

LEGISLATIVE BILL 223

Approved by the Governor March 19, 1979

Introduced by Cullan, 49; Lewis, 45

AN ACT to amend sections 70-1007, 70-1008, 70-1009, and 70-1010, Reissue Revised Statutes of Nebraska, 1943, relating to power districts and corporations; to provide an additional standard; to establish certified service areas; to change rights with respect to service of customers and areas as prescribed; to provide for acquisition of and payment for facilities and customers; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 70-1007, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1007. After the hearing, the board shall make an order establishing the service areas in the matter covered by the notice. In determining any such matter, the board shall seek to carry out the policy stated in section 70-1001. It shall give such consideration as is appropriate in each case to the following:

- (1) The supplier best able to supply the load required;
- (2) The most logical future supplier of the area;
- (3) The desires of the supplier with respect to loads and service areas it wishes to serve;
- (4) The ability to provide service at costs comparable to other suppliers in the service area and the immediate costs to the ultimate consumers involved in the transfer; and
- (5) The ability of the supplier to cope with the problems of expanding loads and increased costs.

Sec. 2. That section 70-1008, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1008. In the absence of an agreement between the suppliers affected and notwithstanding the provisions of subdivisions (1) to (5) of section 70-1007:

(1) In the zoning area surrounding any municipality and outside the corporate limits thereof, if such municipality operates a retail system, it shall have the right to serve such zoning area at retail except as to such customers as are presently served by other suppliers. Such a municipality may acquire the facilities of other suppliers in such zoning area by negotiation.

(2) In determining the service area of a municipally owned electric system, there shall be included, as a minimum, the corporate area of the municipality, the zoning area outside the corporate limits of such municipality, and the area beyond the zoning area which is presently being served by such municipality, including not more than the area one-half mile on each side of the line presently used by such municipality to serve its existing customers, except for customers presently served by other suppliers. When any new customer outside the corporate limits of any municipality and outside the zoning limits surrounding such municipality locates closer to electric lines owned by other suppliers in the municipal service area as provided for in this section, in case of disagreement, the question of which supplier shall serve such new customer shall be submitted to the Nebraska Power Review Board for determination under the standards set forth in section 70-1007.

(1) Existing service areas presently designated by agreements and exhibits filed with and approved by the board, or previously ordered by the board, shall remain and be established as certified service areas.

(2) A municipally-owned electric system, serving such municipality at retail, shall have the right, upon application to and approval by the board, to serve newly-annexed areas of such municipality. Electric distribution facilities and customers of another supplier in such newly-acquired certified service area may be acquired, in accordance with the procedure and criteria set forth in section 70-1010, within a period of one year and payment shall be made in respect to the value of any such facilities' customers or certified service area being transferred. The rights of a municipality to acquire such distribution facilities and customers within such newly-annexed area shall be waived unless such acquisition and payment are made within one year of the date of annexation. If an application is made to the board within one year of the date of annexation for a determination of total economic impact as provided in section 70-1010, such right shall not be waived unless the municipality fails to make payment of the price



determined by the board within one year of a final decision establishing such price. Notwithstanding other provisions of this section, the parties may extend the time for acquisition and payment by mutual written agreement.

(3) All retail power suppliers having adjoining certified service areas shall engage in joint planning with respect to customers, facilities, and services, taking into account the considerations specified in section 70-1007, including the possibility that an area may be annexed by a municipality within a reasonable period of time.

Sec. 3. That section 70-1009, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1009. If two or more suppliers, one of which is municipally owned, serve the same municipality at retail, the municipally owned supplier shall have first preference to acquire the service area, customers, and facilities of any other supplier providing service at retail within such part of the zoning area surrounding such municipality as becomes annexed to such municipality.

(1) When one supplier at the date of enactment has customers or distribution facilities extending into the certified service area of another supplier, the customers and distribution facilities of the former supplier may be acquired by negotiation or by application of either party to the board for modification of certified service area as to ownership of facilities and customers to be served.

(2) Such amendment may be made by mutual agreement, or upon application of either party to and determination by the board, upon consideration of the factors set forth in section 70-1007, Reissue Revised Statutes of Nebraska, 1943, except that no transfer of facilities and customers shall be made which would impair the rights of bond holders or mortgage holders.

Sec. 4. That section 70-1010, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

70-1010. (1) The board shall have authority upon application by a supplier at any time to modify service areas or customers to be served as previously established. The same procedures as to notice, hearing, and decision shall be followed as in the case of an original application. Suppliers shall have authority by agreement to change service areas or customers to be

served with the approval of the board. This section shall not apply to agreements referred to in subsection (2) of section 70-1002.

(2) In the event of a proposed transfer of customers and facilities from one supplier to another in accordance with this section or section 70-1008 or 70-1009, the parties shall attempt to agree upon the value of the certified service area and distribution facilities and customers being transferred. If the parties cannot agree upon the value, then the board shall determine the total economic impact on the selling supplier and establish the price accordingly based on, but not limited to, the following guidelines: The supplier acquiring the certified service area, distribution facilities, and customers shall purchase the electric distribution facilities of the supplier located within the affected area, together with the supplier's rights to serve within such area, for cash consideration which shall consist of (a) the current reproduction cost if the facilities being acquired were new, less depreciation computed on a straight-line basis at three per cent per year not to exceed seventy per cent, plus (b) an amount equal to the nonbetterment cost of constructing any facilities necessary to reintegrate the system of the supplier outside the area being transferred after detaching the portion to be sold, plus (c) an amount equal to two and one half times the annual revenue received from power sales to existing customers of electric power within the area being transferred, except that for large commercial or industrial customers with peak demands of three hundred kilowatts or greater during the twelve months immediately preceding the date of filing with the board, the multiple shall be five times the net revenue, defined as gross power sales, less costs of wholesale power including facilities rental charges, received from power sales to large commercial or industrial customers with measured demand of three hundred kilowatts or greater during the twelve months immediately preceding the filing with the board for service area modification. After the board has determined the price in accordance with such guidelines, the acquiring supplier may acquire such distribution facilities and customers by payment of the established price within one year of the final order.

(3) Notwithstanding the provisions of sections 70-1008, 70-1009, and 70-1010, no transfer of facilities and customers shall be made or approved by the board if such transfer would impair the obligations of a power supplier to holders of its bonds or mortgages.



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Sec. 5. That original sections 70-1007, 70-1008, 70-1009, and 70-1010, Reissue Revised Statutes of Nebraska, 1943, are repealed.