

**STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD**

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| IN THE MATTER OF THE APPLICATION OF |) | PRB-3617 |
| THE NEBRASKA PUBLIC POWER DISTRICT, |) | |
| HEADQUARTERED IN COLUMBUS, |) | |
| NEBRASKA, REQUESTING AUTHORIZATION |) | |
| TO CONSTRUCT APPROXIMATELY 53 MILES |) | ORDER ON |
| OF 345 KILOVOLT TRANSMISSION LINE IN |) | PROTEST AND PETITION |
| KEARNEY AND FRANKLIN COUNTIES, |) | FOR INTERVENTION |
| NEBRASKA. |) | |

On April 8, 2010, James Choquette, Betty Choquette, Steven L’Heureux, Stephanie L’Heureux, Eric Boudreau, Brandy Boudreau, Donna Boudreau, Laverne Boudreau, Shirley L’Heureux, Les Gunnare, and Kelly Gunnare (collectively “Intervenors”) electronically filed a Protest via facsimile transmission with the Nebraska Power Review Board (“the Board”) in opposition to the approval of application PRB-3617. (Exh. 4). On April 13, 2010, the Nebraska Public Power District (“Applicant”) filed an Objection to Protest. In its objection, Applicant challenged the Intervenors’ standing to participate in the proceedings. Applicant’s filing also objected to Intervenors’ Motion for Continuance, but that issue was previously dealt with in a separate order. On April 15, 2010, Intervenors electronically filed a First Amended Protest A/K/A Petition for Intervention. (Exh. 5).

On April 16, 2010, the Board held a hearing to address the issue of the Intervenors’ standing. Although Neb. Rev. Stat. § 84-912.02 anticipates that the hearing officer will rule on interventions, the Board has previously instructed its hearing officer

that the Board members want to reserve the right to rule on motions that will be dispositive or determinative against a party or the merits of the matter. The Board therefore is issuing this ruling instead of the hearing officer.

In its Objection to Protest, Applicant makes the following arguments:

- 1) Southern Public Power District (“Southern PPD”) and the City of Minden are the only entities that the Board has deemed to be interested parties in this proceeding with the right to file a Protest. Neither Southern PPD nor the City of Minden filed a Protest. Due to this, Intervenors would need to file a Petition in Intervention, which they did not do in a timely fashion.
- 2) Intervenors failed to file a Petition in Intervention within twenty days of the mailing of the Notice of Hearing or allege facts that their legal rights, duties, privileges, immunities or other legal interests may be substantially affected by the proceeding at least five days prior to the hearing as required by Neb. Rev. Stat. § 84-912.02.

The Board, or at least its hearing officer, has previously addressed the issue of whether an entity or person other than an electric utility has standing to participate in a hearing before the Board that will address the issue of approval of an electric generation or transmission facility. (See Exh. 3). In that proceeding, it was noted that a reading of the statutes pertaining to the Board seems to indicate it is anticipated that most participants in hearings before the Board will be electric power suppliers. However, it was determined that nothing in the statutes or the Board’s rules of practice and procedure preclude participation by a person or entity that is not a power supplier, so long as the

party wishing to participate files the appropriate documents and can show a sufficient nexus to the subject matter to warrant participation as a party. The Board believes the hearing officer's ruling in the previous proceeding was correct and confirms that this is the Board's interpretation regarding the ability of non-utility entities to participate in hearings before the Board in applications for the approval of generation and transmission facilities.

The next matter to address is whether the Intervenors filed the appropriate documents. As previously stated, Intervenors initially filed what was captioned a Protest, and subsequently filed what was captioned a First Amended Protest A/K/A Petition for Intervention. Applicant asserts that Intervenors were required to file a Petition in Intervention, and since they did not do so in a timely manner, they lack standing. Regarding the definition of a Protestant, the Board's Rules of Practice and Procedure state that "Party or parties objecting to the granting of an application are termed protestant or protestants." Title 285 NAC, chapter 3, section 003.01b. Regarding the definition of intervenor, the Board's rules states that "Any person or party having an interest in any proceedings before the Board and who does not fall within the classification of the foregoing subsections may intervene and shall be termed as intervenors." Title 285 NAC, chapter 3, section 003.01e. Applicant is correct that in the Board's practice a Protest is normally the document filed by an alternate power supplier that the Board has deemed to be an interested, or potentially interested, party to an application before the Board. The Board also acknowledges that this is not clearly spelled out in the Board's Rules of Practice and Procedure. Although the initial

document filed by Intervenors was captioned as a Protest, the clear intent was that Intervenors were objecting to the approval of application PRB-3617 and desired to participate in the proceedings. This intent was confirmed by Intervenors' filing of a Motion for Continuance and Request for Exhibits electronically on April 12, 2010, and the original documents on the following day. Although captioned as a Protest, it was submitted in writing to the Board, filed more than five days prior to the hearing, with a certificate of service indicating that a copy was mailed to the Applicant. The filing stated, albeit in a footnote, that all Protestors are landowners along the preferred route of the proposed transmission line, and alleges that the line will disrupt the lives, homes, farms and ranches of residents and landowners in Franklin and Kearney Counties. Based on the pleading, Intervenors are alleging that their lives and property would be disrupted by the transmission project. (Exh. 4). The Board also points out that Intervenors filed their Protest prior to the April 9, 2010, deadline established in the Board's public notice. Aside from the term Protest instead of Petition in Intervention, the above factors would seem to meet the requirements set out in the Nebraska Administrative Procedure Act in Neb. Rev. Stat. § 84-912.02(1).

Even if the Protest would be insufficient to allow Intervenors to participate in the proceedings due to its caption, Intervenors corrected this issue when they filed their First Amended Protest A/K/A Petition for Intervention on April 15, 2010. Admittedly, a Petition in Intervention filed the day before a hearing and after the deadline set out in the public notice would normally run a substantial risk of being found to be prejudicial against the Applicant, and might be determined likely to impair the orderly and prompt

conduct of the proceedings. However, in this case Intervenors had already filed their Protest in an attempt to intervene. The Petition for Intervention included the exact language that had appeared in the Protest, with some additional language. The hearing officer, Applicant's counsel and Intervenors' counsel participated in what was characterized as a motion hearing via conference call to address some of the issues surrounding Intervenors' participation and their Motion for Continuance. At that conference call, the hearing officer informed the parties that due to the Board's limitation on the hearing officer's authority, at its April 16 hearing the Board would need to take up the issue of whether Intervenors have standing. Clearly, Applicant was already on notice that Intervenors were objecting to the approval of the application and were attempting to participate in the hearing as a result of the Protest. Had Intervenors' initial filing captioned as a Protest been captioned as a Petition in Intervention, the Board believes it likely the findings necessary to grant an intervention under Neb. Rev. Stat. § 84-912.02(1) could be made.

Although there is some uncertainty surrounding whether Intervenors' original filing captioned as a Protest could be deemed to be a Petition in Intervention, the argument is rendered moot because the Board finds that the Petition for Intervention filed on April 15, 2010, when considered together with the Protest, has merit and should be granted under the Board's discretion to do so set out in Neb. Rev. Stat. § 84-912.02(2). Applicant argues that Intervenors' Petition for Intervention is not timely because such a Petition must be filed at least five days before the hearing. Applicant apparently refers to the provisions of Neb. Rev. Stat. § 84-912.02(1), which provides that a Petition for

Intervention shall be granted if the criteria in subsections (a) through (c) are met. The use of the word “shall” indicates that the proposed intervenor has the right to intervene if it meets the criteria in subsections (a) through (c). In the present instance, the Board is not finding that Intervenors are allowed to participate as of right due to the uncertainty surrounding the document captioned as a Protest. The Board is instead basing its ruling on its discretionary authority provided to the hearing officer or designee, or in this case, the Board, under § 84-912.02(2).

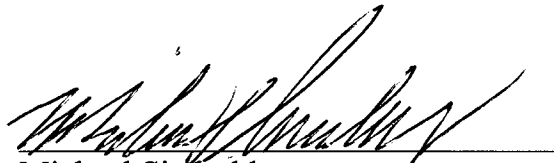
As with the Protest, Intervenors state in their Petition for Intervention, that all the parties wishing to participate in the hearing are landowners along the proposed route. The Petition for Intervention adds that Intervenors live along the route and own and operate farms and/or ranches along the proposed route. Thus, the Board believes Intervenors may be directly and substantially affected by the proposed transmission line and have an interest in the application separate from all others who are electric ratepayers in Nebraska or are Applicant’s customers. Based on the previous filing of the Protest, Applicant was already on notice of Intervenors’ intention to object to the application and participate in the hearing. The Board finds this to be an important distinction from a Petition for Intervention filed the day before a hearing with no prior notice to an Applicant or the Board. The Board finds that Intervenors’ participation in the proceedings is in the interests of justice and, due to the unique facts described above, will not impair the orderly and prompt conduct of the proceedings.

Under Neb. Rev. Stat. § 84-912.02(3), the Board has the right to limit an intervenor’s participation to designated issues and to limit the use of discovery and other

procedures. The hearing officer has already issued an Order dealing with discovery. The Board at this time does not limit the intervenor's participation, but takes this opportunity to remind the parties that all evidence at the hearing must be relevant to the Board's approval criteria set out in Neb. Rev. Stat. § 70-1014, and must not be cumulative or repetitious. Evidence, including testimony, not meeting these standards may be excluded by the Board or the hearing officer.

IT IS THEREFORE ORDERED that the First Amended Protest A/K/A Petition for Intervention, considered together with the Protest, filed by James Choquette, Betty Choquette, Steven L'Heureux, Stephanie L'Heureux, Eric Boudreau, Brandy Boudreau, Donna Boudreau, Laverne Boudreau, Shirley L'Heureux, Les Gunnare, and Kelly Gunnare, is hereby granted. The aforementioned parties are designated as "Intervenors" for the purposes of application PRB-3617.

Dated this 14 day of May, 2010.


Michael Siedschlag
Board Chairman

CERTIFICATE OF SERVICE

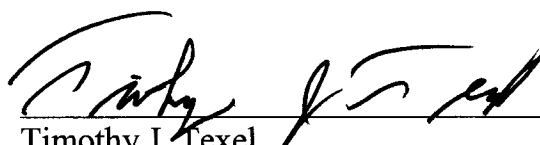
I, Timothy J. Texel, Executive Director and General Counsel for the Nebraska Power Review Board, hereby certify that a copy of the foregoing **Order on Protest/Intervention** in PRB-3617 has been served upon the following parties by mailing a copy of the same to the following persons at the addresses listed below, via United States mail, first class postage prepaid, on this 14th day of May, 2010.

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