

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Application No. BEAD-1/C-5529
Public Service Commission, on)
its own motion, to implement) ORDER REDOCKETING APPLICATION
the Precision Agriculture) AND SEEKING FURTHER COMMENT
Infrastructure Grant Act.) AND
) NOTICE OF HEARING
)
) Entered: September 19, 2023

BY THE COMMISSION:

The Nebraska Public Service Commission ("Commission") opened this docket on its own motion on August 16, 2022, to implement the Precision Agriculture Infrastructure Grant Act, Neb. Rev. Stat. §§ 86-1401 et seq (the "Act"). In the order opening this docket,1 the Commission sought comment on a number of topics relating to the Precision Agriculture Infrastructure Grant Program ("PRO-AG"). The purposes of PRO-AG, as stated in the Act, are to propel Nebraska agricultural producers to lead the nation in precision agriculture connectivity, sustainability, traceability, and autonomy to accelerate rural economic development, and to provide high-speed Internet service to farm sites in unserved areas of the state.

In its August 16 Order, the Commission sought input from stakeholders and interested parties on several topics relevant to the administration of PRO-AG grants. Comments were received from CTIA - The Wireless Association ("CTIA"); the Nebraska Agriculture Leaders Working Group ("NALWG");2 the Nebraska Rural Broadband Alliance ("NRBA"); Paige Wireless ("Paige"); and Reinke Manufacturing, Hamilton Telephone Company, and Nebraska Central Telephone Company ("Reinke and Hamilton"). Reply comments were received from the NRBA and Reinke and Hamilton.

Following receipt and review of the comments, and in consideration of the BEAD Notice of Funding Opportunity requirements, the Commission determined that legislative change

1 Commission Docket No. BEAD-1, In the Matter of the Nebraska Public Service Commission, on its own motion, to implement the Precision Agriculture Infrastructure Grant Act, Order Opening Docket and Seeking Comment (Aug. 16, 2022) ("August 16 Order").

2 The Nebraska Agriculture Leaders Working Group includes the Nebraska Cattlemen, Nebraska Corn Growers Association, Nebraska Dairy Association, Nebraska Farm Bureau, Nebraska Soybean Growers Association, Nebraska Pork Producers Association, and Nebraska Wheat Growers Association.

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would be necessary in order for it to appropriately administer PRO-AG. At the time this docket was opened, PRO-AG was to be funded using federal Broadband Equity, Access, and Deployment Program ("BEAD") funds. A review of comments indicated support for seeking a legislative change to PRO-AG's funding source. Further action on this docket was therefore paused until the close of the 2023 Nebraska legislative session.

Funding Availability

The Commission has determined that appropriate funding to administer PRO-AG now exists. With the passage of the State's biennial budget, the Nebraska Legislature has allocated approximately \$1 million of State General Funds to be used for PRO-AG grants for each fiscal year in the current biennium.³ As BEAD funding is not available for PRO-AG grants at this time, the Commission will proceed with administering PRO-AG grant cycles for the 2023-2024 fiscal year and the 2024-2025 fiscal year using this available state funding.

While issues relating to funding the program have been resolved, the Commission continues to work through other questions relating to PRO-AG's administration. Preliminary findings and further questions are set forth below.

Redocketing of Application

Since the Act was passed and this docket was opened with the docket number BEAD-1, a number of changes have taken place at the state and federal level. First and foremost, the National Telecommunications and Information Association ("NTIA") released a detailed Notice of Funding Opportunity ("NOFO").⁴ Based on the text of the NOFO and on the analysis offered in several comments in this docket,⁵ the Commission has determined that PRO-AG grants are unlikely to be an allowable use of BEAD funding. Additionally, in 2023, the Legislature established the Nebraska Broadband

³ The Legislature included \$906,478 towards PRO-AG for fiscal year 2023-2024 and \$901,216 for fiscal year 2024-2025, with the remainder of the \$1 million each year allocated for operations costs. LB 814 (2023), Slip Law at 14.

⁴ National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, *Notice of Funding Opportunity: Broadband Equity, Access, and Deployment Program*, <https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf> (May 13, 2022) ("BEAD NOFO").

⁵ See NALWG Comments at 5; NRBA Comments at 4; Paige Comments at 3.

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Office, which is now responsible for the administration of BEAD funding.⁶ However, administration of PRO-AG and its general funds allocation remain with the Commission.⁷

The Commission finds that at this time, it is appropriate to re-docket this application to remove the reference to BEAD. The docket will be re-numbered to C-5529, and all filings submitted under BEAD-1 will be included in the C-5529 docket file. While this Order is listed under the number BEAD-1/C-5529, future filings and orders in this docket will be listed under the C-5529 docket number. Notice of the docket's renumbering will be duly published in the Daily Record, Omaha, Nebraska.

Statutory Requirements

As a preliminary matter, the statutory basis for PRO-AG should be reviewed. The purposes of PRO-AG, as stated in the Act, are to propel Nebraska agricultural producers to lead the nation in precision agriculture connectivity, sustainability, traceability, and autonomy to accelerate rural economic development, and to provide high-speed Internet service to farm sites in unserved areas of the state.⁸ The Commission is tasked with administering PRO-AG.⁹

Under the Act, the Commission must promulgate application forms for PRO-AG grants.¹⁰ The Commission may then award grants to a wireless network provider that provides adequate precision agriculture connectivity, or to an agricultural cooperative, agronomist, or agricultural producer.¹¹ As set forth in the Act, PRO-AG grants may be used to provide the following:

⁶ LB 683 (2023).

⁷ Neb. Rev. Stat. § 86-1403.

⁸ *Id.*

⁹ *Id.*

¹⁰ Neb. Rev. Stat. § 86-1404(1).

¹¹ *Id.*

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- (a) Adequate precision agriculture connectivity to on-farm structures and devices, including, but not limited to, tractors, combines, irrigation systems, livestock facilities, and farm offices;
- (b) On-farm traceability solutions that satisfy food supply stakeholder demand, including blockchain;
- (c) Products that improve soil health, water management tools and sensors that facilitate judicious use of water resources, and products that promote the use of water efficiency seed technologies that lower agriculture's water, carbon, and nitrate footprint; and
- (d) Products that use autonomous solutions in agricultural machinery, including, but not limited to, grain carts, spreaders, precision drone scouting, and scouting robots.¹²

The Act requires the Commission to award up to one-half of the available grant fund for the purpose stated under (a) above, ensuring adequate precision agriculture connectivity to on-farm structures.¹³ The Act further requires the Commission to award up to one-half of the available grant funds to the purposes stated under (b), (c), and (d) above.¹⁴

Comments Received and Further Issues for Comment

In its August 16 Order, the Commission sought input from stakeholders and interested parties on a number of topics, outlined below. Additionally, the Commission makes preliminary findings on some of these topics, and seeks further input below.

1. Entities Eligible to Receive Grants

The August 16 Order issued in this matter sought comment on the types of entities eligible to receive grants. The Act allows the Commission to award grants to "[a] provider, an agricultural cooperative, an agronomist, or an agricultural producer."¹⁵ The Commission sought input on what the criteria and definitions for each of these categories should be.

¹² Neb. Rev. Stat. § 86-1404(2).

¹³ Neb. Rev. Stat. § 86-1404(3).

¹⁴ *Id.*

¹⁵ Neb. Rev. Stat. § 86-1404.

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The first term, "provider," is defined in Neb. Rev. Stat. § 86-1402 as "a wireless network provider that provides adequate precision agriculture connectivity." In comments, the CTIA suggested that eligibility should be competitively and technologically neutral.¹⁶ The NRBA noted that PRO-AG is limited to connecting farm sites rather than farm home sites,¹⁷ and suggested that PRO-AG funds should be leveraged with other, fiber-eligible, funding sources to connect farm homes.¹⁸ Paige Wireless suggested that providers with a demonstrated history in precision ag connectivity should be prioritized because the networks for precision agriculture are different from those deployed for residential or business purposes.¹⁹ Paige also suggested that only providers with exceptional cybersecurity protocols should be considered.²⁰

With regard to applicants seeking to provide precision agriculture solutions, NALWG offered definitions of "agriculture cooperative," "agronomist," and "agricultural producer."²¹ Reinke and Hamilton also suggested that "agricultural producer" should include production agriculture farmers, as well as providers of goods and services to the agriculture industry, such as manufacturers of irrigation systems.²²

The Commission finds that the intent of the Act, insofar as it relates to the term "provider," is for funding to be granted to entities providing wireless service at speeds of at least 100/20 Mbps for agricultural purposes.²³ While applicants for PRO-AG funds may utilize existing non-wireless infrastructure, on-farm connectivity to structures and devices must be accomplished using wireless technology.²⁴

¹⁶ CTIA Comments at 3.

¹⁷ See Neb. Rev. Stat. § 86-1403. This section states that a purpose of PRO-AG is to provide high-speed Internet service to farm sites as defined in Neb. Rev. Stat. § 77-1359, which excludes portions of land including an inhabitable residence.

¹⁸ NRBA Comments at 3-4.

¹⁹ Paige Comments at 2.

²⁰ *Id.*

²¹ NALWG Comments at 3.

²² Reinke and Hamilton Comments at 4-5.

²³ See Neb. Rev. Stat. § 86-1402.

²⁴ On-farm structures and devices eligible for connections include tractors, combines, irrigation systems, livestock facilities, and farm offices. Farm offices may not be located within a residential structure or personal home. See Neb. Rev. Stat. §§ 86-1403 and 77-1359(4).

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Additionally, the Commission hereby proposes to adopt the following definitions of "agriculture cooperative," "agronomist," and "agricultural producer":

Agricultural Cooperative: A business entity that is cooperatively owned and controlled by agricultural producers, in which members' resources are pooled, and which operates for its members' benefit rather than the benefit of outside investors.²⁵

Agronomist: A scientist who specializes in the science of farming, including but not limited to crop production, soil control, or soil management.²⁶

Agricultural Producer: An individual or entity directly engaged in the production of agricultural products, including the cultivating, growing, and harvesting of plants and crops, including farming; breeding, raising, feeding, or housing of livestock, including ranching; forestry products; hydroponics; nursery stock; or aquaculture, and whereby 50 percent or greater of their gross income is derived from these products.²⁷

The Commission seeks comment on these proposed definitions. Do these definitions suit the purpose of the Act? Are any changes or clarifications necessary to achieve the goals of the Act?

2. Priority for Grant Distribution

In its August 16 Order, the Commission sought comment on how the Commission might evaluate and prioritize grant awards received. In comments, Paige Wireless and the NALWG advocated for the Commission to adopt criteria from the Nebraska Broadband Bridge Program to evaluate connectivity projects.²⁸ Paige also noted that precision agriculture connectivity "needs to be designed for real-time handoff of data."²⁹ Reinke and Hamilton suggested that grant

²⁵ See U.S. Dep't of Agriculture, Co-ops: A Key Part of Rural America, <https://www.usda.gov/topics/rural/co-ops-key-part-fabric-rural-america> (last visited Aug. 28, 2023).

²⁶ See Cambridge Online Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/agronomist>.

²⁷ See 7 C.F.R. § 4280.103; NALWG Comments at 3.

²⁸ Paige Comments at 4-5; NALWG Comments at 6.

²⁹ Paige Comments at 4-5

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applications should be vetted through a competitive bidding process like that of the NBBP.³⁰ Reinke and Hamilton also suggested that due to continuing drought conditions in Nebraska, the Commission should prioritize water sustainability projects and solutions.³¹ NALWG suggested that funding should be divided equally between the three non-connectivity purposes.³² NALWG further suggested that grant recipients should complete a publicly available annual report for five years following project completion.³³

The Commission finds that to the maximum extent possible, criteria used in the NBBP should be applied to PRO-AG connectivity projects as well. However, the Commission seeks to avoid unnecessary delay in PRO-AG; additionally, the Act does not provide for a challenge process as is set forth in the Nebraska Broadband Bridge Act. The Commission therefore proposes to use an administrative review process for PRO-AG connectivity applications. The Commission will verify that the project exclusively serves unserved locations, as required by the Act.³⁴ Therefore, applications will not be separated into Priority Tiers as they are in NBBP. Rather, applications will either qualify for scoring based on whether it serves exclusively unserved locations based on review of any and all applicable data sources, or it will be removed from further consideration. The Commission will also review applications for financial, legal, and technical capability, as required for NBBP applicants.³⁵ The Commission welcomes comments on this proposal.

PRO-AG grant funding is also available for on-farm traceability solutions, products relating to soil health and water management, and products using autonomous solutions in agricultural machinery. The Commission proposes to prioritize projects which include a demonstration of substantial economic benefit to rural Nebraska to be obtained through the project. Finally, projects which provide continuing or increasing economic and technological benefits over time will be prioritized.³⁶ The Commission seeks comments on this proposal.

³⁰ Reinke and Hamilton Comments at 6-7.

³¹ *Id.*

³² NALWG Comments at 7.

³³ *Id.* at 8.

³⁴ Neb. Rev. Stat. § 86-1403(1)(b).

³⁵ Neb. Rev. Stat. § 86-1305(2)(a).

³⁶ See Neb. Rev. Stat. § 86-1403(1) (stating the goals of PRO-AG).

3. Match Percentage and Grant Amounts

The Commission sought comment on whether it should require applicants for PRO-AG grants to provide matching funds, and whether there should be a maximum dollar amount available for a single PRO-AG grant.

Comments on this topic were varied. CTIA, Paige Wireless, and Reinke and Hamilton opposed a matching funds requirement.³⁷ NALWG supported a matching funds requirement similar to that of the NBBP, with a lower match requirement for high cost areas.³⁸ The NRBA recommended that match funding be scored as it is in the NBBP, with projects offering a higher percentage of matching funds receiving a higher score.³⁹ Reinke and Hamilton also opposed establishing a maximum single project funding amount.⁴⁰

The Commission proposes to not impose a matching funds requirement for PRO-AG grants. However, applications which provide at least a 25% match will receive additional scoring, with higher scores available to applicants providing a higher match percentage.

The Commission seeks additional data to determine whether a maximum single project funding amount is advisable. Are any particular precision agriculture projects or technologies likely to be the subject of an application, and if so, what might such a project cost? Are there additional steps the Commission should take to maximize the impact of grant funding, such as setting different maximum funding amounts for a project that benefits one producer versus a project that would benefit multiple producers? Should the Commission distinguish between producers based upon geographic size, gross income, or any other metric? Should connectivity projects be evaluated differently based on whether they serve one or multiple farm sites? The Commission welcomes specific data and additional resources on this topic.

³⁷ CTIA Comments at 4; Paige Comments at 4; Reinke and Hamilton Comments at 8.

³⁸ NALWG Comments at 8.

³⁹ NRBA Comments at 6. Reinke and Hamilton also supported this position in their Reply Comments, at 4.

⁴⁰ Reinke and Hamilton Comments at 9.

4. Speed Testing

In its August 16 Order, the Commission sought comment on how it should approach speed testing for PRO-AG connectivity projects. These projects must be completed within twelve months after the date on which the grant is awarded.⁴¹ These applicants must further submit speed testing results, and shall be allowed a "reasonable time" to correct any deficiencies found by the speed testing.⁴² The Commission sought input on how to approach such testing.

Since the August 16 Order was entered, the Commission created a broadband speed testing program in a separate docket, NUSF-133.⁴³ Testing requirements for broadband connectivity were set forth within NUSF-133. However, the Commission finds that these requirements may not be fully applicable to PRO-AG connectivity projects, which will serve farm sites. The Commission therefore proposes that speed testing must be performed for the on-farm network rather than for traditional last-mile connections. At the time of application, an applicant seeking to provide on-farm connectivity must define the testing locations for the project, including specific structures and locations where on-farm devices would rely on the network for connectivity. Upon project completion, the wireless network provider must test those locations and demonstrate that adequate connectivity is being provided. Specific requirements for speed testing for each project will be issued on a case-by-case basis. However, the Commission proposes that some general principles will apply, as described below.

The Commission proposes that generally, speed tests should be performed on an hourly basis between the hours of 10:00 a.m. and 2:00 p.m. local time each day. 100% of funded locations identified by the applicant at the time of application must be tested. A minimum of one download test and one upload test per hour will be required. Each speed test must measure a connection between a specific farm site and specific remote server location for a duration of at least 10 seconds. To test latency, a carrier must conduct one latency test per minute at each selected test location

⁴¹ One extension of up to six months is available. Neb. Rev. Stat. § 86-1405(1).

⁴² Neb. Rev. Stat. § 86-1405(2).

⁴³ See Commission Docket No. NUSF-133, *In the Matter of the Nebraska Public Service Commission, on its own motion, to implement standards for the verification of broadband service provider coverage and speed data*, Order Setting Speed Test Requirements (Nov. 8, 2022).

for the duration of the testing period. In some instances, the Commission may also accept speed test data submitted by the customer being served to determine whether adequate connectivity has been provided.

The Commission welcomes comments on this proposal.

5. Affordability of Connectivity Projects

The Commission also sought input as to how it might ensure connectivity projects funded by PRO-AG are affordable for Nebraskans. Comments on this topic were mixed. CTIA recommended avoiding affordability requirements.⁴⁴ By contrast, NALWG supported a requirement that applicants demonstrate that their service offerings are affordable, and recommended that applicants be required to submit a business plan demonstrating the value proposition of the application.⁴⁵ NALWG also suggested that an applicant should be required to maintain the rates stated in their application for at least five years after project completion.⁴⁶

NALWG's comments are well taken. The Commission proposes that PRO-AG connectivity applications should be subject to the same affordability review conducted in NBBP. Applicants will be asked to demonstrate that the rates in the project area will be comparable to those offered elsewhere in Nebraska. Applicants must maintain the rates listed in their application in the project area for a minimum of five years following project completion. Additionally, the Commission proposes that applicants may score additional points by demonstrating that the rates to be offered in the project area are affordable in the long term for producers who would benefit from the service. The Commission seeks comment on whether this affordability review is appropriate for PRO-AG grants.

In addition, because each farm site will have a unique network configuration, the Commission seeks comment on various needs that applications might address. What factors affect the rates which a provider might offer? What types of network components might be used which might affect the cost of services offered? How many of each component might be required, and should this number be reviewed on a per-acre or other geographic basis? Does the type of

⁴⁴ CTIA Comments at 5.

⁴⁵ NALWG Comments at 9-10.

⁴⁶ *Id.*

production impact the precision agriculture needs for connectivity? The Commission welcomes specific data in response to these questions.

6. Completion of Other Grant Projects

The Commission sought comment on whether to impose requirements for timely completion of non-connectivity grant projects, and if so, what those requirements should be. The Commission also asked how long projects should be required to be in service. In comments, NALWG suggested that projects should be completed within one year of the issuance of the grant award, with one six-month extension available upon a showing of good cause.⁴⁷ The NRBA suggested that deadlines should vary based upon the unique characteristics of each project.⁴⁸ Reinke and Hamilton advocated for project completion to be considered based on when the deliverable that is the subject of the application is available for use.⁴⁹ Some commenters also supported a requirement that projects be in service for a minimum of five years.⁵⁰

The Commission proposes that PRO-AG grants awarded for non-connectivity purposes should be subject to a twelve-month completion deadline, based upon the date the award is issued. The project would be considered complete when the project can fulfill the primary operations that it was designed to perform. Extensions of the twelve-month deadline may be available upon a showing of good cause. The Commission also proposes that equipment funded with PRO-AG grants should remain in service for a minimum of five years after project completion, with all necessary maintenance and repairs performed at the cost of the awardee. The awardee will be required to submit an annual report on the usage and maintenance of grant-funded equipment, and benefits to Nebraska obtained by the project, for a period of five years after project completion. The Commission welcomes comments on this proposal.

7. Program Schedule

With the change in funding source determined by the 2023 Legislature, the Commission finds that PRO-AG program cycles should be conducted on an annual basis based upon a fiscal year

⁴⁷ NALWG Comments at 10.

⁴⁸ NRBA Comments at 7.

⁴⁹ Reinke and Hamilton Comments at 5.

⁵⁰ Paige Comments at 5, NALWG Comments at 10.

beginning on July 1. The Commission therefore intends to open a PRO-AG grant cycle annually in each fiscal year, with awards issued prior to June 30 of each year. Interested parties are invited to comment on this proposal.

8. Repayment Provisions

In comments, some parties suggested that the Commission implement a post-award repayment provision similar to that utilized in the NBBP.⁵¹ In the NBBP, grant recipients which fail to complete an awarded project must repay ten percent of the grant for each month that the project is not complete after the project deadline.⁵² Grant recipients who were awarded an extension but fail to complete the project by the extended deadline must repay the grant at twenty percent per month late.⁵³

The Commission makes a preliminary finding that this approach is reasonable and should be adopted for PRO-AG grants. Would any modifications to the NBBP repayment structure be necessary for PRO-AG grants? Should connectivity and non-connectivity projects be treated differently?

9. Other Issues

The Commission welcomes additional comments and suggestions regarding the implementation of the PRO-AG program beyond what is discussed above. If there are other considerations which need to be addressed, stakeholders and interested parties are encouraged to bring them forward in comments and to participate in the public hearing described below.

Comments

The Commission requests that interested parties provide comments responsive to the issues raised above on or before **October 6, 2023 at 5:00 p.m. Central Time**. Comments should be filed electronically, with service to psc.broadband@nebraska.gov.

⁵¹ Reinke and Hamilton Comments at 12; NRBA Reply Comments at 4.

⁵² Neb. Rev. Stat. § 86-1304(2)(b).

⁵³ *Id.*

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Hearing

The Commission finds that this matter should be set for hearing at the earliest practicable opportunity. The hearing will be held on **October 26, 2023 at 1:30 p.m. Central Time** in the Commission Hearing Room, 1200 N Street, 300 The Atrium, Lincoln, Nebraska 68508. This hearing will be held in person. Remote access to the hearing will be available via WebEx at the following link: <https://psc.nebraska.gov/stream> (case sensitive). If a witness desires to appear via Webex, please notify Commission Staff at least twenty-four hours in advance to ensure that said witness is able to appear via video and audio. Anyone attempting to appear via audio only will not be allowed to testify.

If auxiliary aids or reasonable accommodations are needed for attendance at the meeting, please call the Commission at (402) 471-3101. For people with hearing/speech impairments, please call the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0920 (Voice). Advance notice of at least seven days is needed when requesting an interpreter.

The Commission recognizes that this hearing date may conflict with harvest season for some interested parties. However, we find that this is unavoidable to prevent additional delay to the award of PRO-AG grants. Parties unable to attend the hearing in person are encouraged to submit comments to psc.broadband@nebraska.gov prior to October 6, 2023 as described above. Comments received prior to October 6th will be entered into the hearing record. Virtual participation at the hearing is also encouraged.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the above-captioned docket be, and it is hereby, redocketed to C-5529 as described above. Future orders, comments, and other filings should be submitted under the caption C-5529 for the remainder of this docket.

IT IS FURTHER ORDERED that comments may be filed on or before **October 6, 2023 at 5:00 p.m. Central Time** with service to psc.broadband@nebraska.gov as prescribed herein.

IT IS FURTHER ORDERED that a hearing will be held in this matter on **October 26, 2023 at 1:30 p.m. Central Time** in the Commission Hearing Room, 300 The Atrium, 1200 N Street, Lincoln, Nebraska 68508 and by videoconference as indicated above.

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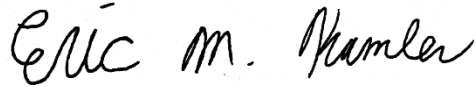
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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska this 19th day of September, 2023.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Eric M. Hamler


Chair



ATTEST:


Deputy Director

COMMISSIONERS DISSENTING:



Commissioner Christian Mirch



Commissioner Kevin Stocker