



## LR 83 White Paper Topic 2

**“The role of the Nebraska Power Review Board in approving renewable generation and transmission projects.”**

### **History and Composition of the Power Review Board**

The Nebraska Power Review Board (PRB) was created by the Nebraska Legislature in 1963. The PRB is required to have five members—an engineer, an attorney, an accountant, and two laypersons. Members are appointed by the Governor subject to approval by the Legislature. Members may not serve more than two consecutive four year terms. See Neb. Rev. Stat. §70-1003 (1) Currently the PRB has a staff of three including an Executive Director who is also General Counsel, a Paralegal and an Business Manager. The PRB has express, but limited authority regarding the state’s unique public power system including jurisdiction over establishment of exclusive retail and wholesale service areas, approving the creation of and amendments to public power district charters, and the approval for acquiring or constructing certain generation and transmission facilities.

Prior to the establishment of the PRB in 1963, there was no independent state entity or statutory framework to regulate certain actions by electric utilities. During the 1950’s, there was substantial growth in the demand for electricity as homes, businesses and agriculture added appliances and equipment that required electricity. The utility structure in the state then was much different than it is today, and there were on-going questions and controversies about who would build the necessary power plants to serve the growing electric loads. Electric infrastructure, especially power plants and high voltage transmission, is highly capital intensive. As a matter of public policy it was critical that adequate electric infrastructure be in place, but also important that the system not be overbuilt and duplicated which would saddle electric consumers with unnecessary costs. For more information on developments leading up to the PRB, see the Nebraska Legislative’s L.R. 455 Phase I Study, Final Report, dated December 1997 Section 1.4, and Public Power in Nebraska, by Robert Firth (1962), especially Chapter XII.

As a result of the conflicts and confusion in the 1950’s, legislation creating the PRB was passed in 1963. Throughout the 1950’s, Nebraska had established itself as a low cost electricity state primarily due to its unique public power system. Consequently, it was not surprising to find the following public policy declaration at the beginning of the legislation establishing the PRB. Neb. Rev. Stat. §70-1001 states in part:

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.

It is also important to understand that the regulatory regime that was established has been designed to regulate the unique public power system serving the State of Nebraska as is evident from the description of utilities in the section above. Public power utilities were created in Nebraska primarily to serve Nebraskans, not to serve customers outside of the state.

### **Current Approval Standard for Generation**

Prior to constructing or acquiring generation facilities or transmission facilities carrying more than 700 volts, there must be an application filed with the PRB subject to certain exceptions described in Neb. Rev. Stat. §70-1012.

An applicant must prove to the Board that the facility “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.” See Neb. Rev. Stat. §70-1014. Public convenience and necessity is a phrase frequently found in other states regarding the approval to construct electric generation and transmission facilities, as well as other public utility facilities. The meaning of the phrase has been addressed by the Nebraska Supreme Court which found that “what constitutes public convenience and necessity is primarily a fact question with a number of imponderables to be taken into consideration. The facts in each case must be separately considered, and from those facts, it must be determined whether public convenience and necessity require a given service to be performed.” In Re Applications of Nebraska Public Power District 215 Neb. 8, (1983).

### **Approval Standard for Public Power Renewable Energy Projects**

There are currently two exceptions to these requirements for obtaining approval of a generating facility, one of which is found in Neb. Rev. Stat. §70-1014.01. It addresses small scale renewable projects and states:

An application by a municipality, a registered group of municipalities, a public power district, a public power and irrigation district, an electric cooperative, an electric membership association, or any other governmental entity for a facility that will generate not more than ten thousand kilowatts of electric energy at rated capacity and will generate electricity using solar, wind, biomass, landfill gas, methane gas, or hydropower generation technology or an emerging generation technology, including, but not limited to, fuel cells and micro-turbines, shall be deemed a special generation application. Such application shall be approved by the board if the board finds that (1) the application qualifies as a special generation application, (2) the application will provide public benefits sufficient to warrant approval of the application, although it may not constitute the most economically feasible generation option, and (3) the application under consideration represents a separate and distinct project from any previous special generation application the applicant may have filed.

Unlike the general requirement found in Neb. Rev. Stat. §70-1014, a special generation project can be approved “although it may not constitute the most economically feasible generation option.” This particular exception is limited to smaller projects and is not available for renewable projects above 10 megawatts.

During the 2009 session of the Nebraska Unicameral, LB 561 was passed and signed by the Governor providing a second exception to the traditional “least cost” standard. LB 561 allows Nebraska’s electric utilities to gain PRB approval of renewable energy projects up to 10% of the utility’s annual, if the utility conducts at least one advertised public hearing on the project. The new law applies to public power and cooperative electric suppliers and to C-BED projects developed for one or more Nebraska electric suppliers. This law eliminates PRB review of cost issues up to the specified threshold.

### **Approval Standard for Future Renewable Generation**

LB 561 will make it easier to for Nebraska’s public power utilities to build or contract with C-BED developers to add renewable energy projects in Nebraska compared to the approval criteria currently found in Neb. Rev. Stat. §70-1014. However, LR 83 contemplates a much larger amount of renewable energy than LB 561 will accommodate. Since the focus of LR 83 is the development of a substantial amount of renewable generation by 2030 (essentially a doubling of the current nameplate generation in the state) additional statutory changes would need to be considered and adopted.

The current criteria that the PRB is required to use were designed to review projects intended to provide electric power to Nebraska wholesale and retail customers. It should not be surprising that these criteria simply do not lend themselves easily for use when reviewing applications for facilities that will produce and transmit power outside Nebraska, for use by non-Nebraska customers. This white paper does not propose specific alternatives since that is within the province of the study efforts, but does identify certain issues that may require assessment as part of the study process.

## **Summary**

In summary, the current PRB statutes generally were designed to regulate the provision of electric service to Nebraskans by public power and cooperative entities. The regulatory regime does not contemplate export of power outside the state, especially as the primary purpose of constructing facilities. There are numerous examples of Nebraska generation and transmission facilities being used by non-Nebraska utilities, but the main reason for the construction of all power plants in the state's eastern interconnection has been the benefit to Nebraska electric customers.

Below are just some of the questions that should be analyzed as part of this section of the study:

- A) What changes, if any, are required in the PRB statutes to allow Nebraska's public power and cooperative utilities to construct renewable energy projects and related transmission to support the export of renewable energy from Nebraska?
- B) What changes, if any, are required to allow private developers or private utilities to construct renewable energy projects and related transmission to support the export of renewable energy from Nebraska?
- C) What are the consequences for Nebraska's public power utilities and the customers they serve if private developers or private utilities begin developing renewable energy projects in Nebraska solely or primarily for export?
- D) What changes, if any, are needed to obtain adequate public input regarding renewable energy projects and related transmission projects?
- E) What criteria should be considered by the PRB in approving renewable energy projects that are primarily for export? For example, should there be a showing of an adequate market or adequate transmission to support the project?

*Leaders of Nebraska's public power industry formed the Nebraska Power Association in 1980 to address industry-wide concerns and interests. This voluntary association represents all segments of the public power industry in Nebraska: municipalities, public power districts, public power and irrigation districts, rural public power districts and rural electric cooperatives engaged in generation, transmission or distribution of electric energy in the state.*