

SUPREME COURT OF NEBRASKA

City of Sidney, Nebraska v. Municipal Energy Agency of Nebraska

City of Sidney v. Mun. Energy Agency of Neb., 301 Neb. 147 (2018) · No. S-17-471 · Decided September 28, 2018

SUMMARY

The Nebraska Supreme Court reviewed an arbitration board decision concerning transmission-rate charges imposed by the Municipal Energy Agency of Nebraska on the City of Sidney. The court held that the increased charges were permitted under the parties’ supplemental agreement and that MEAN substantially complied with its contractual obligations. The court reversed the arbitration board’s decision.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Nebraska                                                                                                                                                                                                                                                                                                                                                                                        |
| WRITING FOR THE COURT | Funke, J.; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.                                                                                                                                                                                                                                                                                                                                              |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | September 28, 2018                                                                                                                                                                                                                                                                                                                                                                                               |
| DOCKET                | S-17-471                                                                                                                                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | reversed                                                                                                                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Municipal Energy Agency of Nebraska appealed a Nebraska Power Review Board arbitration decision determining that MEAN breached a supplemental energy-service agreement by changing Sidney's transmission path and charging increased transmission rates. The Nebraska Supreme Court granted MEAN's petition to bypass the Nebraska Court of Appeals and reviewed the arbitration decision de novo on the record. |
| STANDARD OF REVIEW    | An appeal from an arbitration board convened under Neb. Rev. Stat. § 70-1301 et seq. is tried de novo on the record. When credible evidence conflicts on material factual issues, the appellate court may consider and give weight to the fact that the arbitration board observed the witnesses and accepted one version of the facts over another.                                                             |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                                                                                                                                                                   |
| PARTIES               | Municipal Energy Agency of Nebraska v. City of Sidney, Nebraska                                                                                                                                                                                                                                                                                                                                                  |

## TOPICS

public utilities

contracts

contract interpretation

administrative procedure act

standard of review

## PRACTICE AREAS

contracts

public utilities

administrative law

appellate procedure

## QUESTIONS PRESENTED

1. Whether the statutory arbitration board had subject matter jurisdiction to decide contract and implied-covenant issues intertwined with a wholesale electric transmission-rate dispute.
2. Whether the arbitration board had authority to permit Sidney to amend its notice of dispute.
3. Whether WAPA's 115 kV bus created a gap in the transmission path requiring MEAN to obtain additional contractual transmission rights.
4. Whether MEAN's placement of Sidney on LAP NITS and change in transmission path breached the Service Schedule M agreement.
5. Whether MEAN's increased transmission charges were unfair, unreasonable, or discriminatory under the agreement and Nebraska's power-review statutes.

## HOLDINGS

1. A statutory arbitration board convened under Neb. Rev. Stat. § 70-1301 et seq. has subject matter jurisdiction over contractual issues when those issues are intertwined with a wholesale electric rate dispute.
2. Under Neb. Rev. Stat. § 70-1306 and the incorporated Commercial Arbitration Rules, the arbitration board may permit substantive or nonsubstantive amendments to a notice of dispute at any time during the arbitration proceedings.
3. The Service Schedule M agreement placed the financial responsibility for transmission rights within Sidney West, including rights necessary to use WAPA's facilities on Sidney's side of the point of delivery, on Sidney; MEAN could obtain those rights and pass the resulting charges through to Sidney.
4. MEAN substantially complied with the Service Schedule M agreement by placing Sidney on LAP NITS and changing the transmission path after determining that contractual rights to use WAPA's 115 kV bus were necessary.
5. MEAN did not breach the agreement by passing the LAP NITS transmission charges through to Sidney because the charges were fair, reasonable, and nondiscriminatory.

## KEY QUOTATIONS

*“where “contractual issues are intertwined with a rate dispute, such contractual issues are within the arbitration board’s jurisdiction.”” (301 Neb. at 165)*

*“A contract written in clear and unambiguous language is not subject to interpretation or construction and must be enforced according to its terms.” (301 Neb. at 177)*

*“Thus, we hold that MEAN substantially complied with the SSM and actually provided Sidney benefits by changing the POD.”* (301 Neb. at 180)

## FACTUAL BACKGROUND

Sidney obtained wholesale energy from MEAN under a long-term Service Schedule M supplemental agreement that specified a point of delivery and provided for transmission charges. After WAPA discontinued grandfathered electronic transmission tags, MEAN determined that its existing transmission arrangement lacked contractual rights to use WAPA's 115 kV bus and that additional transmission service was necessary. MEAN placed Sidney on WAPA's LAP NITS system, terminated the Tri-State transmission agreement, and passed approximately \$576,000 per year in transmission costs through to Sidney. Sidney challenged the change and increased charges before the arbitration board.

## PROCEDURAL HISTORY

Sidney disputed transmission charges under Neb. Rev. Stat. § 70-1304, and arbitration proceedings were conducted under § 70-1306. The arbitration board found that MEAN breached the parties' Service Schedule M agreement, set Sidney's transmission rate at the prior monthly amount, and ruled that the increased rate was excessive, unfair, and unreasonable. MEAN appealed, and the Nebraska Supreme Court granted bypass review and reversed the arbitration board.

## DISPOSITION

reversed

## CASES CITED

- In re Application of Northeast Neb. Pub. Power Dist., 300 Neb. 237, 912 N.W.2d 884 (2018)
- Frohberg Elec. Co. v. Grossenburg Implement, 297 Neb. 356, 900 N.W.2d 32 (2017)
- RM Campbell Indus. v. Midwest Renewable Energy, 294 Neb. 326, 886 N.W.2d 240 (2016)
- VRT, Inc. v. Dutton-Lainson Co., 247 Neb. 845, 530 N.W.2d 619 (1995)
- Eadie v. Leise Properties, 300 Neb. 141, 912 N.W.2d 715 (2018)