policy Applicability and Definitions.

A. This policy applies to all transmission lines located in the State of Nebraska, over which the Board has jurisdiction.

B. Reconductoring is defined as replacing an existing conductor with a new single conductor that does not also involve increasing the voltage capability of the current transmission line.

##### III. Board Findings

A. That as long as the reconductoring process does not involve an increase in the voltage of transmission line in current use, and does not involve a change in the physical location of a transmission line or any part thereof, then reconductoring shall be classified as a general maintenance procedure.

1. Merely replacing or altering the support structures of transmission lines to comply with the National Electric Safety Code is considered general maintenance.

B. General maintenance performed on transmission lines does not require Board review or approval.

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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB meeting January 25, 2002.

## **PRB GUIDANCE DOCUMENTS**

### **GUIDANCE DOCUMENT NO. 3**

#### **APPROVAL FOR TRANSMISSION LINE PROJECTS INVOLVING MULTIPLE POWER SUPPLIERS**

##### **I. Purpose**

This policy establishes the Nebraska Power Review Board's (the Board) policy regarding whether electric transmission lines constructed jointly by more than one power supplier constitute projects that require the Board's review and approval prior to the commencement of construction as set out in Neb. Rev. Stat. § 70-1012 (1996). The Board believes that Neb. Rev. Stat. § 70-1012 is ambiguous regarding whether certain joint transmission facility projects require Board approval. This policy is intended to clarify the Board's interpretation of the statute's applicability in certain situations.

##### **II. Policy Applicability and Definitions**

A. This policy applies to those joint transmission facility projects where two or more power suppliers construct transmission facilities for which each entity involved will own that portion of the facility or transmission line that will be located entirely inside its own service area.

B. The Board recognizes there are numerous methods through which power suppliers could structure a joint transmission facility project. This policy is intended to apply to situations described in II.A (above), and not to others that are structured differently (such as, for example, situations where a power supplier would jointly own a transmission facility locate inside another power supplier's service area, or a power supplier making installment payments to another power supplier responsible for constructing and initial financing for a project, where the power supplier responsible for constructing the project retains ownership of the transmission facilities until full payment for the facilities has been achieved; etc.).

C. This policy applies only to situations where the power supplier(s) holding the service area rights where the transmission facilities will be located either: 1) is the applicant or co-applicant, or 2) has filed a Consent and Waiver form indicating its consent to the construction in its service area and waives a hearing thereon.

##### **III. Board Findings.**

A. An application must be filed with the Board Prior to commencement of construction in all joint transmission facility projects where any power supplier involved will at any time be involved in the construction or ownership, jointly or individually, of transmission facilities located outside the supplier's service area.

## PRB GUIDANCE DOCUMENTS

1. An application filed with the Board for a project described in III.A.(above) will be reviewed by the Board's staff. The executive director will make a determination whether an application meets the criteria for this policy and falls under the exemption from Board approval provided in Neb. Rev. Stat. § 70-1012(1). If the application does not qualify, then the application will be processed in accordance with the Board's normal procedures for applications. If it does qualify, Board staff will process it according to the guidelines in III.A.2(below).

2. If there are deficiencies in the application, the Board's staff will contact the power suppliers in an attempt to correct the deficiencies. If the application is found to be complete and in compliance with the Board's rules, the executive director will provide a letter to the power suppliers involved informing them that the application is complete and complies with the Board's rules, and the construction may proceed.

B. No formal approval by vote of the Board is required prior to the commencement of construction in situations covered by this policy.

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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB meeting September 19, 2003.

## **PRB GUIDANCE DOCUMENTS**

### **GUIDANCE DOCUMENT NO. 4\***

#### **PROCEDURES FOR SPECIAL GENERATION APPLICATIONS FILED PURSUANT TO NEB. REV. STAT. § 70-1014.01**

##### I. Purpose

Due to the enactment of Neb. Rev. Stat. §70-1014.01 (formerly known as LB 65 (2003)) the Power Review Board (the Board) believes it beneficial to provide its staff and Nebraska power suppliers with guidance regarding the procedures the Board intends to follow when a special generation application is filed. Although this policy sets out the Board's intentions regarding the procedures it will follow in such circumstances, the policy is intended only as guidelines for purposes of uniformity and predictability. The Board acknowledges that this policy does not have legal effect unless and until its provisions are included in the Board's rules and regulations.

##### II. Policy Applicability and Definitions

A. This policy applies to all special generation applications filed pursuant to the provisions set out in Neb. Rev. Stat. §70-1014.01.

##### III. Procedures To Be Followed

A. Upon receipt of an application, the Board's executive director will determine whether the application can be placed on the Board's next agenda. Due to a variety of factors present in each situation, and in order to provide maximum flexibility to the board's staff and applicants, the Board believes it is best not to establish a set deadline by which applications must be submitted. Applicants wishing to know if sufficient time exists to have the matter be considered at the Board's next scheduled meeting should coordinate with the Board's executive director prior to filing the application.

B. The Board's rules and regulations do not currently contain a separate format for special generation applications'. Power suppliers should continue to use the form provided in the Board's rules at Appendix C of Title 285, Nebraska Administrative code, Chapter 2, (located on pages 8 and 9 of the Board's rules).

1. The last paragraph of Appendix C (section 7, found on page 9) should be deleted and replaced with a new section 7. The new section 7 should state that the applicant is either a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, and electric cooperative, and electric membership association, or another for of governmental entity, and that the application is filed as a special generation application under the provisions of Neb. Rev. Stat. §70-1014.01.

## PRB GUIDANCE DOCUMENTS

C. If the applicant would prefer that a hearing not be held on its special generation application, the applicant must attach exhibits to the application that provide sufficient specific information to allow the Board to make the findings required in Neb. Rev. Stat. §70-1014.01. The following exhibits should be included:

1. A sworn affidavit from an employee or agent of the applicant that is familiar with the proposed project. Among other information, this person should provide some details concerning where the facility will be located and the total cost of the project. He/she will attest to the amount of kilowatts of electric energy the facility will produce at the facility's rated capacity (which cannot exceed 10,000 kilowatts); which method of generation listed in §70-1014.01 the unit or facility will use; whether the power supplier involved has filed any other special generation applications, and if so, provide some reasons why the current application constitutes a separate and distinct project from the previous special generation applications.

a. It is not required that all information be provided on one affidavit. Multiple affidavits are appropriate if different individuals have knowledge concerning different aspects of the proposed project.

2. A sworn affidavit describing the public benefits that will be provided by the project that warrant its approval even though it may not constitute the most economically feasible generation option.

3. A sworn affidavit describing the technical specifications or providing a brief description of the generation equipment that will be constructed or installed as a result of the project. If such specifications are in the form of drawings, photographs, etc., a sworn affidavit attesting to their authenticity must be attached.

D. The Board requests that if an applicant prefers the Board not to hold a hearing on its special generation application, the applicant inform the Board of this desire by filing a Request for Waiver of Hearing.

E. If the applicant has obtained signed Consent and Waiver forms from alternate power suppliers that the applicant believes may be affected by the special generation application, the signed originals should be submitted to the Board along with the special generation application and exhibits. Although it is usually helpful, it is not a prerequisite that the applicant obtain the Consent and Waiver forms from alternate power suppliers. The Board will provide written notice to these parties and provide them an opportunity to submit a Consent and Waiver Form.

F. The executive director will review the application and make an initial administrative determination whether the application qualifies as a special generation application.

## PRB GUIDANCE DOCUMENTS

G. If the application qualifies as a special generation application, a time and date for a hearing will be set. Written notice that the application was filed and notice of the hearing will be sent to the applicant and any alternate power suppliers the Board deems to be affected by the application.

1. The notice will state that if the Board determines the necessary findings can be made without a hearing, and if no interested parties file a Protest or Petition for Intervention in the proceeding, the Board may waive the hearing and consider approval of the special generation application during its next public meeting.

H. Notice will also be provided to the public and any other potentially interested parties through a legal notice that will be placed by the Board in a newspaper with general circulation in the affected area.

1. Similar to the provisions set out in G.1 (above), the public notice will state that if the Board determines the necessary findings can be made without a hearing, and if no interested parties file a Protest or Objection by the stated deadline, the Board may waive the hearing and consider approval of the special generation application during its next public meeting.

2. Upon the receipt of any Protest or Intervention, the Board's staff will provide written notice to the applicant.

I. In the absence of a Protest or Intervention, the Board intends to normally not require a hearing for special generation applications.

1. The Board reserves the right to require a hearing if, in its discretion, it believes one is necessary. However, the Board anticipates that hearings would be used primarily when the project involves special or unique circumstances, or if the application and accompanying exhibits do not provide sufficient information upon which the Board can make the findings required in Neb. Rev. Stat. §70-1014.01.

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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB meeting October 17, 2003.

## **PRB GUIDANCE DOCUMENTS**

### **GUIDANCE DOCUMENT NO. 5\***

#### **PROCEDURES FOR CONFIRMING EXEMPTION FROM POWER REVIEW BOARD APPROVAL FOR GENERATION PROJECTS THAT CONSTITUTE “QUALIFYING FACILITIES” UNDER THE PUBLIC UTILITIES REGULATORY POLICIES ACT OF 1978 (PURPA)**

##### **I. Purpose**

This policy is being implemented to comply with the legal conclusions in Nebraska Attorney General’s Opinion No. 04024 (September 7, 2004). The Policy describes the procedures by which the Power Review Board (the Board) will confirm that renewable generation projects which are considered “qualifying facilities” under the Public Utilities Regulatory Policies Act of 1978 (PURPA), shall be exempt from the need to obtain Power Review Board approval prior to construction, or prior to interconnecting with the transmission grid in the case of an existing facility, pursuant to the requirements of Neb. Rev. Stat. §70-1014.

##### **II. Definitions.**

A. “Owner” for purposes of this policy shall mean one or more individuals or corporations, jointly or severally, in whom is or will be vested primary or controlling interest in a proposed or existing generation facility.

B. “Qualifying Facility” for purposes of this policy shall mean a generation facility that meets the criteria to be considered a qualifying small power production facility or a qualifying cogeneration facility under federal regulations set out at 18 C.F.R. subpart B (18 CFR §§ 292.201 through 292.211).

##### **III. Policy Applicability**

A. This policy applies to all renewable generation facilities whose owners obtain or wish to obtain certification for the project as a qualifying facility under PURPA. Certification of a project as a qualifying facility must be obtained through the Federal Energy Regulatory Commission (FERC), pursuant the criteria set out in the code of federal regulations at 18 C.F.R. part 292.

B. Generation facilities that constitute qualifying facilities are exempt from the need to obtain the Board’s approval. However, the owner of the proposed facility must provide the Board with evidence that a proposed facility, or an existing facility that will be interconnected with the transmission grid, has obtained qualifying status through certification with FERC.

## **PRB GUIDANCE DOCUMENTS**

### IV. Procedure To Be Followed

A. Owners seeking a determination that a proposed generation facility or an existing generation facility to be interconnected with the transmission grid is a qualifying facility and thus exempt from the Board review should contact FERC to obtain certification of the generation project as a qualifying facility.

B. After the owner of a generation project obtains certification of the project from FERC, the owner should provide the following to the Board:

1. A copy of the completed Form 556 submitted to FERC.

2. A copy of FERC's docket confirmation documentation or FERC's Order granting the application for FERC Certification.

3. A brief transmittal letter stating that the owner has obtained certification of the facility from FERC and therefore intends to proceed with the project without filing an application with the Board.

C. Upon receipt of the documents listed in III.B.1-3 (above), the Board's staff will provide written confirmation to the owner of the proposed generation facility that the evidence of FERC's certification has been received and that the facility is therefore exempt from the need to obtain Board approval prior to commencement of construction, or interconnection of an existing facility, under Neb. Rev. Stat. § 70-1014.

D. In the event of the receipt of an application for approval of a generation facility which the Board's staff believes may meet the criteria of a qualifying facility, the Board's staff will contact the applicant and inform him or her that it appears the project may constitute a qualifying facility. Such action by the Board's staff in no way constitutes a determination that the generation facility does in fact constitute a qualifying facility. It is intended to bring the matter to the attention of those owners or applicants that may be unaware of PURPA's provisions. The Board's staff will recommend that the applicant investigate the matter further, contact FERC, or seek legal advice.

E. Exemption from the necessity of Board approval does not in any way relieve the owner from any applicable notice requirements or interconnection or safety standards that must otherwise be met prior to or subsequent to construction or installation of the qualifying facility.

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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB meeting held October 21, 2004.

# PRB GUIDANCE DOCUMENTS

## GUIDANCE DOCUMENT NO. 6\*

### ASSESSMENT OF HEARING COSTS

#### I. Purpose

To clarify when the costs associated with a contested hearing before the Nebraska Power Review Board will be assessed against one or more of the parties participating in the hearing.

#### II. Policy Applicability and Definitions

- A. This policy applies to all parties involved in contested hearings conducted by the Nebraska Power Review Board. The policy shall apply to both power suppliers and to non-utility parties that participate in a contested case based on a Complaint, Protest, Objection or Intervention with the Board.
- B. The term “contested case” shall have the same meaning used in the Nebraska Administrative Procedure Act. Contested case means a proceeding before the Board in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing. See Neb. Rev. Stat. § 84-901(3).

#### III. PRB Findings and Interpretations

- A. If no parties in a contested case request that the Board be bound by the rules of evidence, it is the Board’s interpretation that the provisions of Neb. Rev. Stat. § 84-914(1) do not require that the services of a court reporter be procured. Thus, the proceedings could be tape recorded by the Board’s staff. If the Board’s decision is appealed, a court reporting service can transcribe the hearing record. The costs associated with the preparation of the transcript will be paid by the party appealing the Board’s decision.
- B. Under Neb. Rev. Stat. § 84-914(1), if any party to a contested case submits a request that the Board be bound by the formal rules of evidence, the party or parties against whom a final decision is rendered must pay all costs incurred as a result of the formal hearing.
- C. It is the Board’s policy to procure the services of a court reporter in conjunction with all formal hearings, regardless of whether any party to the contested hearing submits a request that the Board be bound by the rules of evidence. This is done for the Board’s convenience. The Board prepares a transcript in conjunction with all formal hearings. As an example, this allows the Board to create a well-

## PRB GUIDANCE DOCUMENTS

prepared permanent record of the proceedings, and facilitates citation to the record for use in the Board's Finding of Facts, Conclusions of Law and Order.

- D. The Board finds that to assess the costs of a court reporter at a formal hearing before the Board, when no party has submitted a request that the Board be bound by the formal rules of evidence, places an undue burden on parties wishing to participate in a contested case and serves as a deterrent to participation by members of the public that may otherwise have standing and wish to participate in the hearing.

### IV. Assessment of Costs For Formal Hearings

- A. When no party to a formal hearing held in conjunction with any contested case submits a request that the Board be bound by the formal rules of evidence, the costs of the court reporting service will not be assessed against the party or parties against whom a decision is rendered.
- B. When any party to a formal hearing held in conjunction with any contested case submits a request that the Board be bound by the formal rules of evidence, the costs of the court reporting service will be assessed against the party or parties against whom a decision is rendered.
- C. If a party filing a protest or objection to an application submitted by a power supplier waives his or her right to a hearing and agrees to submit the matter on the pleadings, and a formal hearing is nevertheless held in that matter, the costs associated with a court reporting service will not be assessed against that party.

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Timothy J. Texel  
Executive Director and General Counsel

Approved at the January 25, 2008, NPRB meeting.  
Amended Section IV. C. at the February 21, 2008, NPRB meeting.

## PRB GUIDANCE DOCUMENTS

### GUIDANCE DOCUMENT NO. 7\*

#### REPRESENTATION OF PARTIES BY NONLAWERS

##### I. Purpose

This policy clarifies that the Nebraska Power Review Board (NPRB) allows an employee, officer or member of an entity meeting the requirements in Rule 2.4.3(b)(1) to (6) of the Nebraska Supreme Court's *Rules Governing the Unauthorized Practice of Law* adopted on October 10, 2007 and effective January 1, 2008, to represent that entity in administrative proceedings before the NPRB.

##### II. Policy Definition and Applicability

A. This policy applies to all nonlawyers who wish to appear in a representative capacity before the NPRB in a matter involving a contested hearing.

B. "Contested case" shall mean any administrative proceeding before the NPRB in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an agency hearing, whether or not the hearing involves opposing parties.

##### III. Findings

A. That the NPRB is an agency of the State of Nebraska authorized to conduct contested administrative hearings on certain matters within its jurisdiction.

B. That Section 2.4.3 of the Nebraska Supreme Court's *Rules Governing the Unauthorized Practice of Law* establishes the conditions that must be met in order for a nonlawyer to appear in a representative capacity before an administrative tribunal or an agency of the State of Nebraska.

##### IV. Representation of Parties by Nonlawyers

A. The NPRB permits a nonlawyer employee, member, or officer of an entity or organization to represent that entity or organization. Prior to making an appearance or filing documents in a contested case before the NPRB, a nonlawyer must meet the prerequisites set out in sections 2.4.3(b) of the Nebraska Supreme Court's *Rules Governing the Unauthorized Practice of Law*.

## PRB GUIDANCE DOCUMENTS

B. A nonlawyer representing a party in a contested case before the NPRB must provide the NPRB with written documentation demonstrating that the entity or organization has authorized the nonlawyer to appear on behalf of the entity or organization in matters before the NPRB.

C. Pursuant to section 2.4.3(b)(6) of the Nebraska Supreme Court's *Rules Governing the Unauthorized Practice of Law*, when any party requests that the NPRB be bound by the Nebraska Rules of Evidence in a contested case, a nonlawyer is no longer permitted to appear before the NPRB in a representative capacity in that matter.

D. The NPRB does not permit nonlawyers to represent unrelated parties in contested cases before the NPRB. See Nebraska Supreme Court *Rules Governing the Unauthorized Practice of Law*, section 2.4.3.(c)(1).

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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB meeting held January 25, 2008.

## **PRB GUIDANCE DOCUMENTS**

### **GUIDANCE DOCUMENT NO. 8\***

#### **NOTICE CRITERIA FOR TRANSMISSION APPLICATIONS**

##### **I. Purpose.**

This policy is intended to document the Nebraska Power Review Board's (the Board) policy regarding what entities it deems to be "interested" for purposes of receiving written notice of an application to construct transmission facilities. The policy is intended to provide a general outline of the criteria the Board uses when determining what entities receive notice. It is not intended as an exclusive list of the criteria or outline of entities that the Board can consider.

##### **II. Policy Applicability.**

A. This policy applies to an application to construct a transmission facility filed with the Board.

##### **III. Determination of "Interested" Party and Receipt of Notice.**

A. In general, when an application involves a 34.5 kV transmission line or larger and is at least 5 miles in length a hearing date will be set and notice provided to the following entities:

1. Any municipality that is in the general area. There is no specific established mile limit, but if a line (or corridor with alternate routes) passes within approximately five miles of a municipality, a notice will be sent to the municipality. The size and purpose of the line, as well as the population density in the area could increase the range of the notice.
2. Any other transmission-owning utility that owns or operates facilities with which the new facility will interconnect.
3. The electric power supplier that holds the retail service area rights to the geographic territory where the facility will be located.
4. If the transmission line will cross over or come in close proximity to another transmission facility, the Board may provide notice to the owner of that line (if the Board is aware of the proximity).

## **PRB GUIDANCE DOCUMENTS**

5. Notice to the general public will be published in at least one newspaper with general circulation in the area where the project will be located.

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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB meeting on February 18, 2011.

## **PRB GUIDANCE DOCUMENTS**

### **GUIDANCE DOCUMENT NO. 9\***

#### **NOTICE CRITERIA FOR GENERATION APPLICATIONS**

##### **I. Purpose.**

This policy is intended to document the Nebraska Power Review Board's (the Board) policy regarding what entities it deems to be "interested" for purposes of receiving written notice of an application to construct generation facilities. The policy is intended to provide a general outline of the criteria the Board uses when determining what entities receive notice. It is not intended as an exclusive list of the criteria or outline of the entities that the Board can consider.

##### **II. Policy Applicability.**

A. This policy applies to an application to construct a generation facility filed with the Board.

##### **III. Determination of "Interested" Party and Receipt of Notice.**

A. In general, when an application is filed with the Board for authority to construct a generation facility, a hearing date will be set and notice provided to the following entities:

1. All utilities within approximately fifty (50) miles of the project that own or operate commercial generation facilities.
2. The electric power supplier that holds the retail service area rights to the geographic territory where the facility will be located.
3. If the facility will interconnect to a transmission provider other than the applicant, notice will be provided to the transmission-owning utility.
4. If the application is filed under § 70-1014.02 (a certified renewable export facility), all consumer-owned utilities serving more than 50 MW load at the time of the filing.
5. Notice to the general public will be published in at least one local newspaper with general circulation in the area where the project will be located.

## PRB GUIDANCE DOCUMENTS

6. Any power suppliers of which the Board is aware that will have a capacity purchase agreement entitling it to a set portion of the facility's output.

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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB meeting on February 18, 2011.

## **PRB GUIDANCE DOCUMENTS**

### **GUIDANCE DOCUMENT NO. 10\***

#### **DEFINITION OF TERM “ULTIMATE USER” AS USED IN NEB.REV. STAT. § 70-1011**

##### **I. Purpose**

This policy establishes the Nebraska Power Review Board’s (the Board) interpretation of the term “ultimate users” used in Neb. Rev. Stat. § 70-1011. In particular, the Board wishes to clarify that the term “ultimate users” refers to the location of a load or customer, and not to the location of the meter or other point of interconnection where a load or customer’s system is connected or coupled with an electric power supplier’s distribution system.

##### **II. Policy Applicability and Definitions**

A. This policy is intended to apply to situations covered under Neb. Rev. Stat. § 70-1011 where a power supplier is, or wishes to be, interconnected with a load or customer’s electric system for purposes of supplying the load or customer with electric service, when the load or customer is located outside the power supplier’s certified retail service area in the State of Nebraska.

B. “Power supplier” follows the same meaning as provided in Neb. Rev. Stat. § 70-1001.01(2).

C. “Load” or “customer” means an individual physical building, machine, equipment or similar devices (or sometimes a connected or related group of buildings, machines, equipment or similar devices) that uses the electricity provided to it by a retail power supplier.

##### **III. Board Findings**

A. It is the Board’s interpretation that the term “ultimate users,” as it is used in Neb. Rev. Stat. § 70-1011, refers to the physical location of a load or customer where the electricity is consumed or converted into another form of energy.

1. It is the Board’s interpretation that the term “ultimate user” does not refer to the location of the meter used to measure the amount of electricity provided to the load or customer.

B. Based on the above interpretation, the Board believes that it is a violation of Nebraska law for a power supplier to provide electrical power to a load or customer located in any other power supplier’s certified retail service area, except by agreement of the suppliers involved, by order of the Board or a court

## **PRB GUIDANCE DOCUMENTS**

of competent jurisdiction, or as authorized by some other legal authority determined to have jurisdiction over this matter.

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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB Board Meeting April 22, 2011.

## **PRB GUIDANCE DOCUMENTS**

### **GUIDANCE DOCUMENT NO. 11\***

#### **ACCEPTANCE OF FILINGS DURING NON-BUSINESS HOURS**

##### **I. Purpose**

This policy establishes the Nebraska Power Review Board's (the Board) procedure for accepting and date and time stamping documents filed with the Board outside of the Board's normal business hours. There are occasions when the Board's staff is working in the office outside the Board's normal business hours and filings are received, either by personal delivery or facsimile transmission.

##### **II. Policy Applicability and Definitions**

A. This policy is meant to outline the Board's procedure for how a document submitted for filing with the Board will be date and time stamped when it is received by the office staff during non-business hours. This policy sets out the procedure that will normally be followed for the Board's staff to accept and time and date stamp documents received during non-business hours so that parties filing the documents or other parties inquiring about filings are aware of the Board's procedures for receiving such documents.

B. "Normal business hours" for the Board are 8:00 a.m. to 5:00 p.m. (CT) Monday through Friday. The office is closed on all State holidays.

C. "Non-business hours" are any hours that are not part of the Board's normal business hours.

##### **III. Receipt of Filings Prior to the Office Opening for Business**

Documents received prior to the time when the Board officially opens in the morning on a non-holiday workday will be time and date stamped on the appropriate business date at 8:00 a.m. For example: a courier arrives at the Board's offices at 7:20 a.m. on June 10 to file a document. The Board's staff member accepting the filing will time and date stamp it as having been officially received at 8:00 a.m. on June 10.

##### **IV. Receipt of Filings After the Close of Business**

Documents received by the Board's staff after the close of business will be time and date stamped as having been officially filed at the opening of the office on the next business day. For example: a courier arrives at the Board's offices at 5:45 p.m. on June 10 to file a document. The Board's staff member accepting the filing will time and date stamp it as having been officially received at 8:00 a.m. on June 11.

## PRB GUIDANCE DOCUMENTS

### V. Receipt of Filings Via U. S. Postal Service or State Interoffice Mail

Documents received through the U.S. mail or through the State's interoffice mail will be time and date stamped as having been officially received at the time when the mail is retrieved on that business day. If the mail would be retrieved on a non-business day, the document will be time and date stamped as having been received at the opening of business on the next business day. On business days, the Board's staff will retrieve mail each morning. In some instances the mail may be checked periodically throughout the day. Those documents received during the day will be time and date stamped as having been received at the time they are retrieved prior to the close of business.

### VI. Filing of Documents Due To Non-Scheduled Office Closure

In any instance when the Nebraska State Office Building or the Board's offices are closed on a weekday that is not a State holiday due to unscheduled circumstances (e.g. weather conditions, bomb threat, all Board employees are ill on the same day, etc.) that day will be treated as if it were a State holiday only for purposes of determining filing deadlines, receipt of filings, and time-stamping documents received in the Board's offices. If the Board's offices are open for part of the day but are closed prior to the normal close of business at 5:00 p.m. CT, the entire day will be treated as if it were a State holiday only for purposes of filing deadlines. Any documents received while the Board's offices are open on such a day will be accepted for filing and time or date stamped on that day.

A. In instances where the Board's offices open later than its normal opening time of 8:00 a.m. due to unforeseen circumstances (such as inclement weather, evacuation due to bomb threat, etc.), the day will be deemed to be a normal business day for purposes of receiving filings if the Board's offices are open by 1:00 p.m. and remain open until the normal close of business at 5:00 p.m. In instances where the Board's offices are not open for business by 1:00 p.m., but are subsequently open, that day will be considered to be a State holiday only for purposes of filing deadlines.

B. In the event the Board's offices are closed on a non-holiday weekday due to unforeseen circumstances, the Board's staff will make an attempt to notify any party, or the party's attorney if represented by counsel, with proceedings pending before the Board about the closure and that the day should be counted as a State holiday only for purposes of calculating filing deadlines.

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Timothy J. Texel  
Executive Director and General Counsel

Approved as amended at NPRB Board Meeting January 11, 2013.  
Originally approved on August 12, 2011.

## **PRB GUIDANCE DOCUMENTS**

### **GUIDANCE DOCUMENT NO. 12\***

#### **POWER REVIEW BOARD JURISDICTION WHEN A NON-UTILITY PROVIDES ELECTRICITY TO THIRD PARTIES**

##### **I. Purpose**

Each electric power supplier serving customers in the State of Nebraska has a certified service area in which it is both authorized and obligated, if economically feasible, to provide retail electric service to the customers in that service area. There are limited instances where entities that are not utilities provide electricity to third parties for various purposes. One example is when a business provides electricity to third parties in order to charge Plug-In Electric Vehicle's (PEVs). As the use of PEVs and other instances of non-utilities providing electricity to third parties becomes more prevalent, the Nebraska Power Review Board (the Board or PRB) is aware that it would be helpful to citizens, businesses and electric utilities to have guidance regarding whether and under what circumstances the Board believes provision of electricity to third parties by a non-utility would mean the provider is acting as an electric power supplier and the activity is therefore subject to the Board's jurisdiction. This policy is intended to provide general guidance regarding how the Board interprets its jurisdiction over the provision of electricity by non-utility entities to third parties, including situations involving PEV charging stations, in order to ensure that citizens, businesses and utilities know how to conduct their affairs and remain compliant with Nebraska law when dealing with situations involving the provision of electricity to third parties.

##### **II. Power Review Board Jurisdiction**

The Board has jurisdiction over certain activities in which electric power suppliers operating in the State of Nebraska are engaged. Under Nebraska law, other than in the instance of privately developed renewable energy generation facilities as defined in Neb. Rev. Stat. § 70-1001.01 and qualified net metering facilities as defined in Neb. Rev. Stat. § 70-2002, "electric suppliers or suppliers of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail." Neb. Rev. Stat. § 70-1001.01(3). Unless otherwise agreed to by the suppliers involved, "no supplier shall offer electric service to additional ultimate users outside its service area or construct or acquire a new electric line or extend an existing line into the service area of another supplier for the purpose of furnishing service to ultimate users therein without first applying to the board and receiving approval thereof, after due notice and hearing under rules and regulations of the board." Neb. Rev. Stat. § 70-1011. Due to these provisions of law, entities that are not a utility with a certified retail service area that sell or distribute electricity to third parties without the consent of the utility holding the service area rights to that location may be in violation of Nebraska law. If customers are being served in violation of the provisions of Chapter 70, article 10, the Board has the authority, and possibly the obligation, to bring an action to enjoin the violation until the

## PRB GUIDANCE DOCUMENTS

power supplier complies with the provisions of Chapter 70, article 10. Neb. Rev. Stat. § 70-1015(1).

Due to the above provisions of law, the Board has jurisdiction over situations where any entity is selling or distributing electricity at wholesale or retail to third parties.

### III. Situations Constituting a Violation

The Board's interpretation of Nebraska law is that a violation occurs when a non-utility entity sells electricity to third parties, and the compensation paid by the third party is based on the actual amount of electricity used by the third party customer as measured by an electric meter or other similar device. Under such circumstances, the non-utility entity becomes a retail power supplier under Nebraska law, thus subjecting the activity to the Board's jurisdiction. Whether the entity is making a profit from the sale of the electricity is not relevant.

A. Example: If a landlord meters or otherwise measures the consumption of electricity on the pertinent property and charges tenants an additional amount based on the actual usage, the landlord is selling electricity to third parties and is operating as an electric power supplier. This would include rental properties such as apartment complexes, duplexes, and mobile home parks. The Board does have jurisdiction over such operations and the operation is a potential violation of Nebraska law.

B. Example: If a business such as a truck stop sells electricity to its customers through the use of a PEV charging station that meters the electricity consumed and charges the customer based on the actual usage (usually measured in kilowatt hours), the provider of the electricity is operating as an electric power supplier, the activity falls within the Board's jurisdiction, and the sale is a potential violation of Nebraska law.

### IV. Situations That Do Not Constitute a Violation

If an entity provides electricity to third parties as part of another service or package, and the customer is not charged for electricity based on the actual usage, the Board does not believe that the entity is engaged in "selling" or "distributing" electricity as used in § 70-1001.01(3). The Board considers provision of electricity in such situations as incidental to the primary business in which the entity is engaged, and is intended to be a service or activity included as part of a larger package. In such instances the entity is not acting as an electric power supplier, and the activity does not create PRB jurisdiction over the entity or its actions.

## PRB GUIDANCE DOCUMENTS

A. Example: The provision of electricity by an entity, including private businesses and political subdivisions of the state, through the use of charging stations or other devices solely to its own buildings, machines, vehicles, etc. does not fall within the Board's jurisdiction and does not violate Nebraska law.

B. Example: Businesses such as truck stops, gas stations, convenience stores, campgrounds and hotels that provide electricity on a temporary basis to their customers without charging for the electricity based on usage are not operating as electric power suppliers and therefore those activities do not fall within the Board's jurisdiction and do not constitute a violation of Nebraska law.

C. Example: A campground that provides electricity as part of a set packaged price that also includes the use of a camp site, water, recreational vehicle sewer disposal services, bathrooms, showers, picnic facilities, cable television, etc. is not selling or distributing electricity for purposes of § 70-1001.01(3).

### V. Receipt of Complaint

Any person or entity, including consumers and utilities, may file a complaint with the Board concerning a potential violation involving an entity engaged in selling or distributing electricity to third parties outside its service area through the use of devices such as PEV charging stations. The Board will follow the procedures established in Chapter 70, article 10 and the Board's Rules of Practice and Procedure when a complaint is filed.

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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB Board Meeting June 14, 2013.  
Amended at NPRB Board Meeting February 26, 2018.

## PRB GUIDANCE DOCUMENTS

### GUIDANCE DOCUMENT NO. 13\*

#### REMITTANCE OF ASSESSMENT FUNDS AND INTEREST ON LATE PAYMENTS

##### I. Purpose

This policy establishes the Nebraska Power Review Board's (the Board) interpretation of when payments of the assessments levied against Nebraska's electric power suppliers are past due and interest must be charged. The pertinent language in Nebraska Revised Statute section 70-1020, states "The [electric power] supplier shall remit the amount of its assessment to the board within forty-five days after the mailing of the assessment. Any assessment not paid when due shall draw interest at a rate equal to the rate of interest allowed per annum under section 45-104.02, as such rate may from time to time be adjusted."

##### II. Power Review Board's Interpretation

The language in Neb. Rev. Stat. section 70-1020 requires that each power supplier operating in the State of Nebraska remit its payment to the Board within forty-five days from the date when the Board mails the assessment notice. The Board finds that payments are submitted when either delivered to the Board's offices or postmarked if delivered by mail. According to Black's Law Dictionary, the term "remit" means "To transmit (as money)." Black's Law Dictionary 1409 (9<sup>th</sup> ed., 2009). Similarly, Webster's dictionary defines "remit" as "to send (money) in payment." Webster's New World Dictionary 545 (4<sup>th</sup> ed. 2003). The statute does not require that the payment be received in the Board's offices within the forty-five days.

Based on the above definitions, it is the Board's interpretation that a power supplier remits payment when it is placed in the mail as demonstrated by the postmark, or when delivered by hand to the Board's offices. Interest will not be charged for assessments received after the due date, so long as the payment is postmarked on or prior to the due date.

The Board will collect interest from any power supplier from which payment is received after the due date, or if the postmark is after the due date. Interest will be collected from the power supplier regardless of the amount involved. The language in Neb. Rev. Stat. section 70-1020 clearly states that late payments "shall draw interest." The use of the word shall indicates mandatory and nondiscretionary action. The Board and its staff lack any legal authority to waive collection of interest on late payments, even when the interest involved is for a nominal amount.

## PRB GUIDANCE DOCUMENTS

**Example:** The Board sends out its notice of assessment on August 1. Payment would be due forty-five days later on September 15. A power supplier mails its payment check on September 12, which is received by the Board on September 17. The payment is not late, as it was remitted prior to the due date, as demonstrated by the postmark on the envelope. Thus, no interest would need to be assessed. If the envelope was postmarked on September 16 and was received on September 20, five day's interest would be charged.

### III. Calculation of Interest

The Board's staff will determine the interest to be assessed based on the interest rate set in Neb. Rev. Stat. section 45-104.02. Interest will be calculated on a per annum basis, which will then be divided by 365. The power supplier will receive a letter from the Board's staff notifying it of the amount of interest due.

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Timothy J. Texel  
Executive Director and General Counsel

Approved at NPRB Board Meeting October 11, 2013.

## GLOSSARY

### ~A~

**Access Charge:** A fee imposed on a seller to gain access to a utility's transmission or distribution lines necessary to deliver power to a point of exchange or use.

**Alternating Current (A.C.):** Electrical current that periodically (regularly) changes direction. A.C. is much more efficient than D.C. for transmission purposes.

**Alternator:** An A.C. generator. An A.C. generator has a magnet that rotates within a stationary structure containing wires in which alternating voltage is induced.

**American Public Power Association (APPA):** A national service organization representing over 2,000 municipal and other state or local publicly-owned electric utilities throughout the United States. The Power Review Board is an Associate Member of the APPA.

**Ancillary Services:** Interconnected operations services for operating reserve, voltage control, regulation and frequency response, scheduling and system control and dispatch, and other power supply necessary to affect a reliable transfer of electrical energy at specified contract terms between a buyer and seller.

**Availability:** A measure of time that a generating unit, transmission line or other facility is capable of providing service, whether or not it is actually in service. Typically this measure is expressed as a percent available for the period under consideration.

**Avoided Cost:** The cost the utility would incur but for the existence of an independent generator or other energy service option. Avoided cost rates have been used as the power purchase price utilities offer independent suppliers.

### ~B~

**Baseload:** The minimum amount of power delivered or demanded over a given period at a constant rate. Baseload generators are those that are relied upon to run continuously (except for maintenance) to provide a constant power source for the customers of retail electric utilities.

**Bilateral Contract:** A direct contract between a power producer and end user outside a centralized power pool.

**Black-Out:** Refers to a condition when all electrical power is disrupted to a certain area.

**Bottleneck Facility:** A point on a system, such as a transmission line, through which all electricity must pass to get to its intended buyers. If there is limited capacity at this point, some priorities must be developed to decide whose power gets through. It also must be decided if the owner of the bottleneck may, or must, build additional facilities to relieve the constraint.

**BPA:** The Bonneville Power Authority. The BPA is one of five federal power marketing administrations that sell electric power produced by federal hydroelectric dams.

**Broker:** An agent that arranges power transactions. The agent may aggregate customers and arrange for transmission, firming and other ancillary services as needed. The broker does not take title to the power supply.

**Broker System:** An electronic marketplace in which electric generation is priced and purchased.

**Bulk Power Supply:** This term is often used interchangeably with wholesale power supply. In broader terms, it refers to the aggregate of electric generating plants, transmission lines and related equipment, and can also refer to one utility or a group of interconnected utilities.

~C~

**Capacity:** The continuous load carrying ability, expressed in megawatts [MW] or mega volt-amperes [MVA] of generation, transmission, or other electrical equipment.

**Capacity Factor:** The ratio of total energy generated by a plant for a specified period of time to the maximum possible energy it could have produced if operated at the maximum capacity rating for the same period, expressed as a percent.

**Captive Customer:** A customer who does not have realistic alternatives to buying power from the local utility, even if that customer had the legal right to buy from competitors.

**Cogeneration (Cogen):** Generating electricity using a waste heat fuel source (such as steam) which comes from another industrial process.

**Competitive Power Supplier:** A supplier of retail energy and capacity and ancillary services, other than the incumbent supplier, that may own generation, buy and resell, and who has title to the electricity.

**Competitive Transition Charges:** A charge that allows utilities to recover historic costs related to electric generating facilities and power purchase contracts.

**Conductor:** Any substance, usually metallic, that will readily conduct an electrical current. When used in the context of a transmission line, conductor refers to the line that will actually transmit the current.

**Contracts for Differences (CfD):** A type of bilateral contract where the electric generator-seller is paid a fixed amount over time which is a combination of the short-term market price and an adjustment with the purchaser for the difference. For example, a generator may sell a distribution company power for ten years at 6 cents/kWh. That power is bid into a PoolCo at a low cent/kWh value (to ensure it is always taken). The seller then gets the market clearing price from the pool and the purchaser pays the producer the difference between the PoolCo selling price and 6 cents/kWh (or vice versa if the pool price should go above the contract price).

**Contract Path:** The most direct physical transmission tie between two interconnected entities. When utility systems interchange power, the transfer is presumed to occur over the contract path, notwithstanding the fact that power flow in the network will distribute in accordance with network flow conditions.

**Control Area:** An electric system or systems, bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other control areas and contributing to frequency regulation of the interconnection.

**Control Area Operator:** The operator of a Control Area in which transmission facilities used for transmission services are located.

**Cooperative Electric Utility (Co-op):** An electric utility owned by its customers and operated for the benefit of those using its service.

**Cost Based Pricing:** Electric service prices determined by adding the costs associated with serving an individual customer (or the average cost of serving a group of similar customers) to an allowed return on investment.

**Cost Allocation Working Group (CAWG):** A working group that was formed by the Southwest Power Pool's Regional State Committee (RSC) to research and provide recommendations on issues assigned to it by the RSC. The CAWG's voting membership consists of one representative from each state regulatory agency with a representative on the RSC. The PRB has a consultant that is designated as the PRB's CAWG member.

**Cost Based Electricity:** A term used by consumer-owned electricity meaning that only the costs of generation, transmission and distribution are included in the cost, and that there is no "margin" or "profit" included.

**Cost of Service Study:** An analysis of all of a utility's costs at a very detailed level for purposes of assigning these costs to the various customer classes.

**Customer Classes:** A term used in ratemaking to segregate customers by types such as residential, commercial and industrial. The main segregation occurs due to the amount and way customers use electricity.

**Curtaibility:** The right of a transmission provider to interrupt all or part of a transmission service due to constraints that reduce the capability of the transmission network to provide that transmission service.

## ~D~

**Decoupling:** A regulatory process for determining the total revenue needed to cover the costs of a utility in which the actual or projected level of sales is disassociated ("decoupled") from the revenues derived. Conservationists often advocate such a process to discourage utilities from selling more energy to maintain adequate profit levels.

**Default Provider:** In the case where an electric consumer does not choose a new supplier once competition begins, a supplier is automatically assigned. This supplier is known as a 'default supplier'.

**Demand:** The rate at which electric energy is delivered to or by a system at a given instant or averaged over any designated interval of time, generally expressed in kilowatts or megawatts.

**Demand Side Management (DSM):** 1) Refers to measures taken by a utility to encourage conservation of electric usage or to reschedule electric usage for more uniform usage throughout the day or year. Such efforts are intended to minimize the size and number of new generating facilities or to design strategic load growth. 2) Planning, implementation, and evaluation of utility-sponsored programs to change the timing or reduce the amount of a customer's energy consumption.

**Deregulation:** The elimination of regulation from a previously regulated industry or sector.

**Direct Access:** The ability of a retail customer to purchase electricity as a commodity directly from the wholesale market rather than through a local distribution company.

**Direct Current (D.C.):** An electric current which flows in one direction only. Examples of direct current would be a dry cell, battery, or rectifier.

**Disaggregation:** The functional separation of the vertically integrated utility into smaller, individually owned business units (i.e., generation, dispatch/control, transmission, distribution). The terms "deintegration", "disintegration" and "delamination" are sometimes used to mean the same thing. *See also Divestiture.*

**Distributed Generation:** A distributed generation system involves small amounts of generation located at numerous locations on a utility's distribution system for the purpose of meeting local (substation level) peak loads and/or displacing the need to build additional (or upgrade) local distribution lines. Distributed generation can reduce the risks associated with having too much generation in one location or reliant on one or two transmission lines.

**Distribution:** The process of delivering electric power at lower voltages from central substations to the point of end use.

**Distribution Charges:** Charges for the use of local wires, transformers, substations and other equipment used to deliver electricity to homes and businesses.

**Distribution system:** The poles, wires and apparatus used in distributing electricity to end-use customers. Electricity is transmitted to a distribution system over transmission lines.

**Distribution Utility (Disco):** The regulated electric utility entity that constructs and maintains the distribution wires connecting the transmission grid to the final end-use customer. The distribution utility can also perform other services such as aggregating customers, purchasing power supply and transmission services for customers, billing customers and reimbursing suppliers, and offering other regulated or non-regulated energy services to retail customers. The “wires” and separate entities are used to supply these two types of distribution services.

**Divestiture:** 1) Refers to the sale of a utility’s generation or transmission assets. 2) The stripping off of one utility function from the others by selling (spinning-off) or in some other way changing the ownership of the asset related to that function -- most commonly associated with spinning-off generation assets so they are no longer owned by the shareholders that own the transmission and distribution assets. *See also Disaggregation.*

~E~

**ECAR:** East Central Area Reliability Coordination Agreement.

**Economic Dispatch:** The allocation of demand to individual generating units on-line to effect the most economical production of electricity.

**Economic Efficiency:** 1) A measure of the amount of output obtained for a given set of economic inputs. The most desirable economic efficiency is that which produces a given level of output using the fewest economic inputs. 2) A term that refers to the optimal production and consumption of goods and services. This generally occurs when prices of products and services reflect their marginal costs. Economic efficiency gains can be achieved through cost reduction, but it is better to think of the concept as actions that promote an increase in overall net value (which includes, but is not limited to, cost reductions).

**Economic Long-Run:** The time period over which the value of a given set of economic inputs is recovered, which is often a function of both the physical life of the asset and its economic usefulness.

**Economic Short-Run:** Any period less than the economic long-run. During the economic short-run, economists argue that price levels should cover all variable costs and make some or no contribution to fixed costs, but that full costs may not be recovered.

**Economies of Scale:** The efficiencies and reduced costs achieved due to the larger size of a project, which eliminates duplication of some efforts and costs. Economies of scale exist where the industry exhibits decreasing average long-run costs with size.

**EEI:** Edison Electric Institute. An association of investor-owned electric companies formed in 1933. EEI provides advocacy, analysis, and information to its members and government agencies. EEI also provides a forum for its member companies to discuss issues related to the electric industry.

**ELCON:** Electricity Consumers Resources Council. An association formed in 1976 of large industrial consumers of electricity. ELCON works cooperatively for the development of coordinated and consistent policies affecting electric energy supply and pricing at the federal, state and local levels.

**Electron:** A negatively charge atomic particle which orbits the atomic nucleus. It electrically balances the uncharged neutron(s) and the positively charge proton(s), which make up the nucleus.

**Embedded Costs Exceeding Market Prices (ECEMP):** Embedded costs of utility investment exceeding market prices are: 1) costs incurred pursuant to a regulatory or contractual obligation; 2) costs that are reflected in cost-based rates; and 3) cost-based rates that exceed the price of alternatives in the marketplace. ECEMPs may become “stranded costs” where they exceed the amount that can be restored through the asset’s sale. Regulatory questions involve whether such costs should be recovered by utility shareholders and if so, how they should be recovered.

**Energy:** The capacity for doing work. Electric energy is measured commercially in kilowatt hours.

**Environmental Externalities:** Environmental costs associated with the provision of a good or service which may or may not be incorporated in the internal cost measurements of the provider. Such costs are sometimes imputed theoretically to represent unmeasured costs to society associated with the use of the good or service. In the electric industry, the term “externalities” is sometimes used to refer to medical or clean-up costs associated with air or water pollution associated with generation facilities.

**EPAct:** The Energy Policy Act of 1992. EPAct addresses a wide range of energy issues. The legislation created a new class of power generators and grants the authority to FERC to order and condition access by eligible parties to the interconnected transmission grid.

**ERCOT:** The Electric Reliability Council of Texas.

**ESCO:** An Efficiency Service Company. A company that offers to reduce a client’s electricity consumption with the cost savings being split with the company.

~F~

**FERC:** The Federal Energy Regulatory Commission. FERC regulates the price, terms, and conditions of power sold at wholesale in interstate commerce and regulates the price, terms and conditions of all transmission services. FERC is the federal counterpart to state utility regulatory commissions, which regulate the retail operations of electric utilities.

**FERC Order 888:** FERC Order 888 promotes wholesale competition through open access and non-discriminatory transmission service by investor-owned utilities. Requirements of FERC 888 include the identification of stranded costs by public utilities and transmitting utilities for recovery, unbundling of costs, and separating marketing functions from transmission operations.

**FERC Order 889:** Requirements of FERC Order 889 include the creation of a nation-wide information sharing system. Open Access Same-Time Information System (OASIS) is a computer information system on the internet, created to allow utilities and power marketers to make reservations on transmission systems across the nation.

**Firm Power:** Power that is guaranteed by the supplier to be available at all times during a period covered by a contractual commitment.

**Forwards:** A forward is a commodity bought and sold for delivery at some specific time in the future. It is differentiated from futures by the fact that a forward contract is a customized, non-exchange traded, and a non-regulated hedging mechanism.

**Franchise:** A franchise is a grant of right or privilege to occupy or use public streets, ways and facilities to deliver service to customers. Local governments typically grant franchises.

**Franchise Fee:** A payment to a city or other local government for the exclusive right to sell a product or service in a specified area.

**Frequency of A.C.:** The rate at which alternating current changes direction, measured in cycles per second.

**FRCC:** Florida Reliability Coordinating Council.

**Futures Market:** Arrangement through a contract for the delivery of a commodity at a future time and at a price specified at the time of purchase. The price is based on an auction or market basis. Futures market is a standardized, exchange-traded, and government regulated hedging mechanism.

**FTR:** Future Transmission Right

~G~

**Generation:** The process of producing electricity from other forms of energy.

**Generation Charges:** The charge for generating or creating the electricity used. This charge includes the cost of fuel and power plant costs, but not the cost of delivering the electricity to the customer.

**Generation Dispatch and Control:** Aggregating and dispatching generation from various generating facilities, and providing backup and reliability services.

**Generator:** A machine that converts mechanical power into electrical power.

**Grid:** A system of interconnected power lines and generators that is managed so that the generators are dispatched as needed to meet the electrical demands.

**Gross Revenue Tax:** A tax that is applied to the gross revenue of a utility. Often referred to as payment-in-lieu-of taxes).

~H~

**Hedging Contracts:** Contracts which establish future prices and quantities of electricity independent of the short-term market. Derivatives may be used for the purpose. *See also* **Contract for differences, forwards, futures and options.**

**Horsepower (HP):** A unit of mechanical power. One horsepower equals about three-quarters of a kilowatt.

**Hydro:** A generation plant using flowing water to turn turbines for generation.

~I~

**Independent Power Producer (IPP):** An entity which owns facilities to generate electric power for sale to utilities and end users. IPP's have no assured retail customer base, but rather make profits from selling power into the market. *See also* **Non-Utility Generators.**

**Independent System Operator (ISO):** Independent system operator. An ISO is an independent third party who takes over ownership and/or control of a region's transmission system for the purpose of providing open access to retail and wholesale markets for supply.

**Integrated Resource Planning (IRP):** A process to control electric power planning through both demand-side management (to reduce the need or demand for electricity) and supply side management (to redistribute the types of needed electric generation among fuel types, location, etc.) to accomplish specified social and environmental goals.

**IPP:** *See* **Independent Power Producer.**

~J~

~K~

**Kilovolt (kV):** One kilovolt is 1000 Volts.

**Kilowatt (KW):** A watt is a unit of power in the International System of Units (SI) that is required to do work at the rate of 1 joule per second. Kilo is a metric system term meaning 1000. Therefore, a kilowatt is equal to 1000 watts.

**Kilowatt-hour (KWh):** A Kilowatt-hour is the total number of kilowatts used in one hour, or 3,600,000 joules.

**KVA:** Kilovolt Ampere refers to the unit used to express apparent power. This unit of measurement for power consumption is used for equipment that is not resistive such as motors, computers, and most non-incandescent lighting.

~L~

**LB 901:** Legislative Bill 901 (2000 session). The Nebraska State Legislature passed Legislative Bill 901 on April 11, 2000. LB 901 requires the Board to prepare an annual report examining the conditions in the electric industry that indicate whether retail competition in the electric industry would benefit Nebraska's ratepayers. The bill incorporated the elements of the "condition certain" approach to electric deregulation in Nebraska that resulted from the prior LR 455 studies.

**LR 455:** Legislative Resolution 455. LRB 455 was a three- year comprehensive review of the electric industry in Nebraska, commissioned by the Nebraska State Legislature in 1997. The final report recommended and formed the basic premise of the "Conditions Certain" approach to electric deregulation in Nebraska. Under the "Conditions Certain" approach, retail competition would be considered in Nebraska when the conditions indicated it would benefit Nebraska's ratepayers, as opposed to a "date certain" approach where an arbitrary date is chosen when retail competition will be implemented.

**LES:** Lincoln Electric System. LES is the municipal electric utility for the City of Lincoln, Nebraska.

**LMP:** Locational Marginal Price. LMP is the wholesale electric price at a particular location on the transmission system that reflects the cost to meet the next unit of demand at that location.

**Load:** The amount of power delivered at any instant. It may be applied to a generating plant, a transmission or distribution system, a whole power system, or a customer's requirements.

**Load Factor:** A measure of the degree of uniformity of demand over a period of time, usually one year, and equivalent to the ratio of the average demand expressed as a percentage.

**Load Following:** 1) The obligation of the wheeling utility to provide from its own generating sources any difference between the amount of power being wheeled and the instantaneous requirement of the customer receiving, or the supplier delivering the wheeled power. 2) Load Following falls into two categories: (a) dedicating sufficient generating capacity to the automatic generator control (AGC) mode to allow them to follow load, and (b) monitoring mismatches between intended and actual interchanges between control areas, and transmitting control signals to AGC generators to minimize this mismatch. Both require a system to record mismatches (over-runs and under-runs).

Load following is important because it helps maintain system frequency. Otherwise, if demand exceeded supply, generators would slow down; conversely, if supply exceeded demand, generators would speed up. Both situations could result in an unstable situation which could lead to a widespread outage.

**Local Distribution Company:** The regulated electric utility company that constructs and maintains the distribution system that connects the transmission grid to the end use customer.

## ~M~

**Marginal Cost:** In the utility context, the cost to the utility of providing the next (marginal) kilowatt-hour of electricity, irrespective of sunk costs.

**Market-Based Pricing:** Electric service prices determined in an open market of supply and demand under which the price is set solely by agreement as to what a buyer will pay and a seller will accept. Such prices could recover less or more than the full cost, depending upon what the buyer and seller see as their relevant opportunities and risks.

**Marketer:** An agent for generation projects who markets power on behalf of the generator. The marketer may also arrange transmission, firming or other ancillary services as needed. Though a marketer may perform many of the same functions as a broker, the difference is that a marketer represents the generator while a broker acts as a neutral middleman. *See also* **Power Marketers**.

**MAAC:** Mid-Atlantic Area Council.

**MAIN:** Mid-America Interconnected Network, Inc. The first regional electric reliability council under the North American Electric Reliability Council (NERC). MAIN, ECAR and MAAC were replaced by the Reliability *First* Corporation, which began operations January 1, 2006. MAIN members joined either Reliability *First*, the Midwest Reliability Organization (MRO), or the Southeastern Electric Reliability Council, Inc. (SERC).

**MAPP:** *See* **Mid-Continent Area Power Pool**.

**MAPP Restated Agreement:** The original MAPP organizational contract among members was renegotiated to comply with federal requirements and provided for new classes of members including independent power producers and non-transmission owning utilities. The restated agreement was unbundled to facilitate membership in ISOs and other organizations by parties to the restated agreement.

**Megawatt (MW):** One million watts.

**Metering:** The process and methods of utilizing devices to measure the amount and direction of electrical energy flow.

**Meter Reading Charges:** The supplier's costs of providing customers with metering and/or meter reading services.

**Mid-Continent Area Power Pool (MAPP):** One of the nation's nine electricity reliability councils under the North American Electric Reliability Council (NERC). MAPP covers a geographic area including the eastern two-thirds of Nebraska, South Dakota, North Dakota, Montana, Minnesota, western Wisconsin, Iowa, and parts of Saskatchewan and Manitoba, Canada.

**Midwest ISO (MISO):** Midwest Independent System Operator. The non-profit Midwest ISO is an Independent Transmission System Operator that serves the electrical transmission needs of all or parts of Illinois, Indiana, Iowa, Kentucky, the Province of Manitoba, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota and Wisconsin.

**MRO:** Midwest Reliability Organization. A voluntary association of over 40 organizations formed in 2003. The MRO adopts implements and enforces NERC and regional reliability standards. It is governed by a balanced stakeholders' board of directors. The MRO region covers nine states and two Canadian provinces.

**MTEP-3:** Midwest Transmission Expansion Plan

**Municipal Utility (Muni):** A provider of utility services owned and operated by a municipal government.

**Municipalization:** The process by which a municipal entity assumes responsibility for supplying utility service to its customers. In supplying electricity, the municipality may generate and distribute the power or purchase wholesale power from other generators and distribute it.

~N~

**NARUC:** The National Association for Regulatory Utility Commissioners. NARUC is a non-profit organization whose members consist of governmental agencies engaged in the regulation of utilities and carriers in all fifty States, the District of Columbia, Puerto Rico and the Virgin Islands. NARUC's members regulate the telecommunications, energy, and water utilities industries.

**NASUCA:** The National Association of Utility Consumer Advocates. NASUCA is an association of 44 consumer advocates in 42 states and the District of Columbia. Its members are representing the interests of utility consumers before state and federal regulators and in the courts.

**Non-Utility Generators (NUGs):** Facilities for generating electricity that are not owned exclusively by an electric utility (less than 50%) and which operate connected to an electric utility system. Included are qualifying cogeneration and independent power productions facilities under the Public Utility Regulatory Policies Act of 1978 (PURPA) (referred to as “qualifying facilities” or QF’s), facilities installed under the competitive bidding process, and other independent power producers (IPPs) that operate connected to the electric utility system. *See also Independent Power Producers.*

**NAERO:** North American Electricity Reliability Organization. *See North American Reliability Council.*

**NERC:** *See North American Reliability Council.*

**NPCC:** Northeast Power Coordinating Council. NPCC is a regional reliability coordinating council consisting of the New England Power Pool, the New York Power Pool and the utilities of eastern Canada.

**NOPR:** Notice of Proposed rulemaking. A designation used by the FERC for some of its dockets.

**North American Reliability Council:** Effective January 1, 2007, the North American Electric Reliability Council and the North American Electric Reliability Corporation merged, forming the NERC Corporation. The Federal Energy Regulatory Commission certified the NERC Corporation as the “electric reliability organization” in July 2006. NERC improves the reliability and security of the bulk power system in North America by developing and enforcing reliability standards; monitoring the bulk power system; auditing owners, operators, and users for preparedness; and educating and training electric industry personnel.

**North American Electric Reliability Organization (NERC):** *See North American Reliability Council.*

**NRTA:** Northwest Regional Transmission Association. A sub-regional transmission group within the Western Regional Transmission Association.

**NPPD:** Nebraska Public Power District.

**Nuclear Decommissioning:** Mandated charges to pay for dismantling nuclear power plants after they are retired from service.

~O~

**Obligation to Serve:** The concept embodied in the statutes of many States governing the retail or end-use provision of electric service in which a utility is required to serve all customers who request service at non-discriminatory prices. This obligation is rendered in return for the granting of exclusive rights to serve a geographic area at retail.

**Off-Peak:** Generally refers to designated periods of relatively low system demand. NERC has defined these periods as 10 p.m. until 6 a.m., Monday through Saturday, and all day Sunday.

**Off-Peak Rate:** Generally refers to the cost for power used during Off-Peak periods.

**OMS:** *See Organization of MISO States.*

**OPPD:** Omaha Public Power District.

**Open Access Same Time Information System (OASIS):** An electronic information posting system for transmission access data that allows all transmission customers to view the data simultaneously.

**Options:** An option is a contractual agreement that gives the holder the right to buy (call option) or sell (put option) a fixed quantity of a security or commodity (for example, a commodity or commodity futures contract), at a fixed price, within a specified period of time. May either be standardized, exchange-traded and government regulated or over-the-counter, customized and non-regulated.

**Organization of MISO States (OMS):** An organization of governmental regulatory agencies from 14 U.S. states and one Canadian province. OMS provides advice and counsel to the Midwest Independent System Operator and the Federal Energy Regulatory Commission. The Power Review Board is a member of the OMS.

## ~P~

**Pancaking:** Refers to multiple transmission tariffs that are applied when electricity is transferred across multiple utility systems.

**Parallel Path Flows:** The flow of electricity on an electric system's transmission facilities resulting from scheduled electric power transfers between two electric systems. Electric power flows on all interconnected parallel paths in amounts inversely proportional to each path's resistance.

**Payments in Lieu of Taxes:** Payments made to local governments in lieu of property and other taxes.

**Peak Load or Peak Demand:** The electric load that corresponds to a maximum level of electric demand in a specified time period.

**Performance-Based Rate Making:** A process by which a utility's rates are set in such a way as to encourage certain behaviors considered to be in the public interest, as opposed to setting rates based on cost plus an allowed return on investment.

**PoolCo:** 1) An entity in which the generating assets of all members are "pooled" and the participants obtain pooled average prices for power to meet their system needs. 2) PoolCo refers to a specialized, centrally dispatched spot market power pool that functions as a short-term market. It establishes the short-term market clearing price and provides a system of long-term transmission compensation contracts. It is regulated to provide open access, comparable service and cost recovery.

**Power Exchange:** An entity that would provide a centrally dispatched spot market power pool.

**Power Marketers:** Sales agents for electric power, typically not a part of a utility. Such entities contract with sellers and buyers as the middleman. Unlike brokers, power marketers take title to all power they transact. *See also Marketer.*

**Pricing Parity:** Under regulated pricing, the process of setting the price to collect revenues from a given group or category of customers to equal the cost to serve the customer, including an allowed return on investment. By contrast, and absence of parity would indicate that the prices for one class of customers were less than the full cost and prices for another class of customers were more than the full cost, even though total prices for all classes together may equal the total cost for all classes.

**Pricing Transparency and Liquidity:** In a fully functioning competitive market, price transparency would reflect an indifference to the identity of buyer and seller because the price would be entirely available to all buyers and sellers.

**Public Power:** Consumer-owned electric utilities. The term includes all political subdivisions of the state such as public power districts and municipal systems, as well as cooperatives owned by their members.

**Public Purpose Funds:** State mandated programs, such as low-income discounts and energy efficiency programs.

**PUHCA:** The Public Utility Holding Company Act of 1935. PUHCA prohibits acquisition of any wholesale or retail electric business through a holding company unless that business forms part of an integrated public utility system when combined with the utility's other electric business. The legislation also restricts ownership of an electric business by non-utility corporations.

**PURPA:** The Public Utility Regulatory Policies Act of 1978. This federal statute requires the local retail electric utility to purchase the output from cogenerators and small power producers who have renewable generation facilities and meet certain criteria. The utilities are only required to pay the avoided cost for the electricity purchased under this statute. *See also* **Avoided Cost**.

### ~Q~

**Qualifying Facility (QF):** Under PURPA, QFs are allowed to sell their electric output to the local utility at avoided cost rates. To become a QF, the independent power supplier must produce electricity with a specified fuel type (cogeneration or renewables), and meet certain size and efficiency criteria established by the Federal Energy Regulatory Commission.

### ~R~

**Regional Transmission Group (RTG):** Regional Transmission Group is a voluntary organization of transmission owners, users and other entities interested in coordinating transmission planning, expansion, operation and use on a regional and inter-regional basis.

**Regional Transmission Organization (RTO):** An organization which coordinates, controls and monitors the operation of the electrical grid system of a particular region. *See also* **Independent System Operator**.

**Reliability:** The degree to which electric power is made available to those who need it in sufficient quantity and quality to be dependable and safe. The degree of reliability may be measured by the frequency, duration, and magnitude of adverse effects on consumers' services.

**Reserve Margin:** The amount of installed generation which exceeds the operating generation capacity needed to meet the expected peak load of a given utility with a defined statistical probability. Standards vary from utility to utility, but most utility planners consider a 15 to 20 percent reserve margin essential for good reliability.

**Restructuring:** The reconfiguration of the vertically integrated electric utilities. Restructuring refers to the separation of various utility functions into individually operated and owned entities that control each of the various functions.

**Retail Competition:** A market system under which more than one provider can sell to retail customers and retail customers can buy from more than one supplier. *See also*

**Retail Market:** A market in which electricity and other energy services are sold directly to the end-use customer.

**Retail Sales:** Sales of electric energy to residential, commercial and industrial end-use customers.

**RTO:** *See* **Regional Transmission Organization.**

**Rural:** A public power district engaged in distributing power to rural consumers.

**Rural Electric Cooperative Utility:** An electric utility set up under the Rural Electrification Act of 1934 and owned by the customers of the utility itself. The original purpose of the Act was to provide electric power availability to rural customers who may not have received service because they were more costly to serve than the concentrated urban customers. *See also* **Cooperative Electric Utility.**

**Regional State Committee (RSC):** A Southwest Power Pool committee with a representative commissioner or board member from each state regulatory agency with utilities with members in the SPP. The PRB has one seat on the RSC.

**Rural Utility Service (RUS):** A program under the U. S. Department of Agriculture that provides direct loans and loan guarantees to electric utilities to serve customers in rural areas.

~S~

**Seams Operating Agreement (SOA):** An agreement to coordinate the granting of transmission service between adjoining regions so that neither region oversells transmission service that would overload transmission facilities in the adjoining region.

**Service Area Exclusivity:** The concept embodied in the statutes of many States under which a utility is granted the right to be the exclusive provider of electric service in a given geographic area in return for the utility's obligation to serve all customers in that area with reliable service at fair and non-discriminatory rates.

**SERC:** Southeastern Electricity Reliability Council.

**Service Schedule F:** MAPP's open access transmission tariff.

**SMA:** Supply Market Assessment. (FERC Concept).

**SMD:** Standard Market Design. (FERC Concept).

**Southwest Power Pool:** A regional transmission organization with members in Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma and Texas. As of April 2011 the Lincoln Electric System, Nebraska Public Power District, and Omaha Public Power District are all members of the SPP.

**Spinning Reserves:** 1) The differences between the capability and actual output of generating units which are operating and connected to the electrical network. 2) Generating and power quality assurance service provided by a supplier to customers who rely on service or equipment which may not be as available or reliable as needs dictate. Typically, standby or backup service is sold by a utility to another utility or generator, such as an industrial cogenerator, to assure continuation of service during maintenance and emergency outages.

**Spot Market:** A market in which commodities are bought and sold for cash and delivered immediately.

**SPP:** Southwest Power Pool.

**Standby (Backup) Service:** 1) Service through a permanent connection not normally used but available in lieu of, or as a supplement to, the usual source of supply. 2) Generating and power quality assurance services provided by a supplier to customers who rely on service or equipment which may not be as available or reliable as needs dictate. Typically, standby or backup service is sold by a utility to another utility or generator, such as an industrial cogenerator, to assure continuation of service during maintenance and emergency outage.

**Substation:** A group of transformers with switching and other necessary equipment for increasing or decreasing the voltage and for providing facilities for outgoing lines.

**Stranded Benefits:** Benefits associated with regulated retail electric service which may be at risk under open market retail competition. Examples are conservation programs, fuel diversity, reliability of supply, and tax revenues based on utility reserves.

**Stranded Costs/Stranded Assets:** Costs incurred by a utility which may not be recoverable under market-based retail competition. Examples are undepreciated generating facilities, deferred costs, and long-term contract costs.

**Supply-side:** Activities conducted on the utility's side of the customer meter. Activities designed to supply electric power to customers, rather than meeting load through energy efficiency measures or on-site generation on the customer-side of the meter.

## ~T~

**Tariff:** A document, approved by the responsible regulatory agency, listing the terms and conditions, including schedule of prices, under which utility services will be provided.

**Time-of-Use (TOU) Rates:** The pricing of electricity based on the estimated cost of electricity during a particular time block. Time-of-Use rates are usually divided into three or four time blocks per twenty-four hour period (on-peak, mid-peak, off-peak and, sometimes, super off-peak) and by seasons of the year (summer and winter). Real-time pricing differs from TOU rates in that it is based on actual (as opposed to forecasted) prices which fluctuate many times a day and are weather-sensitive, rather than varying with a fixed schedule.

**Transformer:** A stationary device which converts alternating current of one voltage into alternating current of another voltage. It increases or decreases the voltage of a supply of electricity. Commonly a transformer is composed of two or more coils of wire wound on a common iron core.

**TLR:** Transmission loading relief procedures.

**Transition Costs (Charges):** These include existing costs that are stranded, and incremental costs of the new market system for both start-up and on-going expenses ranging from consumer protection to power exchange and access fees.

**TRANSLink:** Organization of transmission owning utilities in upper Midwest attempting to form an organization for independent transmission operation.

**Transmission Charges:** Charges associated with transporting electricity over long distances, such as from generating stations to substations in the consumer's neighborhood.

**Transmission system:** The transmission lines and substations for transferring electric energy at high voltage.

**Turbine:** A machine that converts energy of steam, water, hot gases or air to mechanical energy without the use of reciprocating parts. It turns the rotor in a generator.

## ~U~

**Unbundling:** The separation of utility bills into the individual price components for which an electric supplier charges its retail customers, including, but not limited to, the separate charges for generation, transmission, and distribution of electricity.

**Uniform Business Practices:** A consensus-driven set of uniform business practices for competitive electricity markets.

~V~

**Vertically Integrated Utilities:** Utilities that own the generating plants, transmission system, and distribution lines to provide all aspects of electric service to their customers.

**Voltage:** The electrical force that is caused by electrical current in a circuit. In other words, voltage is the amount of electrical force required to force one ampere of current to flow through one ohm of resistance.

~W~

**Watt (W):** The unit in which most electrical power is measured. 746 watts is equal to one horsepower, which is the amount of energy required to lift 550 pounds one foot in one second.

**WAPA:** Western Area Power Administration. WAPA markets and transmits reliable, low-cost electric power, and provides related services to a service area covering 1.3 million square miles in the western United States. WAPA's wholesale power customers provide service to consumers in 15 western states, including Arizona, California, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Texas, Utah and Wyoming. Many Nebraska municipalities receive an allocation of WAPA power.

**Wheeling:** The use of one utility's transmission line by another utility that needs to move electricity to another utility or location. The transmission of electricity by an entity that does not own or directly use the power it is transmitting, but rather is moving the power across its lines. Wholesale wheeling is used to indicate bulk transactions in the wholesale market. Retail wheeling allows power producers direct access to retail customers, even when the utility providing the power to the customer does not own the distribution lines necessary to connect to the customer.

**Wholesale Competition:** Rivalry between utilities and other electricity generators striving for the same market of bulk power for resale.

**Wholesale Wheeling:** The process of moving bulk power from a generator to a retail utility across one or more utility-owned transmission systems.

**Western Interconnection Regional Advisory Body (WIRAB):** An organization formed by the Western Governor's Association pursuant to section 215 of the Federal Power Act. WIRAB provides advice to the Western Electricity Coordinating Council, the Electric Reliability Organization and the Federal Energy Regulatory Commission on whether proposed reliability standards and the governance and budgets of the WECC and ERO are in the public interest. Pursuant to the PRB's designation, the PRB's executive director serves as a director on WIRAB's board.

**WSSCC:** The former Western States' System Coordinating Council. WSSCC was a voluntary industry association created to enhance reliability among western utilities. It is now part of the Western Electricity Coordinating Council.

**WSPP:** Western Systems Power Pool. A FERC-approved industry institution formed in 1991. It provides a forum for short-term trades in electric energy, capacity, exchanges and transmission services. The pool consists of more than 300 members and operates in 22 states and one Canadian province.

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