

**STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD**

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
OF 345 KILOVOLT TRANSMISSION LINE IN)	
KEARNEY AND FRANKLIN COUNTIES,)	
NEBRASKA.)	

ON THE 14th day of May, 2010, the above-captioned matter came on for consideration before the Nebraska Power Review Board (“the Board”). The Board, being fully advised in the premises, and upon reviewing said application and the evidence presented to the Board at said hearing, HEREBY FINDS AS FOLLOWS (references 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 II.):

FINDINGS OF FACT

1. That on the 3rd day of March, 2010, the Nebraska Public Power District (“Applicant”) filed an application with the Board requesting authorization to construct approximately fifty-three (53) miles of 345 kilovolt, three-phase transmission line in Kearney and Franklin Counties, Nebraska. (Exh. 9). The application was designated “PRB-3617.”

2. That on April 8, 2010, via facsimile transmission, Intervenors filed a document characterized as a Protest in opposition to the approval of PRB-3617. (Exh. 4). Applicant filed an "Objection to Protest" in which it challenged Intervenors' standing to participate in this proceeding. On April 15, 2010, Intervenors electronically filed a "First Amended Protest A/K/A Petition for Intervention." (Exh. 5). On April 16, 2010, a hearing was conducted to determine whether Intervenors had standing to participate in these proceedings, after which the Board determined that Intervenors did have standing.

3. The estimated total cost of the project is \$78,000,000. Applicant estimates construction of the transmission line would be completed during December 2012. (Exh. 9, page 3).

4. That those power suppliers, other than the Applicant, that the Board deemed to be potentially affected by or interested in said application were the Southern Public Power District and the City of Minden, Nebraska. (Exh. 10, page 4). Written notice of the filing of the application and the hearing date was provided to these potentially interested parties and Applicant via certified U.S. mail. (Exh. 10).

5. Notice of the filing of the application and the hearing date was provided to the general public by publication in The Minden Courier newspaper on Wednesday, March 17 and Wednesday, March 24, 2010 (Exh. 8), in the Holdrege Daily Citizen newspaper on Tuesday, March 16, 2010 (Exh. 11), in the Kearney Hub newspaper on Tuesday, March 16, 2010 (Exh. 12), and in the Franklin County Chronicle newspaper on Wednesday, March 17 and Wednesday, March 24, 2010 (Exh. 13).

6. That on May 14, 2010, the Board commenced the formal evidentiary hearing to address the merits of application PRB-3617.

7. That a certified copy of a Consent and Waiver form was offered and accepted into evidence at the hearing, as provided by law and the Board's Rules of Practice and Procedure, whereby the Southern Public Power District consented to the approval of PRB-3617 and waived a hearing and any and all notice in the matter. (Exh. 14). The proposed line would be located in Southern Public Power District's service area.

8. That pursuant to the requirement set out in Neb. Rev. Stat. § 37-807(3), the Board consulted with the Nebraska Game and Parks Commission ("the Commission") to ensure that the Board utilizes its authority in furtherance of the purposes of the Nebraska Nongame and Endangered Species Act, and to ensure that approval of the proposed transmission line would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Commission to be critical. The Commission provided a letter to the Board stating that the initial area where Applicant proposed to locate the transmission line was within the Rainwater Basin, an area used by whooping cranes (a state and federal endangered species) during their annual spring and fall migrations. (Exh. 15.) At the Commission's recommendation, Applicant extended the area it was studying for location of its proposed transmission line further to the east in order to avoid the wetlands used most consistently by whooping cranes. (Exh. 15, page 2). Applicant followed the Commission's recommendation to select the eastern-most of the corridors

under consideration. (Exh. 15, page 2; Exh. 33, page 1). Applicant has also agreed to mark certain portions of the line with “bird diverters” to further reduce the possibility of bird collisions. (Exh. 15, page 3; Exh. 32, page 1; Exh. 33, page 1).

9. The Commission stated that since Applicant took the appropriate steps, after consultation with the Commission, to avoid adverse impacts to threatened and endangered species, “we have no objection to the selected corridor or routes within the corridor.” (Exh. 15, page 3). The Commission further stated that “we have determined this project ‘may affect but is not likely to adversely affect’ state-listed threatened or endangered species.” The Commission concluded that “Based upon the submitted information, we have no objection to the proposal as currently planned.” (Exh. 15, page 3). The evidence indicates the Commission would have objected to the line if Applicant had decided to construct the line in any of the studied corridors located further to the west. (T87:15 to 89:4).

10. Applicant also consulted with the U.S. Fish and Wildlife Service in selecting the route for the proposed transmission line. As with the Commission, the U.S. Fish and Wildlife Service would not agree to placement of the line in the three proposed western corridors, but supported locating the transmission line in the eastern-most corridor. The U.S. Fish and Wildlife Service concluded that there would be no adverse impacts to federally listed threatened or endangered species or critical habitat if the line is located anywhere in the eastern-most corridor. (T86:23 to 87:5; T88:19 to 89:4; Exh. 32).

11. By moving the line further east to accommodate the wildlife concerns raised by the Commission and the U.S. Fish and Wildlife Service, it is estimated that the cost of the project increased by at least \$14 million dollars. (T89:13-21).

12. In terms of fuel resources, Applicant receives approximately 60 percent of its energy from coal, 20 percent from nuclear, and 20 percent from natural gas, hydroelectric, wind, and purchases from the open market. (T19:18-24).

13. Approximately ninety percent of the time Applicant has at least some excess baseload generating capacity that it could sell. (T24:1-5; Exh. 17). This is normally not the case in the summer months, particularly in July and August, because Applicant's peak demand is experienced during the summer months. (T20:22 to 21:6). During periods when Applicant has excess generating capacity, it sells electricity to other utilities or into the non-firm market. (T21:18 to 22:1; T24:2-5). Applicant is almost constantly making non-firm sales to other entities. These sales can be for periods anywhere from one hour to several weeks. (T22:20-24). During periods when Applicant has excess generation, it sells the electricity on the open market or enters into longer-term agreements with other utilities to utilize the excess, until such time as Applicant's customers need the electricity. (T22:2-8). In the period 2006 to 2009, Applicant's annual non-firm sales ranged from \$42,608,323 to \$59,186,948. (T28:9 to 29:1; Exh. 18). In 2010, Applicant has several long-term contracts that will expire, and during the prior year became a participant for 160 megawatts capacity in a new power plant. Both these factors will make additional generation available for Applicant to sell into the market. Based on this, Applicant projects its non-firm sales could increase to

\$131,897,297 in 2010. (T29:2-20). In order to make these additional sales, and thereby reduce costs for its ratepayers, Applicant will need to be able to move the energy into the market. (T29:18-23). Addition of the transmission line involved in this application would remove the constraint preventing Applicant from moving most or all of its excess power to the market. (T47:5-11).

14. There are many instances when Applicant needs to purchase electricity on the open market for reasons such as avoiding the need to quickly increase or decrease the output from its power plants to match its changing customer demand. (T23:1-8). The addition of the proposed line would also facilitate Applicant's ability to purchase electricity when needed.

15. Applicant became a member of the Southwest Power Pool ("SPP") approximately one year prior to the hearing in this matter. (T24:19-21; T36:2-3). Overall, the SPP region has a generation resource mix that relies on a much larger percentage of natural gas than Nebraska or the Applicant does. Traditionally, generation facilities using natural gas for fuel are higher cost than those using coal. (T24:10-18).

16. When Applicant can sell its excess generation from low cost coal and nuclear facilities, displacing electricity produced by normally higher-cost natural gas facilities, Applicant can use the additional revenue to offset costs and maintain low rates for its Nebraska customers. (T25:10-18; T29:18-23).

17. In order to purchase from or sell into the market, Applicant requires sufficient transmission over which to move the power. For the several months prior to the hearing, Applicant has not met its budget. One factor impeding Applicant's ability to

meet its budget is transmission constraints that impede its ability to make off-system sales of its excess generation, especially the constraint on the transmission line between Gerald Gentleman generating station and the Red Willow substation in the western part of south-central Nebraska. (T30:1-4; T46:20-25; T50:10 to 51:6).

18. Congestion is increasing throughout the SPP's region. (T32:10-15, Exh. 19). In the SPP region, one of the worst congested electricity flowgates is the transmission line from Gerald Gentleman Station to the Red Willow substation that connects transmission assets in western Nebraska with those in western Kansas. (T32:16-25; Exh. 19; Exh. 26, pages 3 and 43). Applicant has experienced congestion problems in the western Nebraska– western Kansas interface area and has studied the need for a line such as the one proposed in PRB-3617 for almost thirty years. (T59:12 to 60:1; T75:1-14; Exh. 36, page 10, deposition pages 37 and 38).

19. The Gerald Gentleman—Red Willow constraint impedes Applicant's ability to sell into the non-firm market. When Applicant cannot gain access to the non-firm market whenever it needs, or in the amount of excess it has at its disposal, it reduces Applicant's non-firm sales. This, in turn, reduces revenue that could be used to reduce prices to its ratepayers and avoid rate increases. (T33:1-12). Electricity prices in the SPP market are high enough, compared to Applicant's production costs, that it is economically advantageous for Applicant to sell its excess power into the market. (T50:16 to 51:6).

20. The proposed transmission line in PRB-3617 would reduce or even perhaps eliminate the Gerald Gentleman—Red Willow transmission constraint connecting

western and south central Nebraska and western Kansas. Reduction or elimination of the constraint would allow Applicant greater access to electricity markets in SPP, allowing more opportunities to sell into, and buy from, the market. (T33:23 to 34:5; T47:1 to 49:13; T49:14 to 50:7; T76:14-21; Exh. 21; Exh. 26, page 43). The increased revenue from sales of excess power, and ability to purchase electricity from the market when prices are low, are expected to offset Applicant's cost to build the line. (T52:2 to 53:18).

21. In order to relieve the congestion in the western Nebraska—western Kansas interface area, it is necessary to construct a line from Nebraska that connects into northern Kansas. It is not a feasible option to build the line to the north, east or west. Nebraska is located on the western edge of the eastern interconnection. The eastern and western interconnections (or transmission grids) are not compatible and have very limited electricity transfer capability. The area north of Nebraska is served by low cost hydroelectric and coal power, and does not have large population centers, and thus there is little opportunity for sales into the market north of Nebraska. Building a line eastward from the congested area is also of limited economic value due to the similarities between Nebraska and the areas to the east in terms of the generation portfolio mix and limited market opportunities. (T62:20 to 64:21).

22. The proposed line will not only relieve congestion in the western and south central Nebraska area, but at least one study indicates it will also relieve constraints by increasing transfer capability and reducing loading on Applicant's transmission system in the central and eastern parts of the State. (T72:3 to 73:20; T74:8-22; Exh. 24, page 7).

23. Although a portion of the cost of the line will necessarily be included in Applicant's rates, the economic benefits of the line are expected to exceed the cost of the line. It is important to point out that the cost of the line will not be borne entirely by Applicant's ratepayers. The line in PRB-3617 was included in the SPP's "Transmission Expansion Plan" and will be paid for using the "Balanced Portfolio" method. (Exh. 9, page 2). SPP issued a "Notice to Construct" the line to Applicant, which Applicant accepted. (T68:20-25; Exh. 28; Exh. 29). As a Balanced Portfolio project, the evidence indicates that at least a portion of the cost of the line will be shared region-wide by SPP members on a load-ratio share basis. Applicant will therefore pay a portion of the costs involved based on its share of the load in the SPP region. (Exh. 28, page 1; Exh. 34, page 5; Exh. 36, page 5, lines 5 to 17 on deposition page 18).

24. The proposed transmission line in PRB-3617 would also provide additional reliability in Applicant's transmission system, and thus to Nebraska ratepayers in western and south central Nebraska. (T53:19-24; T58:22-24; T76:22 to 77:5; Exh. 36, page 6, lines 4 to 12 on deposition page 22). Although the project is not required in order to meet reliability standards, if one of Applicant's generation facilities were to experience an unscheduled outage, or if a natural disaster or other event would render the Gerald Gentleman-Red Willow line or other major transmission assets inoperable, the 345 kV transmission line proposed in PRB-3617 could be used to move electricity from other SPP members into western and south central Nebraska. (T34:10 to 35:13; T77:6 to 79:3).

25. Neither the Omaha Public Power District nor the Lincoln Electric System, Nebraska's other two SPP utility members, are sufficiently impacted by the Gerald

Gentleman—Red Willow transmission constraint to make it economical for them to construct a line to alleviate the congestion. Applicant, on the other hand, owns and operates the transmission lines in the surrounding area, has crews in Kearney, Nebraska, and is impacted directly by the constraint. (T41:23 to 42:16).

26. Compared to the corridor where the proposed line in PRB-3617 would be located, the nearest 345 kV transmission line connecting the transmission grid in Nebraska to Kansas and the SPP region is the Gerald Gentleman—Red Willow transmission line located approximately 90 to 100 miles further west. The only other such connection is a 345 kV line on the eastern edge of the State, near the Missouri River. (T43:4-16).

27. Although the portion of the line located in Nebraska will undoubtedly provide benefits to the utilities and ratepayers in Kansas, that is not the sole or even primary purpose of the Nebraska portion of the line. (T43:24 to 44:8). Although it is certainly possible that wind generation facilities may be connected to that portion of the line that extends into Kansas, there is little or no evidence to indicate that electricity generated in Kansas wind farms would be sold in Nebraska. Applicant has its own wind generation resources, and access to areas in Nebraska with good wind potential. (T44:6-25).

CONCLUSIONS OF LAW

28. Pursuant to Neb. Rev. Stat. §§ 70-1012, 70-1013, and 70-1014, the Board has jurisdiction to conduct a hearing and either approve or deny an application for authority to construct a transmission facility located in the State of Nebraska, but outside

a power supplier's service area. Such approval is required prior to commencement of construction of facilities such as those described in application PRB-3617.

29. The Board has complied with the requirements under Neb. Rev. Stat. § 37-807(3) to consult with and request the assistance of the Nebraska Game and Parks Commission in order to utilize the Board's authority in furtherance of the purposes of the Nebraska Nongame and Endangered Species Act, and to insure that approval of the proposed transmission line would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of habitat of such species which is determined by the Commission to be critical. Applicant has consulted with the Commission and the U.S. Fish and Wildlife Service, and has made substantial modifications to the proposed route for the line in order to mitigate, to the extent feasible, the potential for harm to threatened and endangered species, raptors and migratory birds. The Commission also pointed out that Applicant has agreed to install marking devices on the line in selected areas in order to increase visibility and reduce the chances of bird collisions. The Board believes it is reasonable to defer to the expertise of the Commission and the U.S. Fish and Wildlife Service in concluding that Applicant has taken the necessary and prudent steps to avoid harm to at least threatened or endangered wildlife and vegetation as a result of this project, and that the Board's approval of the proposed transmission line, to the extent feasible and reasonably possible, would not jeopardize the continued existence of any endangered or threatened species or result in the destruction or modification of the critical habitat of such species.

30. It is in the best interests of Applicant's ratepayers if the Applicant is able to sell more of its excess generation capacity. Addition of the proposed transmission line will further Applicant's ability to keep its rates lower due to the ability to subsidize its costs with the non-firm sales into the market. It is also in the best interests of Applicant's ratepayers to have another bulk transmission line that increases reliability in the transmission grid in south central and western Nebraska. The only two 345 kV transmission lines connecting to the SPP region and markets to the south of Nebraska are located a considerable distance to the east and west from the proposed corridor where the line from Axtell to the Nebraska-Kansas border would be located.

31. Intervenors assert that the primary purpose of the line is to provide benefits to Kansas, in particular the Kansas Electric Transmission Authority ("KETA") and ITC Great Plains Company ("ITC"), allowing these entities to move electricity produced by wind generation resources into or through Nebraska. (T101:18-22; T128:7-10; Exh. 4, page 1; Exh. 5, page 1). Intervenors also argue that Nebraska does not receive the majority of the benefits, or more benefits than Kansas does, by the construction of the proposed transmission line. (T108:14-16; T109:24-25; T115:5-8; Exh. 4, page 1, Exh. 5, page 1). Intervenors' witness admitted that there might be some benefits to Nebraska from the proposed project that, in its entirety, would extend from near Axtell, Nebraska, to Spearville, Kansas. (T113:18-19; T115:5-6). The Board points out that the Board's criteria for approving the transmission line in PRB-3617 is set out in Neb. Rev. Stat. § 70-1014. The Board's examination is limited to a determination of whether the application meets the criteria in this controlling statute. Evidently Intervenors would

have the Board engage in a comparison of the relative benefits achieved by the utilities or ratepayers in each of these states. Such a comparison is simply not relevant to an examination of whether the criteria in § 70-1014 are met, and could be deemed improper. In a case before the Nebraska Power Review Board involving an interstate transmission project, the Nebraska Supreme Court stated “The issue to be decided by the Board was whether this application ‘will serve the public convenience and necessity [*of the State of Nebraska*], and that the applicant can most economically and feasibly supply the electric service . . . without unnecessary duplication of facilities or operations.’ § 70-1014. Of course, the bracketed portion of the quotation does not appear in the section cited. It is, nevertheless, a truism.” (emphasis added.) In re Applications of Nebraska Public Power Dist., 215 Neb. 8, 17, 337 N.W.2d 107, 113, (1983). In reviewing the public convenience and necessity aspects of that project, the Court stated that the statutory requirements “quite obviously are limited to the public convenience and necessity of the citizens of this state.” Id. at 11,337 N.W. 2d at 110. The Board’s mandate is not to ensure that Nebraska’s ratepayers receive *more* benefits than ratepayers or citizens in adjoining states that may also benefit from a project, but rather that the ratepayers or citizens of Nebraska receive sufficient benefits to warrant approval of the project. Under the provisions of § 70-1014, if the Applicant demonstrates that the project meets the statutory criteria, the Board must approve the application.

32. The evidence does not support a finding that the Nebraska portion of the line will be used primarily for moving electricity produced in Kansas wind generation facilities to the detriment of Nebraska, nor that if wind generation resources are built in

Kansas that it will result in reducing the economic or reliability benefits that Nebraska ratepayers would receive from the construction of this line.

33. Intervenor's assert that because there are a total of 4,000 megawatts of interconnection requests for wind generation facilities in the vicinity of the Spearville and Knoll substations in Kansas that the line is being built to serve those wind facilities, that such a large amount of generation might interfere with Applicant's stated purpose of selling excess generation into markets south of Nebraska, and that additional studies should be done. (T103:12 to 104:8; T130:20-25; Exh. 53, page 3). The Board points out, however, that the figures cited are merely interconnection requests in a queue. (T104:23 to 105:13; T131:12-19; Exh. 53, page 3). These requests are therefore highly speculative. There is no guarantee whatsoever that these requests will result in actual construction of wind generation facilities. The engineer testifying for Intervenor's admitted that eliminating the existing constraint the proposed line alleviates would allow Nebraska utilities to sell excess generation to markets south of Nebraska (T141:12-15) and that it is a "really good idea to get rid of this constriction." (T141:17-18). Intervenor's engineer witness expressed concern regarding the impact that the proposed 4,000 megawatts of wind generation projects in Kansas might have on Nebraska's system, such as forcing baseload coal and nuclear facilities to reduce output, increasing stress on these facilities, and even increasing stress on the peaking units. (T136:22 to 137:15). The Board again must point out that currently there are only 4,000 megawatts of speculative interconnection requests.

34. Much of the bases for opposition described in Intervenor's initial pleadings deal with the issue of the route Applicant selected for the line. In both their "Protest" and "First Amended Protest, A/K/A Petition for Intervention," Intervenor's assert that the preferred route is wasteful and was chosen for the benefit and convenience of a for-profit Kansas transmission line company, Kansas wind energy developers, and Kansas electric customers. Intervenor's go on to allege that the location of the line unfairly burdens Applicant and its customers by adding 14 more miles than are needed, that the additional 14 miles will unnecessarily disrupt the lives and property of residents along the route, and that Kansas entities selected the point at which the line will cross the Nebraska-Kansas border, causing landowners and families along the route to bear the expense of the additional 14 miles. (Exh. 4, Exh. 5). Although the Board does not doubt that a 345 kV transmission line has the potential to cause disruption to the landowners and residents along the selected route, the issue of the particular route for a line is beyond the Board's jurisdiction. The Nebraska Supreme Court has been very clear on this point. In Lincoln Electric System v. Terpsma, 207 Neb. 289, 298 N.W.2d 366 (1980), the Court addressed the issue of whether the Board has the authority to select the particular route a transmission line must follow. As the Court put it, "Stated another way, the question is whether the utility which must build the line has the power to select the route, or whether the Board has that power. We hold the utility which builds the line has the power to select the route." Id. at 290, 298 N. W.2d at 367. The Court went on to state that once the Board finds that the line will serve the public convenience and necessity, "The Board has discharged its duty and has no authority to select a particular route other than that

selected by the utility which the Board supervises, but does not own.” Id. at 292, 298 N.W.2d at 368. Although the Board cannot select a route, if the Applicant had selected the eastern-most corridor without providing any justification why the additional 14 miles were being built, increasing the project costs by millions of dollars, it could possibly have had an impact on whether the Board could make a finding that the project serves the public convenience and necessity, or whether the Applicant can most economically and feasibly supply the electric service resulting from the proposed line. In the present matter, though, there is ample evidence demonstrating that the additional 14 miles of line are necessary in order to further the objectives of the Nebraska Nongame and Endangered Species Conservation Act. In fact, had Applicant not selected the eastern-most corridor, it is possible the Board would be constrained not to give its approval for the project due to the provisions of Neb. Rev. Stat. § 37-807(3). Since the most direct routes would pose substantial risk to threatened and/or endangered species, Applicant is not only justified, but is probably required, to select a route to avoid those sensitive areas. Since Applicant has done so, the Board has no further authority to be involved in the selection of a route.

35. The Board finds that the evidence shows the proposed transmission line will serve the public convenience and necessity.

36. The Board finds that the evidence demonstrates that Applicant can most economically and feasibly supply the electric service resulting from the proposed transmission line.

37. The Board finds that the evidence demonstrates that the proposed transmission line will not unnecessarily duplicate other facilities or operations.

38. That based on the foregoing findings, Applicant is entitled to an Order approving the construction of the transmission line described in application PRB-3617.

ORDER

That during that part of its public meeting on May 14, 2010, held subsequent to the hearing on application PRB-3617, a majority of the members of the Power Review Board (3 yes, 2 no) voted in favor of a motion to approve application PRB-3617.

IT IS THEREFORE ORDERED by the Nebraska Power Review Board, pursuant to the Board's action taken during its public meeting held May 14, 2010, that the application designated PRB-3617, for authorization for the Nebraska Public Power District to construct approximately fifty-three (53) miles of 345 kilovolt transmission line in Kearney and Franklin Counties, Nebraska be, and hereby is, APPROVED.

NEBRASKA POWER REVIEW BOARD

BY: 
Michael Siedschlag
Chairman

DATED: June 14th, 2010.

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** 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 certified United States mail, first class postage prepaid, on this 14th day of June, 2010.

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