NEBRASKA POWER REVIEW BOARD

Minutes of the 851st Meeting

March 15, 2024

  The 851st meeting of the Nebraska Power Review Board (Board or PRB) was held in the First Floor Hearing Room, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.  The roll was called and present were Chairman Hutchison, Vice Chairman Gottschalk, Mr. Austin, Mr. Liegl, and Mr. Moen. Executive Director Texel stated that public notice for the meeting had been published in the *Lincoln Journal Star* newspaper on March 5, 2024.  The Board also made the meeting available to the public through Webex.  The Webex login information was available on the Board’s website and was published in the *Lincoln Journal Star* notice.  The agenda on the Board’s website provided links to the agenda items with associated documents the Board will consider, as well as a link to the Nebraska Open Meetings Act. Executive Director Texel explained that if any member of the public watching the meeting on Webex wanted to speak, they could click on the “raise your hand” icon.  At that time they would be unmuted, they could announce who is speaking, provide an address, and disclose if they represent an organization. Anyone wishing to comment on an item or ask a question could also type the comment or question in the “chat” function and the Board’s staff would read the question. All background materials for the agenda items to be acted on were provided to all Board members prior to the meeting and a copy of the materials was in each Board member’s meeting notebook.  The executive director announced that a copy of the Nebraska Open Meetings Act was on display on the south wall of the room, and another copy was available in a black three-ring binder on the table in the back of the room.  A copy of all materials that the Board would consider was available for public inspection on a file cabinet on the south wall near the back of the room, as well as extra copies of the agenda.

The Board first considered the draft minutes from its February 16, 2024, public meeting.  The minutes had been sent electronically to the Board members. The staff did not have any recommended changes, and no one had contacted them with any requested changes. Mr. Liegl moved to approve the draft minutes. Vice Chairman Gottschalk seconded the motion. Voting on the motion: Chairman Hutchison – yes, Vice Chairman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 5-0.

The next agenda item was acceptance of the expense report for the month of February.  In February there was $27,547.13 in personal services, $5,775.42 in operating expenses, and $417.49 in travel expenses. The total February expenses were $33,740.04. Executive Director Texel explained that the Board has used 68.54% of the agency’s cash fund, and 66.7% of the fiscal year has gone by. He also explained that in January there were two payments made to JK Energy, one at the very beginning of the month, and one at the very end, and no payment made in February. That is the reason the Engineering and Architecture Services account category is $0 for February. Mr. Liegl moved to accept the February expense report. Mr. Moen seconded the motion. Voting on the motion: Voting on the motion: Chairman Hutchison – yes, Vice Chairman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 5-0.

The next item on the agenda was a proposed amendment to Guidance Document 14. This is the Board’s guidance document that sets out the Board’s interpretation of the agency’s jurisdiction over Energy Storage Resources (ESR) and exemptions to PRB approval requirements. The Nebraska Public Power District (NPPD) plans to install an ESR on the site of an existing wind facility, and an issue came up regarding the Board’s rule that to be exempt from requiring PRB approval, the ESR must receive its charge primarily from the generation facility with which the ESR is associated. John McClure, NPPD’s General Counsel, was present to explain NPPD’s concerns with the language in the guidance document. He told the Board that NPPD has been in discussion about installing a battery storage at its wind facility. The battery storage would not increase the accredited capacity or the interconnection agreement at that location. The Southwest Power Pool (SPP) will accredit the ESR separate from the wind facility. Chairman Hutchison asked about the accreditation. He wanted to know if SPP was accrediting the ESR and the associated wind farm as separate facilities, then why would the ESR not require a separate application to the PRB? Mr. Austin asked about how the ESR would be built or installed and interconnected to the grid. Mr. Wiese, NPPD Vice President of Energy Production, addressed how the ESR would interconnect with the grid. Chairman Hutchison believed that the PRB’s intention was that to be considered an improvement to the associated generator and therefore exempt from needing separate PRB approval, the ESR would be charged using electricity from the associated facility and not from the grid. The Board discussed the concept that an ESR could be similar to a coal pile or fuel storage tanks. The Board felt that it needed additional time to consider the issue and also to look at this new language in comparison to the other sections of the document. Mr. McClure stated that the issue is not time sensitive. He felt that the amendment provided a clarification to the language already stated. Chairman Hutchison said he believed the amendment was a substantive change. Since it was not time sensitive the Board agreed to table the item and address it again next month.

The Board recessed its public meeting at 9:40 a.m. During the recess the Board conducted a hearing on the Omaha Public Power District’s (OPPD) two generation facility applications. After the hearing the Board deliberated. The meeting was reconvened at 1:20 p.m. All five Board members were again present.

The next items on the agenda were to consider applications PRB-4021-G and PRB-4022-G (consolidated). The two applications were set for a joint evidentiary hearing. OPPD submitted both applications on February 16, 2024. PRB-4021-G is for authority to install a 675 megawatt (MW) simple cycle natural gas and fuel oil generating facility and related facilities in Cass County. The location of this unit will be at an existing site called the Cass County Station generating facility at 3520 Mill Road, Cass County, Nebraska. PRB-4022-G is for authority to install a 225 MW natural gas and fuel oil simple cycle generating facility in Sarpy County. The location would be at the existing Turtle Creek generating station located at South 168th Street and Fairview Road, Sarpy County. The application requested the ability to vary the capacity in the units, but not to exceed a combined capacity of 900 MW. A notice of Hearing and Filing Date was sent to Lincoln Electric System, Municipal Energy Agency of Nebraska, NPPD, and the cities of Auburn, Fremont, Tecumseh, Nebraska City, and Wahoo. A public notice was placed in the *Omaha World Herald* on February 27 and the *Sarpy County News* on February 28. The Board did not receive any filings for interventions, protests or complaints. The Board did receive Consent and Waiver forms from MEAN, LES and NPPD. The Board consulted with the Game and Parks Commission as required by Neb. Rev. Stat. section 37-801(3). The Commission stated that the projects are within the range of the state and federally listed endangered northern long-eared bat and the state and federally listed threatened western prairie fringed orchid. Due to the highly disturbed nature of the locations there is no suitable habitat for the western prairie fringed orchid. There is habitat for the northern long eared bats near the Cass County facility. OPPD agreed to mitigation measures recommended by the Commission, which was to avoid tree removal outside of the bats’ active season. OPPD also agreed to the use of downward facing lighting in the area facing Fourmile Creek. With those mitigation measures, the Commission determined the project “may affect, but is not likely to adversely affect” northern long eared bats and that no impacts are anticipated to any other state-listed endangered or threatened species. Executive Director Texel explained that when a hearing on an application to approve a generation or transmission facility does not involve any opposing utilities or other parties, the Board will often place the issue on the agenda for the PRB’s public meeting that same day. The Board is acting in its quasi-judicial capacity, and so could wait and issue its decision in writing at a later date. As a courtesy to the utilities, if the Board can arrive at a unanimous decision after brief deliberation, the Board will vote during its meeting to give its decision. The final decision will still be the written order. Vice Chairman Gottschalk made a motion to approve Omaha Public Power District’s applications PRB-4021-G and PRB-4022-G, that the capacity of either unit could be modified as long as the aggregate capacity of both generators does not exceed 900 megawatts, and that OPPD must comply with the mitigation measures set out in the Nebraska Game and Parks Commission letter dated March 12, 2024. Mr. Liegl seconded the motion. Voting on the motion: Chairman Hutchison – yes, Vice Chairman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 5-0.

The next agenda item was the executive director’s report. First was an update on Southwest Power Pool (SPP) activities. The Board had a copy of JK Energy’s monthly activities report. Chairman Hutchison went over a couple of items. There was a recent REAL team meeting. He discussed having Paul Suskie, SPP general counsel, come to give the Board an update on SPP activities. The big discussion issue for the Regional State Committee (RSC) members is how the winter planning reserve margin (PRM) will affect the member utilities. The concern is how to accredit generation. He explained that SPP is a non-profit organization. Each of the 14 states have a delegate on the RSC. Each of the members have a voice on the RSC, and it is very important, especially when deciding the PRM criteria. He said all these changes must be approved by FERC prior to taking effect. His last point was to state how the winter PRM will affect the northern states, as compared to the southern states. For example, South Dakota has very little power outages, so this winter PRM could have potential impacts on its rate payers depending on how the accreditation formula is finalized.

The legislative bills in the 2024 session was the next item to be discussed. The executive director went over the few bills that directly affect the PRB or the electric industry.

LB 43 was a hold-over bill from last session. This bill is being used as a vehicle for several other bills that will all be packaged as part of LB 43. The original bill dealt with hearing officers and administrative rulings. Sections 13 and 14 are of interest to the PRB. Those sections address how a hearing officer or judge is to deal with agency interpretations of statutes the agency has jurisdiction over, or the agency’s rules or regulations, when those are involved in a contested case. Section 8 expands who can submit public records requests. Currently the statute refers to “citizens.” Section 8 would replace citizens with “residents.” The bill also clarifies that cybersecurity information is listed as a type of record that can be withheld from the public. The bill was advanced to final reading on March 12, and includes an emergency clause.

LB 399 would change provisions relating to privately developed renewable energy generation facilities, and have those facilities be approved by the PRB, instead of the current administrative certification process. The bill has gone through several rewrites,, and has several amendments filed. There are also other concerns, but the hearing issue is the largest issue.

LB 837 was introduced by Senator Lowe. The bill changes procedures for voting or election precincts for public power districts. This bill was introduced at the request of the Nebraska Rural Electric Association (NREA) to address issues related to how PPD voting subdivisions can be configured. Senator Bostelman has asked for an Attorney General’s opinion concerning the bill.

LB 866 was introduced by Senator Bostelman at the request of the PRB. This is the bill to address PRB member requirements and the per diem amount. The accountant member requirement would be removed, and it allows one member to be appointed even though he or she was previously employed by an electric utility within the last four years, with some voting restrictions. It also changes the term limit from two to three consecutive terms. The per diem amount would increase from $60 to $100. The bill drafters office wants to remove the term “laypersons” in the current statute and replace it with “additional persons.” A fiscal note of $3,500 was submitted. The fiscal note was needed because the per diem increase affects the personal services category in the Board’s budget and that is a dollar amount that the Board cannot adjust. The Legislative Fiscal Office agreed the fiscal note would be needed, even though it is small. The bill was packaged into LB 867 and is now Section 11 of LB 867. LB 867 was advanced to select file on March 7.

LB 1218 was introduced by Senator Bostar. The bill would provide for a motor vehicle registration of certain vehicles, impose an excise tax on electric energy used at commercial electric vehicle charging stations, provide for regulation of certain charging stations, provide a sales tax exemption for certain electric energy, and would allow private entities operating electric vehicle (EV) charging stations to charge based on consumption of electricity instead of increments of time, which is the current requirement. Executive Director Texel explained that the issue that falls in the PRB jurisdiction is that Nebraska law prohibits anyone selling electricity to a third party inside a utility’s retail service area. This bill exempts that and gives a right of first refusal to private entities to establish EV charging stations in a certain geographic area. The bill has not received a priority designation, so it is not clear whether the bill will go anywhere this year.

LB 1370 was introduced by Senator Bostelman. This bill provides a requirement for retirement of a dispatchable electric generation facility by an electric supplier. This bill has been amended to include several other bills. This is the Natural Resource Committee’s priority bill. The bill was placed on general file on March 7.

Executive Director Texel stated that the next PRB meetings are scheduled for April 19, May 17, and June 21, 2024.

Mr. Austin moved to adjourn the meeting.  Mr. Liegl seconded the motion.  Voting on the motion:  Chairman Hutchison –yes, Vice Chairman Gottschalk – yes, Mr. Austin – yes, Mr. Liegl – yes, and Mr. Moen – yes.  The motion carried 5 –0.  The meeting was adjourned at 1:46 p.m.

Timothy J. Texel

Executive Director and General Counsel