

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 407

Introduced by Haar, 21; Davis, 43; Kolowski, 31; Nordquist, 7.
Read first time January 16, 2015

Committee: Natural Resources

1 A BILL FOR AN ACT relating to public power; to amend sections 70-1001.01
2 and 70-1014.02, Revised Statutes Cumulative Supplement, 2014; to
3 eliminate provisions relating to criteria for approval of certain
4 facilities as prescribed; to harmonize provisions; to repeal the
5 original sections; and to outright repeal section 70-1028, Revised
6 Statutes Cumulative Supplement, 2014.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 70-1001.01, Revised Statutes Cumulative
2 Supplement, 2014, is amended to read:

3 70-1001.01 For purposes of sections 70-1001 to 70-1027, unless the
4 context otherwise requires:

5 (1) Board means the Nebraska Power Review Board;

6 (2) Certified renewable export facility means a facility approved
7 under section 70-1014.02 that (a) will generate electricity using solar,
8 wind, biomass, or landfill gas, and (b) will be constructed and owned by
9 an entity other than a municipality, a registered group of
10 municipalities, a public power district, a public power and irrigation
11 district, an electric cooperative, an electric membership association, or
12 any other governmental entity, ~~and (c) has a power purchase or similar~~
13 ~~agreement or agreements with an initial term of ten years or more for the~~
14 ~~sale of at least ninety percent of the output of the facility with a~~
15 ~~customer or customers located outside the State of Nebraska and maintains~~
16 ~~such an agreement or agreements for the life of the facility. Output sold~~
17 ~~pursuant to subdivision (2)(a)(iv) of section 70-1014.02 shall not be~~
18 ~~included when calculating such ninety percent.~~ Certified renewable export
19 facility includes all generating equipment, easements, and
20 interconnection equipment within the facility and connecting the facility
21 to the transmission grid;

22 (3) Except as expressly provided in section 70-1014.02, electric
23 suppliers or suppliers of electricity means any legal entity supplying,
24 producing, or distributing electricity within the state for sale at
25 wholesale or retail;

26 (4) Regional transmission organization means an entity independent
27 from those entities generating or marketing electricity at wholesale or
28 retail, which has operational control over the electric transmission
29 lines in a designated geographic area in order to reduce constraints in
30 the flow of electricity and ensure that all power suppliers have open
31 access to transmission lines for the transmission of electricity;

1 (5) Representative organization means an organization designated by
2 the board and organized for the purpose of providing joint planning and
3 encouraging maximum cooperation and coordination among electric
4 suppliers. Such organization shall represent electric suppliers owning a
5 combined electric generation plant capacity of at least ninety percent of
6 the total electric generation plant capacity constructed and in operation
7 within the state;

8 (6) State means the State of Nebraska; and

9 ~~(7) Stranded asset means a generation or transmission facility owned~~
10 ~~by an electric supplier as defined in subsection (1) of section~~
11 ~~70-1014.02 which cannot earn a favorable economic return due to~~
12 ~~regulatory or legislative actions or changes in the market and, at the~~
13 ~~time an application is filed with the board under such section, either~~
14 ~~exists or has been approved by the board or the governing body of an~~
15 ~~electric supplier as defined in such subsection; and~~

16 (7 8) Unbundled retail rates means the separation of utility bills
17 into the individual price components for which an electric supplier
18 charges its retail customers, including, but not limited to, the separate
19 charges for the generation, transmission, and distribution of
20 electricity.

21 Sec. 2. Section 70-1014.02, Revised Statutes Cumulative Supplement,
22 2014, is amended to read:

23 70-1014.02 (1) For purposes of this section:

24 (a) Electric supplier means a public power district, a public power
25 and irrigation district, an individual municipality, a registered group
26 of municipalities, an electric membership association, or a cooperative;
27 and

28 (b) Electric supplier does not have the same meaning as in section
29 70-1001.01.

30 (2)(a) The board shall conditionally approve an application for a
31 certified renewable export facility if it finds that only the criteria

1 described in subdivisions (a)(i) and (ii) through ~~(iv)~~ of this subsection
2 are met: (i) The facility will provide reasonably identifiable and
3 quantifiable public benefits, including economic development, to the
4 residents of Nebraska or the local area where the facility will be
5 located; and (ii) the facility meets the requirements of subdivisions (2)
6 (a) and (b) of section 70-1001.01; ~~(iii)~~ the facility has a memorandum of
7 understanding or other written evidence of mutual intent to negotiate a
8 power purchase agreement or agreements with a purchaser or purchasers
9 outside the State of Nebraska for at least ninety percent of the output
10 of the facility for ten years or more; and ~~(iv)~~ the applicant offers
11 electric suppliers serving loads greater than fifty megawatts at the time
12 the initial application is filed an option to purchase in the aggregate
13 an amount of power up to ten percent of the output of any facility with
14 greater than eighty megawatts of nameplate capacity contingent upon the
15 applicant and electric suppliers negotiating in good faith a power
16 purchase agreement and any other necessary agreements. Such electric
17 suppliers shall be entitled to a minimum of their pro rata share based on
18 the load ratio share of Nebraska electric load served among those
19 electric suppliers eligible under this subdivision ~~(iv)~~. If an electric
20 supplier declines to contract for some or all of its pro rata share, the
21 remaining eligible electric suppliers may share the balance on a pro rata
22 basis. The ten percent may be above the total generation amount proposed
23 in the application for a certified renewable export facility and shall
24 require no separate approval by the board. Any transmission studies,
25 additions, or upgrades due to participation by electric suppliers serving
26 loads greater than fifty megawatts shall be the responsibility of the
27 participating electric supplier. Upon receiving the initial application
28 under this section, the board shall notify electric suppliers identified
29 in this subdivision ~~(iv)~~ of a pending application with a nameplate
30 capacity greater than eighty megawatts. Such suppliers shall have forty-
31 five days following the date of the board's notice to notify the

1 ~~applicant of an interest in exercising the option to purchase power,~~
2 ~~except that such suppliers may withdraw their option to purchase power~~
3 ~~once the costs of the transmission additions and upgrades are determined.~~
4 ~~Electric suppliers withdrawing their option to purchase power are~~
5 ~~responsible for their pro rata share of any costs resulting from their~~
6 ~~participation in and withdrawal from the generation interconnection and~~
7 ~~transmission delivery studies.~~

8 (b) Following the board's conditional approval of an application
9 under subdivision (a) of this subsection, the applicant shall notify the
10 board within eighteen months that it is prepared to proceed to
11 consideration of the criteria in subdivision (c) of this subsection. The
12 board may extend such eighteen-month deadline not more than twelve
13 additional months for good cause shown. If the applicant fails to notify
14 the board within such time that it is so prepared, the conditional
15 approval granted under this subdivision is void.

16 (c) Upon finding that the criteria described in subdivisions (c)(i)
17 through (~~vii viii~~) of this subsection have also been met by the applicant
18 and after the board has fulfilled the requirements of subsection (3) of
19 section 37-807, the board shall grant final approval of an application
20 for a certified renewable export facility if:

21 (i) The facility will not have a materially detrimental effect on
22 the retail electric rates paid by any Nebraska ratepayers, except that,
23 ~~notwithstanding subdivisions (c)(v) and (vi) of this subsection,~~ the
24 determination of a materially detrimental effect on rates shall not
25 include regional transmission improvements approved dictated by a
26 regional transmission operator or transmission improvements required due
27 to participation in the facility or purchase of electricity from the
28 facility by any electric supplier by an eligible entity pursuant to
29 subdivision (2)(a)(iv) of this section;

30 (ii) The applicant has obtained the necessary generation
31 interconnection and transmission service approvals from and has executed

1 agreements for such generation interconnection and transmission service
2 with the appropriate regional transmission organization, transmission
3 owner, or transmission provider;

4 ~~(iii) There has been no demonstration that the proposed facility~~
5 ~~will result in a substantial risk of creating stranded assets;~~

6 (iii ~~iv~~) The applicant has certified that it has applied for and is
7 actively pursuing the required approvals from any other federal, state,
8 or local entities with jurisdiction or permitting authority over the
9 certified renewable export facility;

10 (iv ~~v~~) The applicant and the electric supplier owning the
11 transmission facilities to which the certified renewable export facility
12 will be interconnected, along with any electric supplier which owns
13 transmission facilities of one hundred fifteen thousand volts or more and
14 is required to receive notice pursuant to section 70-1013, have entered
15 into a joint transmission development agreement on reasonable terms and
16 conditions consistent with and subject to the notice to construct or
17 other directives of any regional transmission organization with
18 jurisdiction over the addition or upgrade to transmission facilities or,
19 for any electric supplier that is not a member of a regional transmission
20 organization with which the facility will interconnect, covers the
21 addition or upgrade to transmission facilities required as a result of
22 the certified renewable export facility. Such joint transmission
23 development agreement shall include provisions addressing construction,
24 ownership, operation, and maintenance of such additions or upgrades to
25 transmission facilities. The electric supplier or suppliers shall have
26 the right to purchase and own transmission facilities as set forth in the
27 joint transmission development agreement;

28 (v ~~vi~~) The applicant agrees to reimburse any costs that are not
29 covered by a regional transmission organization tariff or that are
30 allocated through the tariff to the electric suppliers as a result of the
31 certified renewable export facility or not covered by the tariff of a

1 transmission owner or transmission provider that is not a member of a
2 regional transmission organization, costs incurred by any electric
3 supplier as a result of adding the certified renewable export facility,
4 including, but not limited to, renewable integration costs, and costs
5 which allow the interconnected electric supplier to operate and maintain
6 the transmission facilities under reasonable terms and conditions agreed
7 to by the parties within the joint transmission development agreement;

8 (vi ~~vii~~) The applicant shall submit a decommissioning plan. The
9 applicant or owner of the facility shall establish decommissioning
10 security by posting an instrument, a copy of which is given to the board,
11 no later than the tenth year following final approval of the facility to
12 ensure sufficient funding is available for removal of the facility and
13 reclamation at the end of the useful life of such facility pursuant to
14 the decommissioning plan. The owner of the certified renewable export
15 facility shall be solely responsible for decommissioning. If the
16 applicant or any subsequent owner of the facility intends to transfer
17 ownership of the facility, the proposed new owner shall provide the board
18 with adequate evidence demonstrating that substitute decommissioning
19 security has been posted or given prior to transfer of ownership. The
20 requirements of this subdivision (vii) shall be waived if a local
21 governmental entity with authority to create requirements for
22 decommissioning has enacted decommissioning requirements for the
23 applicable jurisdiction; and

24 (vii ~~viii~~) The facility meets the requirements of subdivisions (2)
25 (a) and (b) ~~through (c)~~ of section 70-1001.01.

26 (3) If the applicant does not commence construction of the certified
27 renewable export facility within eighteen months after receiving final
28 approval from the board under subsection (2) of this section, the
29 approval is void. Upon written request filed by the applicant, the board
30 may, for good cause shown, extend the time period during which an
31 approval will remain valid. Good cause includes, but is not limited to,

1 national or regional economic conditions, lack of transmission
2 infrastructure, or an applicant's inability to obtain authorization from
3 other required governmental regulatory authorities despite the
4 applicant's exercise of a good-faith effort to obtain such approvals.

5 (4) The applicant shall remit an application fee of five thousand
6 dollars with the application. The fee shall be remitted to the State
7 Treasurer for credit to the Nebraska Power Review Fund. The board shall
8 use the application fee to defray the board's reasonable expenses
9 associated with reviewing and acting upon the application, including the
10 costs of the hearing. If the board incurs expenses of more than five
11 thousand dollars associated with the application, the board shall provide
12 written notification to the applicant of the additional sum needed or
13 already expended, after which the applicant shall promptly submit an
14 additional sum sufficient to cover the board's anticipated or incurred
15 expenses or shall file an objection with the board. If, after completion
16 of the application process and any subsequent legal action, including
17 appeal of the board's decision, the board's expenses associated with
18 processing and acting upon the application do not equal the amount
19 submitted by the applicant, the board shall return the unused funds to
20 the applicant if the amount is fifty dollars or more. The applicant shall
21 reimburse the board for any reasonable expenses the board incurs as a
22 result of an appeal of the board's decision or shall file an objection
23 with the board. The board shall rule on any objection brought pursuant to
24 this subsection within thirty days. The applicant may request a hearing
25 on its objection, in which case the board shall hold such hearing within
26 thirty days after the request and shall rule within forty-five days after
27 the hearing.

28 (5) No facility or part of a facility which is a certified renewable
29 export facility is subject to eminent domain by an electric supplier or
30 by any other entity if the purpose of the eminent domain proceeding is to
31 acquire the facility for electric generation or transmission.

1 (6) Except as provided in subsection (5) of this section, only an
2 electric supplier may exercise its eminent domain authority to acquire
3 the land rights necessary for the construction of transmission lines and
4 related facilities to provide transmission services for a certified
5 renewable export facility. The exercise of eminent domain to provide
6 needed transmission lines and related facilities for a certified
7 renewable export facility is a public use. Nothing in this section shall
8 be construed to grant the power of eminent domain to a private entity.

9 (7) If any transmission facilities serving a certified renewable
10 export facility are proposed to cross the service area of any electric
11 supplier which owns transmission facilities of one hundred fifteen
12 thousand volts or more and is required to receive notice pursuant to
13 section 70-1013, then such electric supplier may elect to be a party to a
14 joint transmission development agreement for such transmission
15 facilities.

16 (8) If a certified renewable export facility no longer meets the
17 requirements of subdivisions (2)(a) and (b) ~~through (c)~~ of section
18 70-1001.01, the owner of the facility shall notify the board. An electric
19 supplier or a governmental entity with regulatory jurisdiction over the
20 certified renewable export facility may apply to the board or the board
21 may file its own motion to have the certification of a certified
22 renewable export facility revoked upon a showing by the applicant for
23 decertification that the facility no longer meets the requirements of
24 such subdivisions. Upon the filing of such application and making of a
25 prima facie showing by the applicant for decertification that the
26 facility no longer meets the requirements of such subdivisions, the board
27 shall set the matter for hearing. The hearing shall be held within forty-
28 five days unless an extension is necessary for good cause shown. The
29 applicant for decertification shall have the burden of proof. Within
30 forty-five days after the conclusion of the hearing, the board shall
31 enter an order to either reaffirm the facility's status as a certified

1 renewable export facility or to revoke the certification. During the
2 pendency of the application for decertification and before the board's
3 final order on decertification, the facility may continue to operate if
4 the electricity generated at the facility is sold to customers outside
5 the State of Nebraska, or to an electric supplier pursuant to a power
6 purchase agreement or similar agreement. The board shall retain
7 jurisdiction over the decertification action for at least thirty days
8 after entry of such an order. Within thirty days after a final order
9 revoking certification, the owner of the facility may apply for
10 recertification, with the time period for recertification being no longer
11 than one year unless the board extends the time period for good cause
12 shown. Such application for recertification shall extend the board's
13 jurisdiction over the decertification action until the board completes
14 its review of the application for recertification and enters an order
15 granting or denying the application. If the applicant for recertification
16 demonstrates to the board that it is working diligently and in good faith
17 to restore its compliance with subdivisions (2)(a) and (b) ~~through (c)~~ of
18 section 70-1001.01, the board shall not terminate the application for
19 recertification. During the pendency of the application for
20 recertification and before the board's final order on recertification,
21 the facility may continue to operate if the electricity generated at the
22 facility is sold to customers outside the state, or to an electric
23 supplier pursuant to a power purchase agreement or similar agreement. If
24 the board retains jurisdiction over the decertification action, the
25 prohibition on eminent domain set forth in subsection (5) of this section
26 shall remain in full force and effect. If the board enters an order
27 decertifying a certified renewable export facility and such order becomes
28 final due to a failure to timely seek recertification or judicial review,
29 the prohibition on eminent domain set forth in subsection (5) of this
30 section shall no longer apply. Nothing in this section shall prohibit a
31 decertified facility from being recertified in the same manner as a new

1 facility.

2 Sec. 3. Original sections 70-1001.01 and 70-1014.02, Revised
3 Statutes Cumulative Supplement, 2014, are repealed.

4 Sec. 4. The following section is outright repealed: Section
5 70-1028, Revised Statutes Cumulative Supplement, 2014.