

GUIDANCE DOCUMENT NO. 12*

POWER REVIEW BOARD JURISDICTION WHEN A NON-UTILITY PROVIDES ELECTRICITY TO THIRD PARTIES

I. Purpose

Each electric power supplier serving customers in the State of Nebraska has a certified service area in which it is both authorized and obligated, if economically feasible, to provide retail electric service to the customers in that service area. There are limited instances where entities that are not utilities provide electricity to third parties for various purposes. One example is when a business provides electricity to third parties in order to charge Plug-In Electric Vehicle's (PEVs). As the use of PEVs and other instances of non-utilities providing electricity to third parties becomes more prevalent, the Nebraska Power Review Board (the Board or PRB) is aware that it would be helpful to citizens, businesses and electric utilities to have guidance regarding whether and under what circumstances the Board believes provision of electricity to third parties by a non-utility would mean the provider is acting as an electric power supplier and the activity is therefore subject to the Board's jurisdiction. This policy is intended to provide general guidance regarding how the Board interprets its jurisdiction over the provision of electricity by non-utility entities to third parties, including situations involving PEV charging stations, in order to ensure that citizens, businesses and utilities know how to conduct their affairs and remain compliant with Nebraska law when dealing with situations involving the provision of electricity to third parties.

II. Power Review Board Jurisdiction

The Board has jurisdiction over certain activities in which electric power suppliers operating in the State of Nebraska are engaged. Under Nebraska law, other than in the instance of privately developed renewable energy generation facilities as defined in § 70-1001.01 and qualified net metering facilities as defined in Neb. Rev. Stat. § 70-2002, "electric suppliers or suppliers of electricity means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail." Neb. Rev. Stat. § 70-1001.01(3). Unless otherwise agreed to by the suppliers involved, "no supplier shall offer electric service to additional ultimate users outside its service area or construct or acquire a new electric line or

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extend an existing line into the service area of another supplier for the purpose of furnishing service to ultimate users therein without first applying to the board and receiving approval thereof, after due notice and hearing under rules and regulations of the board.” Neb. Rev. Stat. § 70-1011. Due to these provisions of law, entities that are not a utility with a certified retail service area that sell or distribute electricity to third parties without the consent of the utility holding the service area rights to that location may be in violation of Nebraska law. If customers are being served in violation of the provisions of Chapter 70, article 10, the Board has the authority, and possibly the obligation, to bring an action to enjoin the violation until the power supplier complies with the provisions of Chapter 70, article 10. Neb. Rev. Stat. § 70-1015(1).

Due to the above provisions of law, the Board has jurisdiction over situations where any entity is selling or distributing electricity at wholesale or retail to third parties.

III. Situations Constituting a Violation

The Board’s interpretation of Nebraska law is that a violation occurs when a non-utility entity sells electricity to third parties, and the compensation paid by the third party is based on the actual amount of electricity used by the third party customer as measured by an electric meter or other similar device. Under such circumstances, the non-utility entity becomes a retail power supplier under Nebraska law, thus subjecting the activity to the Board’s jurisdiction. Whether the entity is making a profit from the sale of the electricity is not relevant.

A. Example: If a landlord meters or otherwise measures the consumption of electricity on the pertinent property and charges tenants an additional amount based on the actual usage, the landlord is selling electricity to third parties and is operating as an electric power supplier. This would include rental properties such as apartment complexes, duplexes, and mobile home parks. The Board does have jurisdiction over such operations and the operation is a potential violation of Nebraska law.

B. Example: If a business such as a truck stop sells electricity to its customers through the use of a PEV charging station that meters the electricity consumed and charges the customer based on the actual usage (usually measured in kilowatt hours), the provider of the electricity is operating as an electric power supplier, the activity falls within the Board’s jurisdiction, and the sale is a potential violation of Nebraska law.

IV. Situations That Do Not Constitute a Violation

If an entity provides electricity to third parties as part of another service or package, and the customer is not charged for electricity based on the actual usage, the Board does not believe that the entity is engaged in “selling” or “distributing” electricity as used in § 70-1001.01(3). The Board considers provision of electricity in such situations as incidental to the primary business in which the entity is engaged, and is intended to be a service or activity included as part of a larger package. In such instances the entity is not acting as an electric power supplier, and the activity does not create PRB jurisdiction over the entity or its actions.

A. Example: The provision of electricity by an entity, including private businesses and political subdivisions of the state, through the use of charging stations or other devices solely to its own buildings, machines, vehicles, etc. does not fall within the Board’s jurisdiction and does not violate Nebraska law.

B. Example: Businesses such as truck stops, gas stations, convenience stores, campgrounds and hotels that provide electricity on a temporary basis to their customers without charging for the electricity based on usage are not operating as electric power suppliers and therefore those activities do not fall within the Board’s jurisdiction and do not constitute a violation of Nebraska law.

C. Example: A campground that provides electricity as part of a set packaged price that also includes the use of a camp site, water, recreational vehicle sewer disposal services, bathrooms, showers, picnic facilities, cable television, etc. is not selling or distributing electricity for purposes of § 70-1001.01(3).

V. Receipt of Complaint

Any person or entity, including consumers and utilities, may file a complaint with the Board concerning a potential violation involving an entity engaged in selling or distributing electricity to third parties outside its service area through the use of devices such as PEV charging stations. The Board will follow the procedures established in Chapter 70, article 10 and the Board’s Rules of Practice and Procedure when a complaint is filed.

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