

LEGISLATIVE BILL 207

Approved by the Governor April 20, 1979

Introduced by Public Works Committee, Kremer, 34, Chan.;
Beutler, 28; Vickers, 38; Wesely, 26; Cullan,
49; Clark, 47; Goodrich, 20; Kennedy, 21

AN ACT relating to public power; to declare public policy; to provide procedures for arbitration of disputes between suppliers and purchasers of electrical services as prescribed; and to provide an operative date.

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

Section 1. It is hereby declared to be the public policy of this state to provide adequate electrical service at as low overall cost as possible, consistent with sound business practices and, in furtherance of such policy, electric service should be provided by nonprofit entities including public power districts, public power and irrigation districts, nonprofit electric cooperatives, and municipalities.

Sec. 2. In order to meet the policies set out in section 1 of this act, protect the financial integrity of suppliers of electricity at wholesale, avoid imposing a discriminatory burden on purchasers of electricity at wholesale, and insure that wholesale rates are adequate, fair, reasonable, and nondiscriminatory, it is necessary to provide a method to expeditiously and fairly resolve wholesale electric rate disputes, including rate disputes relating to transmission and delivery of electrical energy, between the supplier of electrical energy and any and all of its purchasers of electricity at wholesale. To carry out such policies, the necessity for the enactment of this act is hereby declared to be a matter of legislative determination.

Sec. 3. A purchaser of electricity at wholesale shall pay to the supplier of such electricity the entire amount of the charge for such electricity within the time set forth in the power contract between the purchaser and supplier or, if no such contract exists or no time is set forth in the contract, within thirty days after the date on which the supplier mails the billing to the purchaser.

Sec. 4. If a purchaser of electricity at wholesale elects to dispute all or any portion of the wholesale electric charge established by the supplier, the purchaser shall nevertheless pay the full amount of the charge stated in the billing within the time established in section 3 of this act and shall give

notice in writing to the supplier stating such election. The notice shall fully describe the basis for the dispute and set forth a detailed statement of disputed issues and the relief sought by the purchaser. Written notice of a dispute concerning a mathematical, metering, or quantity error in the billing shall be given by either party to the other within the time set forth in the power contract or, if no contract exists or no time is set forth in the contract, within sixty days after the discovery of the error.

Sec. 5. Upon written demand by the purchaser made at the time of the notice of dispute as provided in section 4 of this act, the supplier shall, each month, deposit the disputed portion of the monthly payment as specified by the purchaser, but not to exceed twenty per cent of the total amount billed, into an escrow account, in a bank located within the county of the principal place of business of the supplier. Such deposits shall be made from the date of the demand until settlement of the dispute as provided by this act. The escrow funds shall be invested, to the extent possible, in securities of the United States government and the balance in other insured interest-bearing accounts of the bank.

Sec. 6. If the dispute remains unresolved forty-five days after the receipt by the supplier of the notice in writing of such dispute and payment of the full amount of the charge as provided in section 4 of this act has been made, the dispute shall be submitted to arbitration in accordance with this act.

Except as otherwise provided in this act, the Commercial Arbitration Rules of the American Arbitration Association, as amended and in effect March 1, 1977, shall be used to the extent that they are determined by the arbitration board to be applicable to the procedures set forth in this act. The Administrative Fee Schedule contained in such rules shall not apply.

Sec. 7. An arbitration board shall be formed to arbitrate the wholesale electric rate dispute in conformity with the standards set out in section 2 of this act. The arbitration board shall consist of three members, one of whom shall be selected by the purchaser, one of whom shall be selected by the supplier, and a third shall be selected by the other two arbitrators.

Sec. 8. The arbitrators shall not be employees, agents, or consultants of any party to the dispute and shall have no financial or personal interest in the result of the arbitration.

Sec. 9. The arbitration board shall be appointed within ninety days after the receipt of the notice of the dispute. Each party shall notify the other in writing of the name and address of the arbitrator selected by it within sixty days after receipt of the notice of the dispute. The two arbitrators selected by the parties shall notify the parties in writing of the name and address of the third arbitrator selected by them.

Sec. 10. Each of the parties to the dispute shall pay the costs and expenses of the arbitrator selected by it together with one half of the costs and expenses of the third arbitrator and one half of the costs and expenses of the hearing, unless the parties otherwise agree or the arbitration board, in its discretion, assesses such costs and expenses, or any part thereof, in a different manner.

Sec. 11. The arbitration board shall hire an official stenographer to report its hearings and may hire an attorney to assist it in ruling on the admissibility of evidence offered and in the preparation of the record which will constitute the bill of exceptions in any appeal from the decision of the arbitration board and may hire such other personnel as it deems necessary to conduct the hearing.

Sec. 12. The arbitration board shall meet within thirty days of the appointment of the third arbitrator. The third arbitrator shall be the chairperson and preside at all meetings and hearings of the arbitration board and shall provide notice to the parties at least five days before the first meeting. The parties shall meet with the arbitration board at its first meeting for the purpose of clarifying and narrowing the specific issues from those set forth in the detailed statement of disputed issues.

Sec. 13. If a party to the dispute fails or refuses to appoint its arbitrator within the time established in section 9 of this act, the arbitrator appointed by the other party shall, within ten days after such failure apply to the American Arbitration Association for the appointment of the second arbitrator. Within ten days after the appointment of the second arbitrator, the two arbitrators so selected shall appoint a third arbitrator.

Sec. 14. The arbitration board may proceed in the absence of any party who, after due notice, fails to appear or obtain a continuance. An award shall not be made without a hearing or based solely on the default of

a party. The arbitration board shall (1) consider only those matters necessary for the resolution of the disputed issues, (2) have no authority to add to, subtract from, or alter the issues except as otherwise agreed to by the parties, and (3) not alter or modify any existing contract.

Sec. 15. The supplier shall give written notice, by certified mail, to its other purchasers at wholesale within fifteen days after receipt of the notice of the appointment of the third arbitrator.

Sec. 16. The parties shall submit preliminary written statements to the arbitration board within sixty days after the convening of the first meeting of the arbitration board. The arbitration board shall fix the time and place for a hearing which shall commence not more than seventy-five days after the convening of the first meeting of the arbitration board. The board shall give each party written notice of the hearing by certified mail, at least ten days in advance of the hearing, unless the parties waive such notice.

Sec. 17. At all times after receipt of the notice of the dispute, each party shall make available to the other, for inspection and copying, all documents, data, and records with respect to the dispute for the presentation of the matter to the arbitration board. If the parties fail to agree on the production of documents and records, the arbitration board shall determine the matter. The parties may also take depositions with respect to the dispute.

Sec. 18. At the hearing the arbitration board shall hear testimony and receive evidence in person or by deposition relating to the dispute and may continue the hearing from time to time. The arbitration board shall be bound by the rules of evidence applicable in district court. The arbitration board may require a party to submit such evidence as the board may deem necessary or desirable for making its decision and the board is authorized to subpoena witnesses and documents. Opportunity shall be afforded to both parties to present evidence and cross-examine witnesses. The parties may be represented by counsel.

Sec. 19. The arbitration board shall seek to complete its hearing on the issues submitted to it within forty-five days after the commencement of the hearing. The arbitration board may extend the time to complete the hearing beyond the forty-five day period if the board determines that such extension is necessary.

Sec. 20. The arbitration board shall render its decision within thirty days after completion of the hearing. The decision shall be in writing, be accompanied by findings of fact, and be signed by the arbitrators supporting the decision. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. The decision of a majority of the arbitrators shall be the decision of the arbitration board.

Sec. 21. A copy of the decision and accompanying findings and conclusions shall be mailed to each party and its attorney of record by certified mail. The arbitration board shall file its decision, together with all pleadings and exhibits filed with the arbitration board, with the secretary of the Nebraska Power Review Board within five days of the date of the decision.

Sec. 22. Within thirty days after the decision of the arbitration board, the funds and investments in the escrow account established pursuant to section 5 of this act, together with the interest thereon, shall be distributed or apportioned in accordance with the decision of the arbitration board.

Sec. 23. In the event that the escrow and interest thereon are insufficient to satisfy the provisions of the arbitration board's decision, the party liable for such deficiency shall take all actions necessary to obtain such funds and make payment thereof, including interest, within thirty days from the date of the decision. Interest shall be at the rate set forth in the contract between the parties or in the absence of a contract or if no rate of interest is set forth in the contract, at the average rate of interest earned by the escrow account established pursuant to section 5 of this act.

Sec. 24. Except as otherwise provided in section 26 of this act, the parties may, by mutual written agreement filed with the arbitration board, extend any of the time limits prescribed in this act.

Sec. 25. The final decision of the arbitration board shall be binding upon the parties. If a party to any arbitration proceeding is not satisfied with the decision entered by the arbitration board, such party may appeal to the Supreme Court as provided in section 26 of this act to reverse, vacate, or modify the decision, and such decision shall be in abeyance until the Supreme Court has issued its opinion.

Sec. 26. The procedure to obtain reversal, modification, or vacation of a decision rendered by the arbitration board shall be (1) by filing notice of appeal with the Nebraska Power Review Board within thirty days after the date of the filing of the decision with the Nebraska Power Review Board as provided in section 21 of this act, or (2) by filing with the arbitration board and with the Nebraska Power Review Board a motion for rehearing within ten days after the filing of the decision with the Nebraska Power Review Board as provided in section 21 of this act. If the arbitration board denies the motion for rehearing, a notice of appeal must be filed with the arbitration board and with the Nebraska Power Review Board within thirty days after the date of the filing by the arbitration board with the Nebraska Power Review Board of the decision denying the motion to the party appealing, except that, when the arbitration board fails to file a decision on the motion for rehearing within thirty days after such motion is filed, the appeal to the Supreme Court may be perfected by filing a notice of appeal, before the arbitration board files a decision on the motion for rehearing, and the review by the Supreme Court shall be the same as if the board had denied the motion for rehearing. Oral arguments on a motion for rehearing shall be granted when requested. An appeal shall be deemed perfected and the Supreme Court shall have jurisdiction of the cause when a notice of an appeal shall have been filed with the Nebraska Power Review Board and appeal has been taken in the manner provided by law for appeals to the Supreme Court in civil cases.

Sec. 27. Trial in the Supreme Court shall be de novo on the record. Such case shall be advanced in the same manner as other causes which involve the public welfare and convenience and shall be set for an early hearing.

Sec. 28. The verbatim testimony transcribed by the official stenographer, including all exhibits received, shall constitute the bill of exceptions. The decision appealed and the bill of exceptions duly certified by the members of the arbitration board shall constitute the complete record on appeal to the Supreme Court.

Sec. 29. If a purchaser fails or refuses to make payment to the supplier as required by this act, the supplier may, after a charge remains unpaid thirty days after the due date, file suit in the district court in which the supplier or purchaser resides for a writ of mandamus to compel payment of the disputed amount, plus interest, pursuant to this act. If the court issues a

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writ of mandamus and the purchaser gives the written notice of disputed issues as required by section 4 of this act the matter shall proceed to arbitration as provided by this act. If the court declines to issue a writ of mandamus, it shall nevertheless retain jurisdiction of the matter for the purpose of determining the amount due to the supplier.

Sec. 30. This act shall become operative on January 1, 1980.