

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 388

Introduced by Natural Resources Committee: Carlson, 38, Chairperson;
Dubas, 34; Johnson, 23; Kolowski, 31; Schilz, 47.

Read first time January 18, 2013

Committee:

A BILL

1 FOR AN ACT relating to public power; to amend sections 16-901,
2 17-1001, 70-101, 70-301, 70-304, 70-305, 70-306, 70-307,
3 70-408, 70-409, 70-1002, 70-1002.01, 70-1002.02, 70-1004,
4 70-1005, 70-1007, 70-1008, 70-1009, 70-1010, 70-1011,
5 70-1012, 70-1012.01, 70-1017, and 70-1018, Reissue
6 Revised Statutes of Nebraska, and sections 70-1001,
7 70-1001.01, 70-1003, 70-1013, 70-1014.01, 70-1014.02, and
8 70-1015, Revised Statutes Cumulative Supplement, 2012; to
9 define and redefine terms; to provide for construction of
10 electric transmission lines by an incumbent owner as
11 prescribed; to harmonize provisions; and to repeal the
12 original sections.

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

1 Section 1. Section 16-901, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 16-901 Except as provided in section 13-327, any city of
4 the first class may apply by ordinance any existing or future zoning
5 regulations, property use regulations, building ordinances,
6 electrical ordinances, plumbing ordinances, and ordinances authorized
7 by section 16-240 to the unincorporated area two miles beyond and
8 adjacent to its corporate boundaries with the same force and effect
9 as if such outlying area were within the corporate limits of such
10 city, except that no such ordinance shall be extended or applied so
11 as to prohibit, prevent, or interfere with the conduct of existing
12 farming, livestock operations, businesses, or industry. For purposes
13 of sections 70-1001 to 70-1020 and section 31 of this act, the zoning
14 area of a city of the first class shall be one mile beyond and
15 adjacent to the corporate area. The fact that such unincorporated
16 area is located in a different county or counties than some or all
17 portions of the municipality shall not be construed as affecting the
18 powers of the city to apply such ordinances.

19 Sec. 2. Section 17-1001, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 17-1001 Except as provided in section 13-327, any city of
22 the second class or village may apply by ordinance any existing or
23 future zoning ordinances, property use regulation ordinances,
24 building ordinances, electrical ordinances, and plumbing ordinances,
25 to an area within one mile of the corporate limits of such

1 municipalities, with the same force and effect as if such area were
2 within their corporate limits. No such ordinance shall be extended or
3 applied so as to prohibit, prevent, or interfere with the conduct of
4 existing farming, livestock operations, businesses, or industry. For
5 purposes of sections 70-1001 to 70-1020 and section 31 of this act,
6 the zoning area of a city of the second class or village shall be
7 one-half mile from the corporate limits of such municipalities. The
8 fact that the zoning area or part thereof is located in a different
9 county or counties than some or all portions of the municipality
10 shall not be construed as affecting the necessity of obtaining the
11 approval of the city council or board of trustees of such
12 municipality or its agent designated pursuant to section 19-916.

13 Sec. 3. For purposes of Chapter 70, electric supplier has
14 the definition found in section 70-1001.01.

15 Sec. 4. Section 70-101, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 70-101 Notwithstanding any other provision of law
18 regarding confidentiality of records, every ~~district or corporation~~
19 ~~organized under Chapter 70~~ electric supplier shall, upon request,
20 furnish to any county attorney, any authorized attorney as defined in
21 section 42-347, or the Department of Health and Human Services a
22 utility service subscriber's name, social security number, and
23 mailing and residence addresses only for the purposes of establishing
24 and collecting child, spousal, and medical support and of conducting
25 reviews under sections 43-512.12 to 43-512.18. Such information shall

1 be used for no other purpose. An action may be filed in district
2 court to enforce this section. For purposes of this section, utility
3 service shall mean electrical, gas, water, telephone, garbage
4 disposal, or waste disposal service.

5 Sec. 5. Section 70-301, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 70-301 Any ~~public power district, corporation, or~~
8 ~~municipality~~ electric supplier that engages in the generation or
9 transmission, or both, of electric energy for sale to the public for
10 light and power purposes, or is authorized to engage in the
11 production, storage, or distribution of hydrogen for use in fuel
12 processes, or the production or distribution, or both, of ethanol for
13 use as fuel may acquire right-of-way over and upon lands, except
14 railroad right-of-way and depot grounds, for the construction of pole
15 lines or underground lines necessary for the conduct of such business
16 and for the placing of all poles and constructions for the necessary
17 adjuncts thereto, in the same manner as railroad corporations may
18 acquire right-of-way for the construction of railroads. Such
19 ~~district, corporation, or municipality~~ electric supplier shall give
20 public notice of the proposed location of such pole lines or
21 underground lines with a voltage capacity of thirty-four thousand
22 five hundred volts or more which involves the acquisition of rights
23 or interests in more than ten separately owned tracts by causing to
24 be published a map showing the proposed line route in a legal
25 newspaper of general circulation within the county where such line is

1 to be constructed at least thirty days before negotiating with any
2 person, firm, or corporation to acquire easements or property for
3 such purposes and shall consider all objections which may be filed to
4 such location. After securing approval from the Public Service
5 Commission and having complied with sections 70-305 to 70-309 and
6 86-701 to 86-707, such ~~public power districts, corporations, and~~
7 ~~municipalities~~ electric supplier shall have the right to condemn a
8 right-of-way over and across railroad right-of-way and depot grounds
9 for the purpose of crossing the same. The procedure to condemn
10 property shall be exercised in the manner set forth in sections
11 76-704 to 76-724.

12 Sec. 6. Section 70-304, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 70-304 Any ~~such public power district, corporation or~~
15 ~~municipality~~ electric supplier acquiring any easement or right-of-way
16 ~~hereunder pursuant to section 70-301~~ shall be liable to the owner of
17 the land affected for any damage to growing crops not included in the
18 original settlement or award.

19 Sec. 7. Section 70-305, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 70-305 Any ~~person~~ electric supplier engaged in the
22 generating or transmitting of electric current for sale, use, or
23 purchase in the state for power or other purposes is granted the
24 right-of-way for all necessary poles and wires along, within, and
25 across any of the public highways of this state. Such ~~person~~ electric

1 supplier is liable for all damages to private property by reason of
2 the use of the public highways for such purpose. Such damages shall
3 be ascertained and determined in the manner set forth in sections
4 76-704 to 76-724.

5 Sec. 8. Section 70-306, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 70-306 (1) Any electric wire shall be placed at least
8 eighteen feet above all road crossings. Any electric poles and wires
9 shall be so placed as not to interfere with the public use of such
10 highways, and if practicable, the poles shall be set upon the line of
11 such highways.

12 (2) If any ~~person~~electric supplier engaged in
13 distributing, generating, or transmitting electric current for power
14 or other purposes by means of wires seeks to construct an electric
15 wire over and across any railroad tracks, telegraph wires, or rights-
16 of-way of any railroad company in this state and the electric wire
17 intersects and crosses streets, highways, alleys, and other public
18 thoroughfares, or elsewhere, such ~~person~~electric supplier and
19 railroad company shall first endeavor to agree by a contract as to
20 the manner and kind of crossing to be constructed. The contract shall
21 at a minimum meet the requirements of sections 75-706 and 75-707 as
22 to terms and conditions of such construction or placement and shall
23 include the compensation, if any, to be awarded as damages. If no
24 contract is reached, the ~~person~~electric supplier may proceed to have
25 the same ascertained and determined in the manner set forth in

1 sections 76-704 to 76-724.

2 Sec. 9. Section 70-307, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 70-307 If any ~~person~~electric supplier engaged in
5 distributing, generating, or transmitting electric current for power
6 or other purposes by means of wires constructs or places electric
7 wires over the railroad tracks, telegraph wires, or rights-of-way of
8 any railroad company in violation of section 70-305, section 75-708
9 shall apply.

10 Sec. 10. Section 70-408, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 70-408 All charges~~,~~ made for electrical energy for
13 residential, commercial, and farm purposes by any ~~person, firm,~~
14 ~~corporation, or municipal corporation~~electric supplier engaged in
15 the sale of electrical energy in cities of the first class having a
16 population of more than five thousand and less than twenty-five
17 thousand inhabitants, cities of the second class, villages, and
18 unincorporated areas in Nebraska~~,~~ shall be based on the amount of
19 such energy actually furnished by the kilowatt-hour meter, together
20 with such demand as may be registered or indicated by a demand meter,
21 or as may be contracted for, to such purchaser. Such ~~person, firm,~~
22 ~~corporation, or municipal corporation~~electric supplier may provide
23 for either a penalty on or a discount from the amount of any bill to
24 promote prompt payment thereof under uniform rules and regulations
25 governing such penalty or discount. A reasonable minimum charge may

1 be collected from purchasers of electrical energy by any such ~~person,~~
2 ~~firm, corporation, or municipal corporation,~~ electric supplier, even
3 though the charge for the amount of electrical energy actually
4 furnished by the kilowatt-hour to such purchaser or user does not
5 equal such minimum charge for the designated period of service,
6 except that ; ~~Provided, the provisions of~~ sections 70-407 to 70-409
7 shall not be construed to affect any contract or franchise in
8 existence at the time of the passage and approval of this section.

9 Sec. 11. Section 70-409, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 70-409 Any ~~person, firm or corporation,~~ their electric
12 supplier or its employees, agents, or servants who violate or
13 ~~servants, who shall violate~~ any of the provisions of sections 70-407
14 and 70-408 ~~shall be~~ is guilty of a Class V misdemeanor.

15 Sec. 12. Section 70-1001, Revised Statutes Cumulative
16 Supplement, 2012, is amended to read:

17 70-1001 In order to provide the citizens of the state
18 with adequate electric service at as low overall cost as possible,
19 consistent with sound business practices, it is the policy of this
20 state to avoid and eliminate conflict and competition between ~~public~~
21 ~~power districts, public power and irrigation districts, individual~~
22 ~~municipalities, registered groups of municipalities, electric~~
23 ~~membership associations, and cooperatives~~ electric suppliers in
24 furnishing electric energy to retail and wholesale customers, to
25 avoid and eliminate the duplication of facilities and resources which

1 result therefrom, and to facilitate the settlement of rate disputes
2 between suppliers of electricity.

3 It is also the policy of the state to prepare for an
4 evolving retail electricity market if certain conditions are met
5 which indicate that retail competition is in the best interests of
6 the citizens of the state. The determination on the timing and form
7 of competitive markets is a matter properly left to the states as
8 each state must evaluate the costs and benefits of a competitive
9 retail market based on its own unique conditions. Consequently, there
10 is a need for the state to monitor whether the conditions necessary
11 for its citizens to benefit from retail competition exist.

12 It is also the policy of the state to encourage and allow
13 opportunities for private developers to develop, own, and operate
14 renewable energy facilities intended primarily for export from the
15 state under a statutory framework which protects the ratepayers of
16 consumer-owned utility systems operating in the state from
17 subsidizing the costs of such export facilities through their rates.

18 Sec. 13. Section 70-1001.01, Revised Statutes Cumulative
19 Supplement, 2012, is amended to read:

20 70-1001.01 For purposes of sections 70-1001 to 70-1027
21 and section 31 of this act, unless the context otherwise requires:

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

23 (2) Certified renewable export facility means a facility
24 approved under section 70-1014.02 that (a) will generate electricity
25 using solar, wind, biomass, or landfill gas, (b) will be constructed

1 and owned by an entity other than ~~a municipality, a registered group~~
2 ~~of municipalities, a public power district, a public power and~~
3 ~~irrigation district, an electric cooperative, an electric membership~~
4 ~~association, an electric supplier or any other governmental entity,~~
5 and (c) has a power purchase or similar agreement or agreements with
6 an initial term of ten years or more for the sale of at least ninety
7 percent of the output of the facility with a customer or customers
8 located outside the State of Nebraska and maintains such an agreement
9 or agreements for the life of the facility. Output sold pursuant to
10 subdivision (2)(a)(iv) of section 70-1014.02 shall not be included
11 when calculating such ninety percent. Certified renewable export
12 facility includes all generating equipment, easements, and
13 interconnection equipment within the facility and connecting the
14 facility to the transmission grid;

15 (3) Except as expressly provided in section 70-1014.02,
16 ~~electric suppliers or suppliers of electricity means any legal entity~~
17 ~~supplying, producing, or distributing electricity within the state~~
18 ~~for sale at wholesale or retail; supplier means a public power~~
19 ~~district, a public power and irrigation district, a municipality, a~~
20 ~~registered group of municipalities, an electric membership~~
21 ~~association, or a cooperative providing electric distribution,~~
22 ~~transmission, or generation services in Nebraska;~~

23 (4) Regional transmission organization means an entity
24 independent from those entities generating or marketing electricity
25 at wholesale or retail, which has operational control over the

1 electric transmission lines in a designated geographic area in order
2 to reduce constraints in the flow of electricity and ensure that all
3 ~~power~~electric suppliers have open access to transmission lines for
4 the transmission of electricity;

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

12 (6) State means the State of Nebraska;

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

21 (8) Unbundled retail rates means the separation of
22 utility bills into the individual price components for which an
23 electric supplier charges its retail customers, including, but not
24 limited to, the separate charges for the generation, transmission,
25 and distribution of electricity.

1 Sec. 14. No entity shall construct or acquire electric
2 generation facilities or transmission or related facilities in the
3 State of Nebraska for serving customers at retail or wholesale unless
4 authorized to do so under Chapter 70, article 10, except as otherwise
5 authorized with respect to a generation unit which is a qualifying
6 facility under the federal Public Utility Regulatory Policies Act of
7 1978, 16 U.S.C. 2601, as such act existed on January 1, 2013.

8 Sec. 15. Section 70-1002, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 70-1002 (1) All electric suppliers of ~~electricity,~~
11 ~~including public power districts, public power and irrigation~~
12 ~~districts, individual municipalities, registered groups of~~
13 ~~municipalities, electric membership associations, and cooperatives,~~
14 serving customers at retail in adjoining service areas ~~shall have the~~
15 ~~authority to~~ may enter into written agreements with each other
16 specifying either the service area or customers each shall serve with
17 electric energy. Before such agreements ~~shall be~~ may become
18 effective, except agreements referred to in subsection (2) of this
19 section, they shall be submitted to and approved by the ~~Nebraska~~
20 ~~Power Review Board created by section 70-1003.~~ board. In the event
21 that such electric suppliers fail to consummate such agreements,
22 except agreements referred to in subsection (2) of this section, the
23 matter shall be referred to the ~~Nebraska Power Review Board created~~
24 ~~by section 70-1003.~~ board.

25 (2) When two or more electric suppliers serve the same

1 municipality at retail, such agreements shall specify the service
2 areas within such municipality which each electric supplier is to
3 serve.

4 (3) It is declared to be the purpose of this section to
5 promote and encourage the making of such agreements. Such agreements
6 may be amended by the parties thereto at any time, and, except
7 agreements referred to in subsection (2) of this section, shall
8 require the approval of the ~~Nebraska Power Review Board,~~ board, and
9 ~~they~~ shall be submitted to the board for amendment before the
10 transfer of ownership or control of the facilities serving a service
11 area.

12 Sec. 16. Section 70-1002.01, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 70-1002.01 All electric suppliers of ~~electricity,~~
15 ~~including public power districts, public power and irrigation~~
16 ~~districts, individual municipalities, registered groups of~~
17 ~~municipalities, electric membership associations, and cooperatives,~~
18 ~~shall have authority to~~ may enter into written agreements with each
19 other limiting the areas in which or the customers to which a party
20 to the agreement shall provide or sell electric energy at wholesale.
21 ~~Wholesale~~ For purposes of this section, wholesale electric energy is
22 ~~hereby defined as~~ means electric energy which is sold to another
23 agency for resale to the ultimate user, ~~hereafter referred to as the~~
24 a retail customer. Before such agreements ~~shall~~ may become effective,
25 they shall be submitted to and approved by the ~~Nebraska Power Review~~

1 ~~Board created by section 70-1003. board.~~ It is declared to be the
2 purpose of this section to promote and encourage the making of such
3 agreements. Such agreements may be amended by the parties thereto at
4 any time, ~~and such amendments shall require with~~ the prior approval
5 of the ~~Nebraska Power Review Board. board.~~ When requested to approve
6 such an agreement or amendment thereto, the ~~Nebraska Power Review~~
7 ~~Board board~~ shall consider whether or not the proposed agreement or
8 amendment can be reasonably expected to provide a reliable wholesale
9 power supply at a reasonable cost for the area covered by the
10 agreement. It may make such investigation as it determines is
11 necessary and hold a hearing if it determines one to be desirable. At
12 the conclusion of its investigation, the ~~Nebraska Power Review Board~~
13 ~~board~~ shall approve the agreement or amendment unless it determines
14 that it cannot be reasonably expected to provide a reliable wholesale
15 power supply at a reasonable cost for the area covered. Such
16 agreements when approved by the ~~Nebraska Power Review Board board~~
17 shall not be binding upon other electric suppliers that are not
18 parties to the agreement, ~~and the Nebraska Power Review Board board~~
19 shall have no authority to impose conditions that will be binding or
20 applicable to other electric suppliers that are not parties to such
21 agreements. Such agreements shall not be considered as establishing
22 service areas within the meaning of Chapter 70, article 10.

23 Sec. 17. Section 70-1002.02, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 70-1002.02 No electric supplier shall offer, provide, or

1 sell electric energy at wholesale in areas or to customers in
2 violation of any agreement entered into and approved by the ~~Nebraska~~
3 ~~Power Review Board~~ board pursuant to section 70-1002.01.

4 Sec. 18. Section 70-1003, Revised Statutes Cumulative
5 Supplement, 2012, is amended to read:

6 70-1003 (1) There is hereby established an independent
7 board to be known as the Nebraska Power Review Board to consist of
8 five members, one of whom shall be an engineer, one an attorney, one
9 an accountant, and two laypersons. No person who is or who has within
10 four years preceding his or her appointment been either a director,
11 officer, or employee of any electric utility or an elective state
12 officer shall be eligible for membership on the board. Members of the
13 board shall be appointed by the Governor subject to the approval of
14 the Legislature. Upon expiration of the terms of the members first
15 appointed, the successors shall be appointed for terms of four years.
16 No member of the board shall serve more than two consecutive terms.
17 Any vacancy on the board arising other than from the expiration of a
18 term shall be filled by appointment for the unexpired portion of the
19 term, and any person appointed to fill a vacancy on the board shall
20 be eligible for reappointment for two more consecutive terms. No more
21 than three members of the board shall be registered members of that
22 political party represented by the Governor. Each member of the board
23 shall receive sixty dollars per day for each day actually and
24 necessarily engaged in the performance of his or her duties, but not
25 to exceed six thousand dollars in any one year, and shall be

1 reimbursed for his or her actual and necessary expenses while so
2 engaged as provided in sections 81-1174 to 81-1177. The board shall
3 have jurisdiction as provided in Chapter 70, article 10.

4 (2) The board shall meet promptly after its members have
5 been appointed. They shall elect from their members a chairperson and
6 a vice-chairperson. Decisions of the board shall require the approval
7 of a majority of the members of the board.

8 (3) The board shall employ an executive director and may
9 employ such other staff necessary to carry out the duties pursuant to
10 Chapter 70, article 10. The executive director shall serve at the
11 pleasure of the board and shall be solely responsible to the board.
12 The executive director shall be responsible for the administrative
13 operations of the board and shall perform such other duties as may be
14 delegated or assigned to him or her by the board. The board may
15 obtain the services of experts and consultants necessary to carry out
16 the board's duties pursuant to Chapter 70, article 10.

17 (4) The board shall publish and submit a biennial report
18 with annual data to the Governor, with copies to be filed with the
19 Clerk of the Legislature and with the State Energy Office. The report
20 submitted to the Clerk of the Legislature shall be submitted
21 electronically. The State Energy Office shall consider the
22 information in the Nebraska Power Review Board's report when the
23 State Energy Office prepares its own reports pursuant to sections
24 81-1606 and 81-1607. The report of the board shall include:

25 (a) The assessments for the fiscal year imposed pursuant

1 to section 70-1020;

2 (b) The gross income totals for each category of the
3 industry and the industry total;

4 (c) The number of electric suppliers against whom the
5 assessment is levied, by category and in total;

6 (d) The projected dollar costs of generation,
7 transmission, and microwave applications, approved and denied;

8 (e) The actual dollar costs of approved applications upon
9 completion, and a summary of an informational hearing concerning any
10 significant divergence between the projected and actual costs;

11 (f) A description of Nebraska's current electric system
12 and information on additions to and retirements from the system
13 during the fiscal year, including microwave facilities;

14 (g) A statistical summary of board activities and an
15 expenditure summary;

16 (h) A roster of ~~power~~electric suppliers in Nebraska and
17 the assessment each paid; and

18 (i) Appropriately detailed historical and projected
19 electric supply and demand statistics, including information on the
20 total generating capacity owned by Nebraska suppliers and the total
21 peak load demand of the previous year, along with an indication of
22 how the industry will respond to the projected situation.

23 (5) The board may, in its discretion, hold public
24 hearings concerning the conditions that may indicate that retail
25 competition in the electric industry would benefit Nebraska's

1 citizens and what steps, if any, should be taken to prepare for
2 retail competition in Nebraska's electricity market. In determining
3 whether to hold such hearings, the board shall consider the
4 sufficiency of public interest.

5 (6) The board may, at any time deemed beneficial by the
6 board, submit a report to the Governor with copies to be filed with
7 the Clerk of the Legislature and the Natural Resources Committee of
8 the Legislature. The report filed with the Clerk of the Legislature
9 and the committee shall be filed electronically. The report may
10 include:

11 (a) Whether or not a viable regional transmission
12 organization and adequate transmission exist in Nebraska or in a
13 region which includes Nebraska;

14 (b) Whether or not a viable wholesale electricity market
15 exists in a region which includes Nebraska;

16 (c) To what extent retail rates have been unbundled in
17 Nebraska;

18 (d) A comparison of Nebraska's wholesale electricity
19 prices to the prices in the region; and

20 (e) Any other information the board believes to be
21 beneficial to the Governor, the Legislature, and Nebraska's citizens
22 when considering whether retail electric competition would be
23 beneficial, such as, but not limited to, an update on deregulation
24 activities in other states and an update on federal deregulation
25 legislation.

1 (7) The board may establish working groups of interested
2 parties to assist the board in carrying out the powers set forth in
3 subsections (5) and (6) of this section.

4 Sec. 19. Section 70-1004, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 70-1004 Each electric supplier which becomes a party to
7 an agreement under ~~the provisions of~~ section 70-1002 shall file with
8 the secretary of the board a suitable map or maps, in such form as
9 the board shall prescribe, showing either the service area or
10 customers to be served. Whenever any changes occur in the service
11 area, new maps shall be filed. Each electric supplier in the state
12 which fails to file a map or maps showing its service area or
13 customers to be served as established by agreement shall file a
14 statement with the secretary showing the service area and customers
15 actually served by it, what it claims to be its service area, stating
16 the reason it has not entered into agreements with electric suppliers
17 in adjoining service areas, and if a dispute exists as to furnishing
18 service to any service area, the nature and extent thereof. This
19 section shall not apply to agreements referred to in subsection (2)
20 of section 70-1002.

21 Sec. 20. Section 70-1005, Reissue Revised Statutes of
22 Nebraska, is amended to read:

23 70-1005 Any electric supplier may at any time ~~on or after~~
24 ~~July 1, 1964,~~ apply to the board to establish its service area. In
25 such case and in all cases where agreements have not been entered

1 into, including cases arising under section 70-1008, the secretary
2 shall give written notice to the parties involved citing them to
3 appear at a time, not less than thirty days thereafter, and at a
4 place specified in the notice for a hearing upon the matter of
5 establishing the service areas concerned in the notice. ~~The~~
6 ~~provisions of this section shall~~ This section does not apply to
7 service within the corporate limits of any municipality.

8 Sec. 21. Section 70-1007, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 70-1007 After the hearing, the board shall make an order
11 establishing the service areas in the matter covered by the notice.
12 In determining any such matter, the board shall seek to carry out the
13 policy stated in section 70-1001. It shall give such consideration as
14 is appropriate in each case to the following:

15 (1) The electric supplier best able to supply the load
16 required;

17 (2) The most logical future electric supplier of the
18 area;

19 (3) The desires of the electric supplier with respect to
20 loads and service areas it wishes to serve;

21 (4) The ability to provide service at costs comparable to
22 other electric suppliers in the service area and the immediate costs
23 to the ultimate consumers involved in the transfer; and

24 (5) The ability of the electric supplier to cope with the
25 problems of expanding loads and increased costs.

1 Sec. 22. Section 70-1008, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 70-1008 In the absence of an agreement between the
4 electric suppliers affected and notwithstanding the provisions of
5 subdivisions (1) to (5) of section 70-1007:

6 (1) Existing service areas presently designated by
7 agreements and exhibits filed with and approved by the board, or
8 previously ordered by the board, shall remain and be established as
9 certified service areas; and -

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

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

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

11 Sec. 23. Section 70-1009, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 70-1009 (1) When one electric supplier at the date of
14 enactment has customers or distribution facilities extending into the
15 certified service area of another electric supplier, the customers
16 and distribution facilities of the former electric supplier may be
17 acquired by negotiation or by application of either party to the
18 board for modification of certified service area as to ownership of
19 facilities and customers to be served.

20 (2) Such amendment may be made by mutual agreement, or
21 upon application of either party to and determination by the board,
22 upon consideration of the factors set forth in section 70-1007,
23 except that no transfer of facilities and customers shall be made
24 which would impair the rights of bondholders or mortgage holders.

25 Sec. 24. Section 70-1010, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 70-1010 (1) The board shall have authority upon
3 application by a an electric supplier at any time to modify service
4 areas or customers to be served as previously established. The same
5 procedures as to notice, hearing, and decision shall be followed as
6 in the case of an original application. ~~Suppliers~~ Electric suppliers
7 shall have authority by agreement to change service areas or
8 customers to be served with the approval of the board. This section
9 shall not apply to agreements referred to in subsection (2) of
10 section 70-1002.

11 (2) In the event of a proposed transfer of customers and
12 facilities from one electric supplier to another in accordance with
13 this section or section 70-1008 or 70-1009, the parties shall attempt
14 to agree upon the value of the certified service area and
15 distribution facilities and customers being transferred. If the
16 parties cannot agree upon the value, then the board shall determine
17 the total economic impact on the selling supplier and establish the
18 price accordingly based on, but not limited to, the following
19 guidelines: The electric supplier acquiring the certified service
20 area, distribution facilities, and customers shall purchase the
21 electric distribution facilities of the electric supplier located
22 within the affected area, together with the electric supplier's
23 rights to serve within such area, for cash consideration which shall
24 consist of (a) the current reproduction cost if the facilities being
25 acquired were new, less depreciation computed on a straight-line

1 basis at three percent per year not to exceed seventy percent, plus
2 (b) an amount equal to the nonbetterment cost of constructing any
3 facilities necessary to reintegrate the system of the electric
4 supplier outside the area being transferred after detaching the
5 portion to be sold, plus (c) an amount equal to two and one-half
6 times the annual revenue received from power sales to existing
7 customers of electric power within the area being transferred, except
8 that for large commercial or industrial customers with peak demands
9 of three hundred kilowatts or greater during the twelve months
10 immediately preceding the date of filing with the board, the multiple
11 shall be five times the net revenue, defined as gross power sales,
12 less costs of wholesale power including facilities rental charges,
13 received from power sales to large commercial or industrial customers
14 with measured demand of three hundred kilowatts or greater during the
15 twelve months immediately preceding the filing with the board for
16 service area modification. After the board has determined the price
17 in accordance with such guidelines, the acquiring electric supplier
18 may acquire such distribution facilities and customers by payment of
19 the established price within one year ~~of~~ after the final order.

20 (3) Notwithstanding the provisions of sections 70-1008 to
21 70-1010, no transfer of facilities and customers shall be made or
22 approved by the board if such transfer would impair the obligations
23 of a ~~power~~ electric supplier to holders of its bonds or mortgages.

24 Sec. 25. Section 70-1011, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 70-1011 Except by agreement of the electric suppliers
2 involved, no electric supplier shall offer electric service to
3 additional ultimate users outside its service area or construct or
4 acquire a new electric line or extend an existing line into the
5 service area of another electric supplier for the purpose of
6 furnishing service to ultimate users therein without first applying
7 to the board and receiving approval thereof, after due notice and
8 hearing under rules and regulations of the board. Such approval shall
9 be granted only if the board finds that the customer or customers
10 proposed to be served cannot or will not be furnished adequate
11 electric service by the electric supplier in whose service area the
12 customer is located, or that the provision thereof by such electric
13 supplier would involve wasteful and unwarranted duplication of
14 facilities. This section shall not apply to agreements referred to in
15 subsection (2) of section 70-1002.

16 Sec. 26. Section 70-1012, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 70-1012 Before any electric generation facilities or any
19 transmission lines or related facilities carrying more than seven
20 hundred volts are constructed or acquired by any electric supplier,
21 an application, filed with the board and containing such information
22 as the board shall prescribe, shall be approved by the board, except
23 that such approval shall not be required (1) for the construction or
24 acquisition of a transmission line extension or related facilities
25 within a ~~an~~ electric supplier's own service area or for the

1 construction or acquisition of a line not exceeding one-half mile
2 outside its own service area when all owners of electric lines
3 located within one-half mile of the extension consent thereto in
4 writing and such consents are filed with the board, (2) for any
5 generation facility when the board finds that: (a) Such facility is
6 being constructed or acquired to replace a generating plant owned by
7 an individual municipality or registered group of municipalities with
8 a capacity not greater than that of the plant being replaced, (b)
9 such facility will generate less than twenty-five thousand kilowatts
10 of electric energy at rated capacity, and (c) the applicant will not
11 use the plant or transmission capacity to supply wholesale power to
12 customers outside the applicant's existing retail service area or
13 chartered territory, (3) for acquisition of transmission lines or
14 related facilities, within the state, carrying one hundred fifteen
15 thousand volts or less, if the current owner of the transmission
16 lines or related facilities notifies the board of the lines or
17 facilities involved in the transaction and the parties to the
18 transaction, or (4) for the construction of a qualified facility as
19 defined in section 70-2002.

20 Sec. 27. Section 70-1012.01, Reissue Revised Statutes of
21 Nebraska, is amended to read:

22 70-1012.01 ~~In the event a~~ If an electric supplier
23 terminates construction or acquisition of electric generation or
24 transmission facilities after receiving approval for the facilities
25 from the ~~Nebraska Power Review Board,~~ board, the electric supplier

1 shall file with the board within thirty days of the action taken to
2 terminate construction or acquisition, a statement of the factors or
3 reasons relied upon by the electric supplier in taking such action.
4 Within ten days after receipt of such a filing, the board shall give
5 notice of the filing to such other electric suppliers as it deems
6 interested or affected by such action and it shall hold a hearing for
7 the purpose of obtaining such additional information as the board
8 deems advisable or necessary to inform other electric suppliers and
9 the public of the reasons for such termination. Notice of any such
10 hearing shall be given to ~~those~~electric suppliers previously given
11 notice of the filing and to any other parties expressing interest in
12 the approved application. The board shall not have authority to
13 approve or deny the action of a ~~an~~ electric supplier terminating
14 construction or acquisition, and any such filing or hearing shall be
15 advisory and solely for the purpose of informing the board, other
16 electric suppliers, interested parties, and the ratepayers of this
17 state of the factors or reasons relied upon in taking action to
18 terminate construction or acquisition. Nothing in this section shall
19 constitute or be construed as a defense to any cause of action,
20 including a claim for breach of contract, resulting from such
21 termination.

22 Sec. 28. Section 70-1013, Revised Statutes Cumulative
23 Supplement, 2012, is amended to read:

24 70-1013 Upon application being filed under section
25 70-1012, the board shall fix a time and place for hearing and shall

1 give ten days' notice by mail to such ~~power electric~~ suppliers as it
2 deems to be affected by the application. The hearing shall be held
3 within sixty days unless for good cause shown the applicant requests
4 in writing that such hearing not be scheduled until a later time, but
5 in any event such hearing shall be held not more than one hundred
6 twenty days after the filing of the application and the board shall
7 give its decision within sixty days after the conclusion of the
8 hearing. Any parties interested may appear, file objections, and
9 offer evidence. The board may grant the application without notice or
10 hearing, upon the filing of such waivers as it may require, if in its
11 judgment the finding required by section 70-1014 or subdivision (2)
12 (a) of section 70-1014.02 can be made without a hearing. Such hearing
13 shall be conducted as provided in section 70-1006. The board may
14 allow amendments to the application, in the interests of justice.

15 Sec. 29. Section 70-1014.01, Revised Statutes Cumulative
16 Supplement, 2012, is amended to read:

17 70-1014.01 (1) Except as provided in subsection (2) of
18 this section, an application by ~~a municipality, a registered group of~~
19 ~~municipalities, a public power district, a public power and~~
20 ~~irrigation district, an electric cooperative, an electric membership~~
21 ~~association, an electric supplier~~ or any other governmental entity,
22 for a facility that will generate not more than ten thousand
23 kilowatts of electric energy at rated capacity and will generate
24 electricity using solar, wind, biomass, landfill gas, methane gas, or
25 hydropower generation technology or an emerging generation

1 technology, including, but not limited to, fuel cells and micro-
2 turbines, shall be deemed a special generation application. Such
3 application shall be approved by the board if the board finds that
4 (a) the application qualifies as a special generation application,
5 (b) the application will provide public benefits sufficient to
6 warrant approval of the application, although it may not constitute
7 the most economically feasible generation option, and (c) the
8 application under consideration represents a separate and distinct
9 project from any previous special generation application the
10 applicant may have filed.

11 (2)(a) An application by a ~~municipality, a registered~~
12 ~~group of municipalities, a public power district, a public power and~~
13 ~~irrigation district, an electric cooperative, an electric membership~~
14 ~~association, an electric supplier~~ or any other governmental entity
15 for a facility that will generate more than ten thousand kilowatts of
16 electric energy at rated capacity and will generate electricity using
17 renewable energy sources such as solar, wind, biomass, landfill gas,
18 methane gas, or new hydropower generation technology or an emerging
19 technology, including, but not limited to, fuel cells and micro-
20 turbines, may be filed with the board if (i) the total production
21 from all such renewable projects, excluding sales from such projects
22 to other electric-generating entities, does not exceed ten percent of
23 total energy sales as shown in the producer's Annual Electric Power
24 Industry Report to the United States Department of Energy and (ii)
25 the applicant's governing body conducts at least one advertised

1 public hearing which affords the ratepayers of the applicant a chance
2 to review and comment on the subject of the application.

3 (b) The application filed under subdivision (2)(a) of
4 this section shall be approved by the board if the board finds that
5 (i) the applicant is using renewable energy sources described in this
6 subsection, (ii) total production from all renewable projects of the
7 applicant does not exceed ten percent of the producer's total energy
8 sales as described in subdivision (2)(a) of this section, and (iii)
9 the applicant's governing body has conducted at least one advertised
10 public hearing which affords its ratepayers a chance to review and
11 comment on the subject of the application.

12 (3)(a) A community-based energy development project
13 organized pursuant to the Rural Community-Based Energy Development
14 Act or any privately developed project which intends to develop
15 renewable energy sources for sale to one or more Nebraska electric
16 ~~utilities-suppliers~~ described in this section may also make an
17 application to the board pursuant to this subsection if (i) the
18 purchasing electric ~~utilities-suppliers~~ conduct a public hearing
19 described in subdivision (2)(a) of this section, (ii) the power and
20 energy from the renewable energy sources is sold exclusively to such
21 electric ~~utilities-suppliers~~ for a term of at least twenty years, and
22 (iii) the total production from all such renewable projects,
23 excluding sales from such projects to other electric-generation
24 entities, does not exceed ten percent of total energy sales of such
25 purchasing electric ~~utilities-suppliers~~ as shown in such ~~utilities-~~

1 suppliers' Annual Electric Power Industry Report to the United States
2 Department of Energy or the successor to such report.

3 (b) The application filed under subdivision (3)(a) of
4 this section shall be approved by the board if the board finds that
5 the purchasing electric ~~utilities~~ suppliers have met the conditions
6 described in subdivision (3)(a) of this section.

7 (4) No facility or part of a facility which is approved
8 pursuant to this section is subject to eminent domain by any electric
9 supplier, or by any other entity if the purpose of the eminent domain
10 proceeding is to acquire the facility for electric generation or
11 transmission.

12 Sec. 30. Section 70-1014.02, Revised Statutes Cumulative
13 Supplement, 2012, is amended to read:

14 70-1014.02 (1) For purposes of this section:

15 (a) Electric supplier means a public power district, a
16 public power and irrigation district, an individual municipality, a
17 registered group of municipalities, an electric membership
18 association, or a cooperative serving loads greater than fifty
19 megawatts; and

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

22 (2)(a) The board shall conditionally approve an
23 application for a certified renewable export facility if it finds
24 that only the criteria described in subdivisions (a)(i) through (iv)
25 of this subsection are met: (i) The facility will provide reasonably

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

1 megawatts shall be the responsibility of the participating electric
2 supplier. Upon receiving the initial application under this section,
3 the board shall notify electric suppliers identified in this
4 subdivision (iv) of a pending application with a nameplate capacity
5 greater than eighty megawatts. Such electric suppliers shall have
6 forty-five days following the date of the board's notice to notify
7 the applicant of an interest in exercising the option to purchase
8 power, except that such electric suppliers may withdraw their option
9 to purchase power once the costs of the transmission additions and
10 upgrades are determined. Electric suppliers withdrawing their option
11 to purchase power are responsible for their pro rata share of any
12 costs resulting from their participation in and withdrawal from the
13 generation interconnection and transmission delivery studies.

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

23 (c) Upon finding that the criteria described in
24 subdivisions (c)(i) through (viii) of this subsection have also been
25 met by the applicant and after the board has fulfilled the

1 requirements of subsection (3) of section 37-807, the board shall
2 grant final approval of an application for a certified renewable
3 export facility:

4 (i) The facility will not have a materially detrimental
5 effect on the retail electric rates paid by any Nebraska ratepayers,
6 except that, notwithstanding subdivisions (c)(v) and (vi) of this
7 subsection, the determination of a materially detrimental effect on
8 rates shall not include regional transmission improvements dictated
9 by a regional transmission operator or transmission improvements
10 required due to participation by an eligible entity pursuant to
11 subdivision (2)(a)(iv) of this section;

12 (ii) The applicant has obtained the necessary generation
13 interconnection and transmission service approvals from and has
14 executed agreements for such generation interconnection and
15 transmission service with the appropriate regional transmission
16 organization, transmission owner, or transmission provider;

17 (iii) There has been no demonstration that the proposed
18 facility will result in a substantial risk of creating stranded
19 assets;

20 (iv) The applicant has certified that it has applied for
21 and is actively pursuing the required approvals from any other
22 federal, state, or local entities with jurisdiction or permitting
23 authority over the certified renewable export facility;

24 (v) The applicant and the electric supplier owning the
25 transmission facilities to which the certified renewable export

1 facility will be interconnected, along with any electric supplier
2 which owns transmission facilities of one hundred fifteen thousand
3 volts or more and is required to receive notice pursuant to section
4 70-1013, have entered into a joint transmission development agreement
5 on reasonable terms and conditions consistent with and subject to the
6 notice to construct or other directives of any regional transmission
7 organization with jurisdiction over the addition or upgrade to
8 transmission facilities or, for any electric supplier that is not a
9 member of a regional transmission organization with which the
10 facility will interconnect, covers the addition or upgrade to
11 transmission facilities required as a result of the certified
12 renewable export facility. Such joint transmission development
13 agreement shall include provisions addressing construction,
14 ownership, operation, and maintenance of such additions or upgrades
15 to transmission facilities. The electric supplier or suppliers shall
16 have the right to purchase and own transmission facilities as set
17 forth in the joint transmission development agreement;

18 (vi) The applicant agrees to reimburse any costs that are
19 not covered by a regional transmission organization tariff or that
20 are allocated through the tariff to the electric suppliers as a
21 result of the certified renewable export facility or not covered by
22 the tariff of a transmission owner or transmission provider that is
23 not a member of a regional transmission organization, costs incurred
24 by any electric supplier as a result of adding the certified
25 renewable export facility, including, but not limited to, renewable

1 integration costs, and costs which allow the interconnected electric
2 supplier to operate and maintain the transmission facilities under
3 reasonable terms and conditions agreed to by the parties within the
4 joint transmission development agreement;

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

21 (viii) The facility meets the requirements of
22 subdivisions (2)(a) through (c) of section 70-1001.01.

23 (3) If the applicant does not commence construction of
24 the certified renewable export facility within eighteen months after
25 receiving final approval from the board under subsection (2) of this

1 section, the approval is void. Upon written request filed by the
2 applicant, the board may, for good cause shown, extend the time
3 period during which an approval will remain valid. Good cause
4 includes, but is not limited to, national or regional economic
5 conditions, lack of transmission infrastructure, or an applicant's
6 inability to obtain authorization from other required governmental
7 regulatory authorities despite the applicant's exercise of a good-
8 faith effort to obtain such approvals.

9 (4) The applicant shall remit an application fee of five
10 thousand dollars with the application. The fee shall be remitted to
11 the State Treasurer for credit to the Nebraska Power Review Fund. The
12 board shall use the application fee to defray the board's reasonable
13 expenses associated with reviewing and acting upon the application,
14 including the costs of the hearing. If the board incurs expenses of
15 more than five thousand dollars associated with the application, the
16 board shall provide written notification to the applicant of the
17 additional sum needed or already expended, after which the applicant
18 shall promptly submit an additional sum sufficient to cover the
19 board's anticipated or incurred expenses or shall file an objection
20 with the board. If, after completion of the application process and
21 any subsequent legal action, including appeal of the board's
22 decision, the board's expenses associated with processing and acting
23 upon the application do not equal the amount submitted by the
24 applicant, the board shall return the unused funds to the applicant
25 if the amount is fifty dollars or more. The applicant shall reimburse

1 the board for any reasonable expenses the board incurs as a result of
2 an appeal of the board's decision or shall file an objection with the
3 board. The board shall rule on any objection brought pursuant to this
4 subsection within thirty days. The applicant may request a hearing on
5 its objection, in which case the board shall hold such hearing within
6 thirty days after the request and shall rule within forty-five days
7 after the hearing.

8 (5) No facility or part of a facility which is a
9 certified renewable export facility is subject to eminent domain by
10 an electric supplier or by any other entity if the purpose of the
11 eminent domain proceeding is to acquire the facility for electric
12 generation or transmission.

13 (6) Except as provided in subsection (5) of this section,
14 only an electric supplier may exercise its eminent domain authority
15 to acquire the land rights necessary for the construction of
16 transmission lines and related facilities to provide transmission
17 services for a certified renewable export facility. The exercise of
18 eminent domain to provide needed transmission lines and related
19 facilities for a certified renewable export facility is a public use.
20 Nothing in this section shall be construed to grant the power of
21 eminent domain to a private entity.

22 (7) If any transmission facilities serving a certified
23 renewable export facility are proposed to cross the service area of
24 any electric supplier which owns transmission facilities of one
25 hundred fifteen thousand volts or more and is required to receive

1 notice pursuant to section 70-1013, then such electric supplier may
2 elect to be a party to a joint transmission development agreement for
3 such transmission facilities.

4 (8) If a certified renewable export facility no longer
5 meets the requirements of subdivisions (2)(a) through (c) of section
6 70-1001.01, the owner of the facility shall notify the board. An
7 electric supplier or a governmental entity with regulatory
8 jurisdiction over the certified renewable export facility may apply
9 to the board or the board may file its own motion to have the
10 certification of a certified renewable export facility revoked upon a
11 showing by the applicant for decertification that the facility no
12 longer meets the requirements of such subdivisions. Upon the filing
13 of such application and making of a prima facie showing by the
14 applicant for decertification that the facility no longer meets the
15 requirements of such subdivisions, the board shall set the matter for
16 hearing. The hearing shall be held within forty-five days unless an
17 extension is necessary for good cause shown. The applicant for
18 decertification shall have the burden of proof. Within forty-five
19 days after the conclusion of the hearing, the board shall enter an
20 order to either reaffirm the facility's status as a certified
21 renewable export facility or to revoke the certification. During the
22 pendency of the application for decertification and before the
23 board's final order on decertification, the facility may continue to
24 operate if the electricity generated at the facility is sold to
25 customers outside the State of Nebraska, or to an electric supplier

1 pursuant to a power purchase agreement or similar agreement. The
2 board shall retain jurisdiction over the decertification action for
3 at least thirty days after entry of such an order. Within thirty days
4 after a final order revoking certification, the owner of the facility
5 may apply for recertification, with the time period for
6 recertification being no longer than one year unless the board
7 extends the time period for good cause shown. Such application for
8 recertification shall extend the board's jurisdiction over the
9 decertification action until the board completes its review of the
10 application for recertification and enters an order granting or
11 denying the application. If the applicant for recertification
12 demonstrates to the board that it is working diligently and in good
13 faith to restore its compliance with subdivisions (2)(a) through (c)
14 of section 70-1001.01, the board shall not terminate the application
15 for recertification. During the pendency of the application for
16 recertification and before the board's final order on
17 recertification, the facility may continue to operate if the
18 electricity generated at the facility is sold to customers outside
19 the state, or to an electric supplier pursuant to a power purchase
20 agreement or similar agreement. If the board retains jurisdiction
21 over the decertification action, the prohibition on eminent domain
22 set forth in subsection (5) of this section shall remain in full
23 force and effect. If the board enters an order decertifying a
24 certified renewable export facility and such order becomes final due
25 to a failure to timely seek recertification or judicial review, the

1 prohibition on eminent domain set forth in subsection (5) of this
2 section shall no longer apply. Nothing in this section shall prohibit
3 a decertified facility from being recertified in the same manner as a
4 new facility.

5 Sec. 31. (1) If an electric transmission line has been
6 approved for construction in a regional transmission organization
7 transmission plan, the incumbent electric transmission owner of the
8 existing electric transmission facilities to which the electric
9 transmission line will connect shall give notice to the board, in
10 writing, within ninety days after such approval, if it intends to
11 construct, own, and maintain the electric transmission line. If no
12 notice is provided, the incumbent electric transmission owner shall
13 surrender its first right to construct, own, and maintain the
14 electric transmission line and any other incumbent electric
15 transmission owner may file an application for the electric
16 transmission line under section 70-1012. Within twenty-four months
17 after such notice, the incumbent electric transmission owner shall
18 file an application with the board pursuant to section 70-1012.

19 (2) For purposes of this section: (a) Electric
20 transmission line means any line and related facilities connecting to
21 existing electric transmission facilities for transmitting electric
22 energy at a voltage of one hundred kilovolts or greater, other than a
23 line solely for connecting an electric generation facility to
24 facilities owned by an electric supplier; and (b) incumbent electric
25 transmission owner means an entity that: (i) Is an electric supplier;

1 (ii) is a member of a regional transmission organization; and (iii)
2 owns and operates electric transmission lines at a voltage of one
3 hundred kilovolts or greater.

4 Sec. 32. Section 70-1015, Revised Statutes Cumulative
5 Supplement, 2012, is amended to read:

6 70-1015 (1) If any electric supplier commences the
7 construction or finalizes or attempts to finalize the acquisition of
8 any generation facilities, any transmission lines, or any related
9 facilities, or any customers are served in violation of the
10 provisions of Chapter 70, article 10, such construction, acquisition,
11 or service of such customers shall be enjoined in an action brought
12 in the name of the State of Nebraska until such electric supplier has
13 complied with the provisions of Chapter 70, article 10.

14 (2) If any person owning or operating a certified
15 renewable export facility violates any provision of Chapter 70,
16 article 10, or violates or disobeys any requirement imposed by the
17 board pursuant to the board's jurisdiction established in section
18 70-1014.02 or the board enters an order decertifying the facility and
19 the order becomes final, further operation of the facility may be
20 enjoined or otherwise limited or have conditions put upon it in an
21 action brought in the name of the State of Nebraska until such person
22 rectifies the violation or disobedience of the order or the facility
23 becomes recertified.

24 Sec. 33. Section 70-1017, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 70-1017 Any electric supplier ~~of electricity~~ at retail
2 shall furnish service, upon application, to any applicant within the
3 service area of such electric supplier if it is economically feasible
4 to service and supply the applicant. The electric service shall be
5 furnished by the electric supplier within a reasonable time after the
6 application is made. If the electric supplier and the applicant
7 cannot agree upon any of the terms under which service is to be
8 furnished, or if the applicant alleges that the electric supplier is
9 not treating all customers and applicants fairly and without
10 discrimination within the same rate class, the matter shall be
11 submitted to the board for hearing and determination.

12 Sec. 34. Section 70-1018, Reissue Revised Statutes of
13 Nebraska, is amended to read:

14 70-1018 In the event of any dispute between electric
15 suppliers concerning rates for service between such electric
16 suppliers which cannot be settled by negotiations, the dispute shall
17 be submitted to the board. The board may intervene in any such
18 dispute on its own motion. Upon the submission of such dispute or the
19 board's decision to intervene, the board shall set a time and place
20 for hearing thereon and give notice as provided in section 70-1013.
21 Following such hearing the board shall make its recommendations for
22 the settlement of such dispute, which recommendations shall be
23 advisory only.

24 Sec. 35. Original sections 16-901, 17-1001, 70-101,
25 70-301, 70-304, 70-305, 70-306, 70-307, 70-408, 70-409, 70-1002,

1 70-1002.01, 70-1002.02, 70-1004, 70-1005, 70-1007, 70-1008, 70-1009,
2 70-1010, 70-1011, 70-1012, 70-1012.01, 70-1017, and 70-1018, Reissue
3 Revised Statutes of Nebraska, and sections 70-1001, 70-1001.01,
4 70-1003, 70-1013, 70-1014.01, 70-1014.02, and 70-1015, Revised
5 Statutes Cumulative Supplement, 2012, are repealed.