

STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD

IN THE MATTER OF THE APPLICATION OF)
THE NEBRASKA PUBLIC POWER DISTRICT,)
HEADQUARTERED IN COLUMBUS, NEBRASKA,)
REQUESTING AUTHORIZATION TO CONSTRUCT)
220 MILES OF 345 KILOVOLT TRANSMISSION)
LINE IN ANTELOPE, BLAINE, GARFIELD, HOLT,)
LINCOLN, LOGAN, LOUP, McPHERSON, ROCK,)
THOMAS AND WHEELER COUNTIES, AND)
A SUBSTATION IN WHEELER COUNTY,)
NEBRASKA.)

PRB-3774

ORDER
ON PROTESTS AND
PETITIONS FOR
INTERVENTION

References in this Order to testimony are designated by a "T" followed by the transcript page, then the lines upon which the testimony appears, while references to exhibits are designated by "Exh." For purposes of this Order, all references to the transcript are to Volume I.

On September 9, 2014, Clifford A. Skiles, Jr. electronically filed a Protest and Petition For Intervention via facsimile transmission with the Nebraska Power Review Board ("the Board") in opposition to the approval of application PRB-3774. (Exh. 9). On September 10, 2014, separate but similar Protests and Petitions For Intervention were filed via hand delivery by the Price Ranch, LLC (Robert E. Price, Managing Member) and Gracie Creek Ranch, Ltd. (Robert E. Price, Partner) (Exh. 19); Lynn A. Ballagh, Trustee of the Lynn A. Ballagh Living Revocable Trust and Amy C. Ballagh, Trustee of the Amy C. Ballagh Living Revocable Trust (Exh. 13); Ballagh Ranch, Inc. (Rowan K. Ballagh, President) (Exh. 11); Sarah A. Sortum (Exh. 21); Tonya Wilson Trust and

Wilson Production Co., Inc. (Exh. 27); Adam Switzer (Exh. 23); H. Bruce Switzer and Sue Ann Switzer (Exh. 25); and the Malmsten Ranch Company (Duane L. Pelster, President). (Exh. 17). Later on September 10, 2014 another Protest and Petition For Intervention was filed by David Hutchinson, d/b/a Hutchinson Organic Ranch, Service Company of America. (Exh. 15). On September 11, 2014, a Protest and Petition For Intervention was filed by Horn Land & Cattle, Ltd. (Jeff J. Horn, Jr., Manager) (Exh. 29). On September 11, 2014, Barry Geweke entered an Entry of Appearance as counsel for all parties that had filed a Protest and Petition For Intervention except David Hutchinson and Price Ranch, LLC/Gracie Creek Ranch, Ltd. (Exh. 31).

On September 12, 2014, the Board held a hearing to address the issue of whether the persons and entities that had filed Petitions For Intervention had standing to become parties to the proceedings. 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.

At the hearing, Tonya Wilson Trust and Wilson Production Co., Inc. withdrew its Protest and Petition For Intervention, without prejudice. (T12:20 to 13:1; Exh. 32). The Board approves the withdrawal. Mr. Geweke orally informed the Board that he also represented Price Ranch and Gracie Creek Ranch. (T12:12-14).

Applicant objected to the remaining Intervenors' standing. Applicant argued that the Board's controlling statutes provide authority only for electric power suppliers to

have standing to become a party involving a hearing to determine whether the Board will approve or deny an application for an electric generation or transmission facility. (T22:6 to 23:8).

The Board notes that it has on previous occasions 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. The Board has found that persons or entities owning land or having an interest in the land upon which a transmission line will be located, or in a corridor identified by an applicant as the area within which a line will be located, generally have standing to participate in the Board's proceedings to consider whether or not to approve the proposed line. See *In re Application of Nebraska Public Power Dist.*, 798 N.W.2d 572, 281 Neb. 350 (Neb. 2011).

The Board acknowledges that a reading of the statutes pertaining to the Board seem to indicate it is anticipated that most participants in hearings before the Board will be electric power suppliers. However, the Board has previously 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 finds no reason to depart from its precedent.

The Petitions For Intervention were each submitted in writing to the Board, with a certificate of service indicating that a copy of the Petition For Intervention was mailed to all entities listed on the Board's Notice of Hearing. The Board's Notice of Hearing had

provided written notice of the filing of the application and the opportunity to file a protest or intervention to entities deemed by the Board to be potentially interested in the application, in accordance with Neb. Rev. Stat. section 70-1013. (Exh. 2). None of the interventions were submitted at least five days prior to the hearing.

As part of its application, Applicant submitted a map indicating a preferred and alternate proposed route that Applicant expected the proposed transmission line to follow. (Exh. 1, p. 5). The map also indicated a “corridor” inside which Applicant will locate the line, in the event that the preferred or alternate route is not followed for some reason. Based on information in the Petitions for Intervention and the evidence adduced at the portion of the hearing held September 12, 2014, it is the Board’s understanding that all of the persons or entities that filed a Petition For Intervention, other than David Hutchinson, Adam Switzer and Sarah Sortum owned land upon which either the proposed preferred or alternate route would be located, or were within the corridor of territory where the line could be located if the Applicant found a need to divert the final route from the preferred or alternate route. Several Intervenors testified regarding the potential impact of the transmission line on their property and themselves. All Intervenors other than Sarah Sortum, Adam Switzer and David Hutchinson submitted warranty deeds demonstrating their ownership of property inside the project corridor. (Exhs. 33 through 45).

Unlike the other Intervenors, Mr. Hutchinson testified that his property was located in the general vicinity of the corridor, but none of his property was actually located within the corridor route selected by Applicant. (T59:17 to 63:11). Mr. Hutchinson indicated where his property is located by drawing a circle on a map, none of

which touched or was within the project corridor. (Exh. 46). Applicant does not dispute that Intervenor's other than Mr. Hutchinson own property located inside the project corridor. (T27:14-18). Intervenor's counsel clarified that Adam Switzer and Sarah Sortum are the children of H. Bruce and Sue Ann Switzer, and operate businesses on the property owned by their parents, but do not hold legal title to the land. (T27:19-23).

Based on the foregoing, the Board believes Intervenor's other than Mr. Hutchinson 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. Although all the Petitions For Intervention were filed less than five days prior to the hearing date, the Board finds that granting the Interventions requested by persons or entities that own land or operate farms, ranches or other businesses located within the proposed corridor to participate in the proceedings will serve the interests of justice and will not impair the orderly and prompt conduct of the proceedings, so long as the hearing on this matter is not unduly delayed thereby.

The Board therefore finds, pursuant to Neb. Rev. Stat. § 84-912.02(2), that those parties that filed a Petition For Intervention in this proceeding who own land or operate businesses on the land located inside the project corridor identified by Applicant in its application (see Exh. 1) have demonstrated sufficient standing to participate as parties under the discretion provided to the Board in the Nebraska Administrative Procedure Act, and that their Petitions For Intervention should be granted.

The Board points out that Mr. Hutchinson confirmed at the hearing that none of his property is located inside the corridor in which the proposed line would be located,

and he did not demonstrate that he would be directly impacted in any substantial way differently than the general public by the proposed transmission line. The Board therefore finds that Mr. Hutchinson failed to demonstrate sufficient grounds to demonstrate standing, and that allowing Mr. Hutchinson to participate in the hearing would not serve the interests of justice.

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 Board expects the hearing officer to address these issues in a prehearing conference. The Board takes this opportunity to remind the parties that evidence at the hearing must be relevant to the Board's approval criteria set out in Neb. Rev. Stat. § 70-1014, or some other duty placed upon the Board by statute, regulation, caselaw, or other valid authority, and must not be cumulative or repetitious.

The Board also reminds the parties that its finding regarding standing and the granting of the interventions for the persons and entities owning land inside the project corridor pertains only to the issues of standing and the ability to intervene and participate in the proceedings. The Board's ruling should not be misconstrued to be a finding that every topic listed in the Petitions For Intervention as the reasons upon which the landowners base their opposition to approval of the proposed transmission line are necessarily within the Board's jurisdiction.

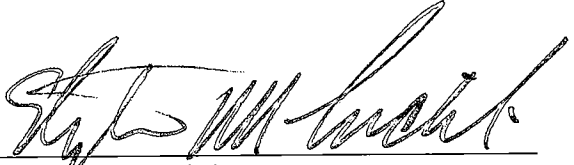
IT IS THEREFORE ORDERED that the Protest and Petition For Interventions filed by Price Ranch, LLC (Robert E. Price, Managing Member) and Gracie Creek Ranch, Ltd. (Robert E. Price, Partner); Lynn A. Ballagh, Trustee of the Lynn A Ballagh

Living Revocable Trust and Amy C. Ballagh, Trustee of the Amy C. Ballagh Living Revocable Trust; Ballagh Ranch, Inc. (Rowan K. Ballagh, President); Sarah A. Sortum; Adam Switzer; H. Bruce Switzer and Sue Ann Switzer; the Malmsten Ranch Company (Duane L. Pelster, President); and Horn Land & Cattle, Ltd. (Jeff J. Horn, Jr., Manager) are hereby GRANTED. The aforementioned parties are designated as "Intervenors" for the purposes of application PRB-3774.

IT IS FURTHER ORDERED that the Protest and Petition For Intervention filed by David Hutchinson, d/b/a Hutchinson Organic Ranch, Service Company of America, is hereby DENIED.

Lichter (Chair), Reida (Vice Chair) and Grennan, participating.

Dated this 26th day of September, 2014.



Stephen M. Lichter
Board Chairman

D. Grennan, Concurring.

I concur with the Board's ruling concerning the Intervenors' standing, but I believe the Board should provide the parties with some additional clarity regarding the limits of the Board's scope of review and its jurisdictional limits. Therefore, I would add that in order to approve an application for a transmission facility under Neb. Rev. Stat. § 70-1014, the Applicant 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, and
- 3) The resulting facility will not unnecessarily duplicate existing facilities or operations.

Evidence may also pertain to the Board's consideration of information related to a regional transmission organization's planning process and the project's benefits to the region including Nebraska provided by the line and related facilities. This additional consideration is also set out in § 70-1014.

Intervenors have been granted standing in these proceedings and have the right to put on evidence showing the Board that the factors in § 70-1014 have not been met for this transmission project. The bases upon which the Board must make its decision on the merits either approving or denying the application are set out in § 70-1014. Thus, the Board's scope of review is limited to those factors set out in § 70-1014. Evidence, including testimony, not pertaining to the above criteria or some other legal duty imposed on the Board by a valid authority is not relevant to the Board's review and would be properly excluded by the Board or the hearing officer. For example, evidence arguing that the proposed line should follow a particular route, or that a different location would be preferable for the substation, are beyond the Board's jurisdiction. See e.g., *Lincoln Electric System v. Terpsma*, 207 Neb. 289, 298 N.W.2d 366 (Neb. 1980). The Board also must consult with the Nebraska Game and Parks Commission in accordance with Neb. Rev. Stat. § 37-807 to ensure that an approval of the application would not harm a threatened or endangered species. However, once the Board demonstrates that it has

performed the consultation and received a response from the Game and Parks Commission that does not involve a determination that an approval would harm a threatened or endangered species, or that the Commission objects to approval of the project, the Board's inquiry into that issue is complete.

I believe it is in the best interests of both the Intervenors and the Applicant if the Board provides some limited guidance that helps to narrow the focus and identify the issues that are relevant to the Board's jurisdiction. This will assist both parties when preparing for the hearing on the merits. I would therefore prefer to apprise the parties of the Board's jurisdictional limits and emphasize the applicable approval criteria.

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 Protests and Petitions For Intervention** in PRB-3774 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, and by facsimile transmission to the parties with numbers listed below their name and address on this 26th day of September, 2014.

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