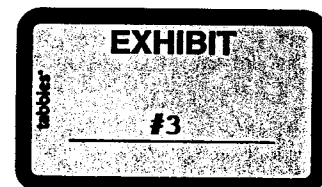


**STATE OF NEBRASKA  
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE APPLICATION )	<b>PRB - 3355</b>
OF THE OMAHA PUBLIC POWER )	
DISTRICT OF OMAHA, NEBRASKA, )	
REQUESTING AUTHORIZATION TO )	<b>ORDER ON MOTION</b>
CONSTRUCT A 600 MEGAWATT )	<b>TO INTERVENE BY</b>
ELECTRIC GENERATION UNIT )	<b>THE NEMAHA COUNTY</b>
IN OTOE COUNTY, NEBRASKA. )	<b>DEVELOPMENT ALLIANCE</b>

On April 16, 2002, the Nemaha County Development Alliance (NCDA) filed a Motion To Intervene in the above-captioned matter before the Nebraska Power Review Board (the Board). Pursuant to Neb. Rev. Stat. §84-912.02, the hearing officer must issue an order granting or denying each pending Petition to Intervene at least twenty-four hours prior to the hearing, and briefly state the reasons for the order.

The first issue to be addressed is whether the NCDA has standing to participate in a hearing to determine whether the Board will approve an application to construct a new generation facility. During a preliminary conference (at which the Omaha Public Power District (OPPD), the NCDA, and all parties that had been previously granted intervention participated) held on April 17, 2002, OPPD objected to the NCDA's participation based on lack of standing. The Lincoln Electric System (LES), and the Nebraska Public Power District (NPPD) also questioned the NCDA's standing in this matter. A reading of the pertinent statutes, as well as the Board's rules of practice and procedure, seem to indicate that it is anticipated that only power suppliers will participate in hearings addressing the issue of whether the findings required in Neb. Rev. Stat. § 70-1014 can be made on an application. Power suppliers are the only entities entitled to receive notice of the hearing.



Neb. Rev. Stat. § 70-1013. Although the Board publishes public notice of the hearing in a newspaper of general circulation in the area where the proposed generation facility will be located, this is not required by the statute or by the Board's Rules of Practice and Procedure. In fact, the Board is allowed to grant approval without a hearing if the appropriate waivers are filed by alternate power suppliers. See § 70-1013. It is not clear if the language "Any parties interested may appear, file objections, and offer evidence" in § 70-1013 refers to any power suppliers deemed by the Board to be interested parties, or if the language was intended to be broader in scope, to include the public. However, nothing was found in Nebraska law or the Board's rules of practice and procedure that would preclude participation by a person or entity that is not a power supplier.

There appears to be a dearth of precedent on this particular topic. A brief review of the Board's records of hearings failed to disclose any instance where a party other than a power supplier participated in a hearing after filing an intervention or protest. It is also important to note that no record was found where anyone other than a power supplier filed a Petition for Intervention or a Protest concerning a generation facility.

Although it may be anticipated that power suppliers will be the participants at hearings pertaining to the approval of generation facilities, absent the existence of specific language limiting the public's participation, I am unwilling to find that the public or an association such as the NCDA is precluded from participation simply because they are not a power supplier.

Even though members of the public or associations are not precluded from intervening in a hearing on an application, their participation is not guaranteed. It is

subject to the criteria set out in the Nebraska Administrative Procedure Act. Neb. Rev. Stat. §§ 84-901 to 84-920. The NCDA's Petition in Intervention was submitted less than five days before the hearing. The Petition in Intervention therefore cannot be granted as of right pursuant to § 84-912.02(1). The decision instead is within the discretion of the hearing officer pursuant to the criteria set out in §84-912.02(2). In order to be granted an intervention under § 84-912.02(2), the hearing officer must find that the intervention sought is in the interests of justice, and will not impair the orderly and prompt conduct of the proceedings.

According to the Petition, the NCDA wishes to participate in order to address its concerns regarding that portion of the proposed facility's capacity that is not subscribed, and to "aid the Board in reviewing the subject application to determine whether the construction of the proposed generation unit will serve the public convenience and necessity." It is unclear from the Petition precisely what concerns NCDA has regarding the application or the unsubscribed portion of the proposed facility. At the preliminary conference the NCDA indicated that in addition to the issue of the public convenience and necessity, the NCDA's interests include possible rate increases by OPPD. The Board is obligated to examine whether an applicant has provided sufficient evidence to support a finding that the proposed facility will serve the public convenience and necessity, even if there were no intervenors or protestors, just as the Board must ensure that the applicant can most economically and feasibly supply the electric service resulting from the proposed facility, regardless of the participation by intervenors or protestors.

However, this application involves a proposal for a generation facility estimated to

have a total cost over \$850,000,000. To the extent NCDA can offer relevant, non-cumulative evidence concerning whether the criteria in § 70-1014 have been met, the intervention serves the interests of justice. I believe it to be more appropriate to allow an intervention with certain limitations than to simply exclude the NCDA participation. I do not believe the orderly and prompt conduct of the proceedings will be impaired by allowing the NCDA's participation, if certain conditions upon participation are imposed.

Due to the concerns set out in this Order, and pursuant to Neb. Rev. Stat. § 84-912.02(3), I am setting several conditions on the NCDA's participation. The NCDA's participation will be limited to the issue of whether the application serves the public convenience and necessity. See § 84-912.02(3)(a). The NCDA will be able to cross-examine witnesses called by the applicant, but will not cross-examine witnesses called by the other intervenors. The NCDA will be allowed to offer documentary evidence.

IT IS THEREFORE HEREBY ORDERED that the Nemaha County Development Alliance's Petition In Intervention and/or in the Alternative, Protest, in the proceedings on PRB-3355 is hereby Granted, with the conditions set out in the preceding paragraph. Per §84-912.02(3), the Board reserves the right to impose additional conditions on the NCDA if it will foster the orderly and prompt conduct of the proceedings.

DATED this 18<sup>th</sup> day of April, 2002.

  
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Timothy J. Texel  
Executive Director

## 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 Petition In Intervention and/or In the Alternative, Protest** in PRB-3355 has been served upon the following parties via facsimile transmission and by mailing a copy of the same to the following persons at the addresses listed below, via regular United States mail, first class postage prepaid, on this 18<sup>th</sup> day of April, 2002.

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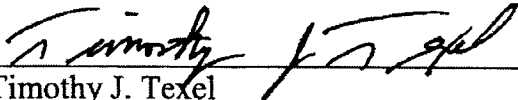
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