

NEBRASKA POWER REVIEW BOARD

BOARD POLICY NO. 13 ASSESSMENT OF HEARING COSTS

I. Purpose

To clarify when the costs associated with a contested hearing before the Nebraska Power Review Board will be assessed against one or more of the parties participating in the hearing.

II. Policy Applicability and Definitions

- A. This policy applies to all parties involved in contested hearings conducted by the Nebraska Power Review Board. The policy shall apply to both power suppliers and to non-utility parties that participate in a contested case based on a Complaint, Protest, Objection or Intervention with the Board.
- B. The term "contested case" shall have the same meaning used in the Nebraska Administrative Procedure Act. Contested case means a proceeding before the Board in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing. See Neb. Rev. Stat. § 84-901(3).

III. PRB Findings and Interpretations

- A. If no parties in a contested case request that the Board be bound by the rules of evidence, it is the Board's interpretation that the provisions of Neb. Rev. Stat. § 84-914(1) do not require that the services of a court reporter be procured. Thus, the proceedings could be tape recorded by the Board's staff. If the Board's decision is appealed, a court reporting service can transcribe the hearing record. The costs associated with the preparation of the transcript will be paid by the party appealing the Board's decision.
- B. Under Neb. Rev. Stat. § 84-914(1), if any party to a contested case submits a request that the Board be bound by the formal rules of evidence, the party or parties against whom a final decision is rendered must pay all costs incurred as a result of the formal hearing.
- C. It is the Board's policy to procure the services of a court reporter in conjunction with all formal hearings, regardless of whether any party to the contested hearing submits a request that the Board be bound by the rules of evidence. This is done for the Board's convenience. The Board prepares a

transcript in conjunction with all formal hearings. As an example, this allows the Board to create a well-prepared permanent record of the proceedings, and facilitates citation to the record for use in the Board's Finding of Facts, Conclusions of Law and Order.

- D. The Board finds that to assess the costs of a court reporter at a formal hearing before the Board, when no party has submitted a request that the Board be bound by the formal rules of evidence, places an undue burden on parties wishing to participate in a contested case and serves as a deterrent to participation by members of the public that may otherwise have standing and wish to participate in the hearing.

IV. Assessment of Costs For Formal Hearings

- A. When no party to a formal hearing held in conjunction with any contested case submits a request that the Board be bound by the formal rules of evidence, the costs of the court reporting service will not be assessed against the party or parties against whom a decision is rendered.
- B. When any party to a formal hearing held in conjunction with any contested case submits a request that the Board be bound by the formal rules of evidence, the costs of the court reporting service will be assessed against the party or parties against whom a decision is rendered.
- C. If a party filing a protest or objection to an application submitted by a power supplier waives his or her right to a hearing and agrees to submit the matter on the pleadings, and a formal hearing is nevertheless held in that matter, the costs associated with a court reporting service will not be assessed against that party.

Approved at the February 21, 2008, NPRB meeting.



Timothy J. Texel
Executive Director