

LB 1048
CERTIFIED RENEWABLE
EXPORT FACILITIES

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What Does The PRB Do?

- State-level approval authority for all new generation and transmission facilities located outside a utility's service area. (70-1012)
- Approve public power district petitions for creation and charter amendments. (70-603, 70-604, 70-662)
- Approve retail service areas and boundary amendments. (70-1002, 70-1005, 70-1010)
- Can hear limited customer complaints and some utility rate disputes. (70-1018, 70-1017)

Hurdles Addressed By LB 1048

- Nebraska laws pertaining to electric industry were designed on assumption that all generation and transmission will be built by consumer-owned power suppliers, and that all Nebraska electric needs will be served by nonprofit entities. (70-1301, *See also* Neb. Att'y Gen. Op. 96013)
- Findings PRB must make before approving a facility are designed for use with consumer-owned electric utilities, most of which are political subdivisions of the State. (*See* 70-1014)
 - 32 public power districts, 121 municipalities
 - There are also 13 cooperatives operating in Nebraska
- Although private entities are not prohibited from operating in Nebraska, it is not clear how standards designed for consumer-owned utilities would apply to private entities.
- Developers were extremely concerned about power of eminent domain that Nebraska's utilities could exercise.

Definition of “Certified Renewable Export Facility”

Facility qualifies under LB 1048, section 6, if:

- Fuel will be wind, solar, biomass or landfill gas.
- Owner is not a consumer-owned power entity.
- Applicant has a power purchase agreement with initial term of 10 or more years for sale of at least 90% of facility’s output, with customer(s) located outside Nebraska.
 - Original or replacement agreement must be maintained for life of the facility.

(Neb. Rev. Stat. section 70-1001.01(2))

Two-Step Approval Process

- LB 1048 provides a two-step approval process.
 - Conditional Approval
 - Final Approval
- Applicant can choose to go directly to Final Approval stage.
- Developers wanted Conditional Approval to help obtain financing.

Conditional Approval

Findings required for Conditional Approval:

- 1) Facility must provide reasonably identifiable and quantifiable public benefits to residents of Nebraska or the local area where facility will be located.
- 2) Fuel will be wind, solar, biomass or landfill gas.
- 3) Owner cannot be a consumer-owned power entity.
- 4) Applicant has MOU or similar evidence of intent to create a power purchase agreement with purchaser outside Nebraska for 90% of output for 10+ years.
- 5) If facility capacity will be greater than 80 megawatts, applicant must offer Nebraska utilities with over 50 megawatts load an option to purchase up to 10% of the facility's output.

(Neb. Rev. Stat. section 70-1014.02 (2)(a))

Interim Period

- If Conditional Approval granted, applicant has 18 months to notify PRB it is prepared to proceed to Final Approval stage.
- If PRB is not notified within 18 months, Conditional Approval is void.
- PRB can extend 18 month deadline up to 12 additional months for good cause.
(Neb. Rev. Stat. section 70-1014.02(2)(b))

Final Approval

Findings required for Final Approval:

- 1) Facility will not have materially detrimental effect on retail rates.
 - Excludes improvements required by a regional transmission operator or costs incurred due to Nebraska utilities buying their 10% share
- 2) Applicant has executed agreements for generation interconnection and transmission service with appropriate transmission provider.

Final Approval (cont'd)

- 3) There has been no demonstration that the facility will result in substantial risk of creating stranded assets.
- 4) Applicant certifies it has applied for and is actively pursuing required approvals from other federal, state or local entities with jurisdiction or permitting authority over the facility.

Final Approval (cont'd)

- 5) Applicant and owner of transmission facilities to which facility will interconnect, and owners of lines 115 kilovolts or larger that PRB deems potentially affected, have a joint transmission development agreement.
- 6) Applicant agrees to reimburse electric suppliers for transmission costs not otherwise covered.

Final Approval (cont'd)

7) Applicant must submit a decommissioning plan.

- Decommissioning requirements in LB 1048 are waived if appropriate local governmental entity creates its own decommissioning requirements.
- Applicant or subsequent owner must submit a decommissioning security to PRB no later than 10th year after Final Approval is granted.

8) Facility must meet definition of certified renewable export facility in 70-1001.01(2)

(Neb. Rev. Stat. section 70-1014(2)(c)(i) to (viii))

Decertification

- LB 1048 includes a mechanism whereby PRB can decertify a facility.
- Primarily for instances where facility fails to maintain its power purchase agreement.
- If PRB revokes certification after hearing, owner can apply for recertification.
 - Owner has one year to correct the deficiency
 - Facility can continue operating during recertification process IF output is sold outside Nebraska, or to an electric supplier under a power purchase agreement (Neb. Rev. Stat. section 70-1014.02(8))

Eminent Domain

- Major concern for developers.
- Certified renewable export facilities are not subject to eminent domain.
 - Wording is designed to protect facility as a whole, while allowing entities with eminent domain authority to acquire needed easements.

(Neb. Rev. Stat. section 70-1014.02(5))

Effective Date

- The provisions of LB 1048 became effective July 15, 2010.
 - Enacted bills become effective 3 calendar months after end of 2010 legislative session. (Neb. Const. art. III, 27)
 - LB 1048 is now codified in statutes.
 - PRB received its first application for a Certified Renewable Export Facility under provisions of LB 1048 on the morning of July 15, 2010.
 - Application was filed by Invenergy for 200 megawatt facility in Antelope and Boone Counties. Hearing for Conditional Approval was held October 15, 2010.

QUESTIONS?

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