IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

THE STATE OF NEBRASKA, ex rel. MICHAEL T. HILGERS, Attorney General,	)	**Case No. CI _____**
Plaintiff,	)	**COMPLAINT**
v.	)	
OMAHA PUBLIC POWER DISTRICT, JAVIER FERNANDEZ, President and CEO of Omaha Public Power District, AMANDA BOGNER, District 1 Member of the Omaha Public Power District Board of Directors, SARA HOWARD, District 2 Member of the Omaha Public Power District Board of Directors, MARY SPURGEON, District 3 Member of the Omaha Public Power District Board of Directors, MATT CORE, District 4 Member of the Omaha Public Power District Board of Directors, CRAIG MOODY, District 5 Member of the Omaha Public Power District Board of Directors, ERIC WILLIAMS, District 6 Member of the Omaha Public Power District Board of Directors	)	
Defendants.		

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COMES NOW, the State of Nebraska, by and through its Attorney General, Michael T. Hilgers, and avers:

1. It is the unambiguous public policy of the State that Nebraska's public power utilities "provide for dependable electric service at the lowest practical cost to all of the citizens of the state." Neb. Rev. Stat. § 70-1101. *See also* Neb. Rev. Stat. §§ 70-1001; 70-1301; 70-1403; 70-1501; 70-2102.

2. "The public policy of this state as to [public] power districts" is to "furnish[]" electricity to "the ultimate consumer at the lowest cost consistent with sound business judgment." *Custer Pub. Power Dist. v. Loup River Pub. Power Dist.*, 162 Neb. 300, 313–14 (1956).

3. Omaha Public Power District (OPPD) has adopted policies and is pursuing action that prioritize considerations other than the cost and reliability of the electricity it provides to its customers.

4. One notable example is OPPD's decision to completely eliminate its North Omaha Station's ability to use coal as fuel.

5. The State, by and through the Attorney General, asks this Court to declare that OPPD's adoption of policies that prioritize non-cost or reliability factors directly contravenes the public policy of the State; to deem action taken pursuant to such policies invalid, ultra vires acts; to enjoin any and all efforts, initiatives, or actions predicated on those policies that do not prioritize the cost and reliability of the electricity OPPD provides; and to award any and all other appropriate relief warranted by law.

INTRODUCTION & BACKGROUND

6. Nebraska is the only State in the nation that relies exclusively on publicly owned entities to provide electricity to consumers.

7. Beginning with the enactment of Senate File 310 (also known as the "Enabling Act") in 1933 and continuing with a dedicated effort to acquire private utility companies over the ensuing decade, by the late 1930 and early 1940s Nebraska had become "a bastion of public power." *See* Don Schaufelberger & Bill Beck, *The Only State: A History of Public Power in Nebraska* 109 (2010) ("*The Only State*"); *see also id.* at 87. By 1941, Nebraska had the "largest locally-owned power system in the nation." *Id.* at 129.

8. "The Nebraska Legislature set up the Enabling Act with the intention that [public power districts] would [ultimately] be the exclusive providers of electric services in the State." *See* Allan M. Williams*, The Winds of Change: How Nebraska Law Has Stalled the Development of Wind Energy and What Can Be Done to Spur Growth,* 47 Creighton L. Rev. 477, 485 (2014); *see also* Neb. Rev. Stat. § 70-1301 (providing that "in furtherance of" the State's public policy of providing "adequate electrical service at as low overall cost as possible," electric service "should be provided by nonprofit entities including public power districts, public power and irrigation districts, nonprofit electric cooperatives, and municipalities").

9. By 1949, Nebraska had become the "only state in the nation in which there were no investor-owned electric utilities serving customers in the state." *The Only State* at 146; *see also id.* at 135, 152, 182.

10. There are at least 166 publicly owned entities that

produce and deliver electricity to Nebraskans. *Who We Are: About NPA*, Neb. Power Assoc., available at https://perma.cc/BAU4-CNZ4; *see also Who We Are: NPA Members*, Neb. Power Assoc., available at https://perma.cc/CVP3-DFVR

11. For nearly a century, the Legislature has consistently pursued efforts to support public ownership of electricity generation, believing that doing so would "mean savings and expanded services for Nebraska ratepayers." *The Only State* at 108.

12. As John McClure, the former Chief Executive Offier and a current Executive Vice President of Nebraska Public Power District (NPPD), has remarked: "Public power in Nebraska . . . focus[es] on what's important. This includes reliability, a long-term view and low-cost power." *The Only State* at 332.

13. The Legislature's belief in and commitment to public power is borne out by data, both historic and contemporary. In 1960, when the Federal Power Commission surveyed electricity costs nationwide, it found that Nebraska's average monthly residential electric bill was the fifth-lowest. *The Only State* at 195. The survey also found that "Nebraska and other states with a large preponderance of public power entities" had retail electricity rates that were "among the cheapest." *Id.*

14. Nebraska's commitment to public power has helped low-cost electricity become an enduring feature of Nebraska life. "In 1997, Nebraska enjoyed some of the lowest-cost retail electric rates in the United States." *The Only State* at 316. In a 2007 survey, Nebraska "still had the fifth lowest average retail price of electricity." *The Only State* at 195.

15. The low cost of Nebraska electricity continues to this day.

The average cost of electricity in Nebraska is consistently below the national average, and Nebraska is routinely among the top five or six States with the cheapest electricity rates. *See*, *e.g.*, *Electricity Price*, U.S News & World Report, available at https://perma.cc/UNG5-XVS5 (ranking Nebraska as "#6 in electricity price"); *Electricity Rates*, Electric Choice: An Independent Comparison Site (Sept. 22, 2025), available at https://perma.cc/3E44-F8L4 (noting that the average electric rate in the United States is 15.22 cents per kilowatt/hour, while the average kilowatt/hour rate in Nebraska is only 11.26 cents).

16. OPPD recently represented to a member of the Legislature that, as of 2023, its rates were "15.8% below [the] regional average and 27.4% below the national average." OPPD Response to Inquiries by Senator Tom Brandt at 3 (July 14, 2025), Attachment A, *infra*.

17. In short, "public power has been an absolute boon for the people of Nebraska," ensuring that Nebraskans have reliable access to energy and "nearly the lowest rates in the country." *The Only State* at 338 (quoting former NPPD President and CEO Ron Asche).

18. As outlined in greater detail below, it is the express public policy of the State to ensure that Nebraskans have reliable access to low-cost electricity.

19. Policies and actions undertaken by a public power provider that prioritize other considerations over cost and reliability are contrary to the public policy of the State.

20. OPPD has adopted policies and is undertaking (or planning to implement) actions that are driven by considerations other than cost and reliability.

21. Actions driven by considerations other than cost and

reliability include the proposed elimination of coal-fired generation capacity at OPPD's North Omaha Station and the retirement of three of the five currently operating generation units at North Omaha Station.

22. By OPPD's own admission, the decision to "refuel and retire North Omaha Sation" was "primarily based on environmental considerations." OPPD Response to Inquiries by Senator Jared Storm at 2–3 (Oct. 1, 2025), Attachment B, *infra*.

23. Similarly, OPPD has expressly recognized that "retiring any generation [capacity]" will make it "more difficult to serve existing and new customers." *Id*. at 3.

24. OPPD has also indicated that due to the recent uptick in demand of electricity, "without additional capacity resources beyond those [currently] in service and planned, OPPD will face a deficiency in [its] ability to serve new large [electrical] load requests . . . over the next 10 years." Attachment A at 7.

25. OPPD's decision to proceed with the refueling and retirement of North Omaha Station is *not* driven by economic necessity or sound business practice.

26. A recent OPPD analysis of the "net costs or savings" of its current "retirement/refueling" plan for North Omaha Station versus "maintaining the current status quo" reveals that the retirement/refueling option is substantially more expensive. *See* Attachment A at 8.

27. "If OPPD were to place on hold its current plans for retirement/refueling for 5 years," the approximate net savings would be $36 million, factoring in "potential retail revenue growth." *Id*.

28. "If OPPD were to place on hold its current plans for

retirement/refueling for 15 years, it could result in approximately $439 million in net savings with potential retail revenue growth included." *Id*.

29. The proposed elimination of coal-fired generation capacity at North Omaha Station and retirement of three of its five generation units will significantly decrease the supply of dispatchable baseload generation necessary to ensure both price stability and the reliability of the supply of electricity to the customers OPPD serves.

30. The proposed elimination of North Omaha Station's coal-fired generation capacity and reduction in overall dispatchable baseload generation capacity will also deprive OPPD customers of the cost benefits of hundreds of millions of dollars of net savings.

31. Such savings would likely translate into reduced (or, at a minimum stable) rates for consumers, even in the face of the increasing demand for electricity.

32. The proposed replacement of coal-fired dispatchable baseload generation (such as the generation currently provided by North Omaha Station) with intermittent or flexible generation sources threatens to increase the cost of electricity provided to Nebraskans, especially during periods when those intermittent sources are inactive or minimally active.

33. Thus, OPPD's proposed elimination of North Omaha Station's coal-fired generation capacity and the proposed retirement of three other units, predicated on "environmental considerations" rather than cost or reliability, contravenes the public policy of the State.

34. When a public power district acts in a manner that is "contrary to public policy," its contrary actions are "illegal and void." *Custer Pub. Power Dist. v. Loup River Pub. Power Dist.*, 162 Neb. 821,

822 (1956).

PARTIES

35. The State of Nebraska, by and through its Attorney General, is the Plaintiff in this action.

36. The Attorney General is Nebraska's "chief law officer." *In re Equalization of Assessment of Nat. Gas Pipe Lines*, 123 Neb. 259, 261 (1932); *see also id*. at 262 ("The attorney general is the principal law officer of the state."). Concomitant with that role, the Attorney General pursues legal action in the name of the State. *See* Neb. Rev. Stat. § 84-203.

37. Defendant Omaha Public Power District (OPPD) is a public corporation organized under Chapter 70 of the Nebraska Revised Statutes. *See* Neb. Rev. Stat. § 70-602. A public power district like OPPD "may sue or be sued in its corporate name. *Id*.

38. OPPD came into existence near the end of World War II, when the Nebraska Power Company, the "last large privately-owned utility holding company subsidiary" in Nebraska, "agreed to be acquired by a publicly held consortium." *The Only State* at 138.

39. OPPD provides electric power to approximately 850,000 Nebraskans; its service area includes consumers in all or parts of 13 counties, including Douglas County. *See* OPPD Service Territory, available at https://perma.cc/X7ME-8HKQ.

40. Javier Fernandez is the current President and Chief Executive Officer of OPPD and is sued in his official capacity.

41. Amanda Bogner is a member of OPPD's Board of Directors and is sued in her official capacity.

42. Sara Howard is a member of OPPD's Board of Directors and is sued in her official capacity.

43. Mary Spurgeon is a member of OPPD's Board of Directors and is sued in her official capacity.

44. Matt Core is a member of OPPD's Board of Directors and is sued in his official capacity.

45. Craig Moody is a member of OPPD's Board of Directors and is sued in his official capacity.

46. Eric Williams is a member of OPPD's Board of Directors and is sued in his official capacity.

JURISDICTION, STANDING & VENUE

47. The District Court of Douglas County has jurisdiction pursuant to its historic powers to entertain and resolve requests for equitable relief. Neb. Rev. Stat. § 25-101; *see City of Beatrice v. Goodenkauf*, 219 Neb. 756 (1985).

48. "[I]n cases where the property of the sovereign or the interests of the public are directly concerned," the "attorney general has the right" to "institute suit by what may be called 'civil information' for their protection." *In re Equalization of Assessment*, 123 Neb. at 261.

49. This Court also has jurisdiction to "declare rights, status, and other legal relations" under the Uniform Declaratory Judgment Act. Neb. Rev. St. § 25-21,149.

50. The Attorney General has standing to bring an action in the name of the State when the object of the action is to vindicate the public interest. *See State ex rel. Meyer v. Peters*, 188 Neb. 817, 819–21 (1972); *State v. Pacific Express Co.*, 80 Neb. 823, 827–38 (1908).

51. Venue for this action properly lies in this Court because OPPD furnishes electricity to consumers located in Douglas County. *See* Neb. Rev. Stat. § 25-403.01.

FACTS

A.

Low Cost and Reliability are the Cornerstones of Nebraska's Public Policy Regarding Electricity.

52. The Legislature has repeatedly emphasized that the primary objective of the public power system is to ensure that Nebraskans have access to reliable, low-cost electricity.

53. For example, the Legislature has indicated that public power districts have "an obligation to provide the inhabitants and customers of [that] district an adequate, reliable, and economical source of electric power and energy." Neb. Rev. Stat. § 70-1403.

54. The legal foundation for Nebraska's public power system, the Enabling Act, as amended, is found in Chapter 70 of the Nebraska Revised Statutes.

55. Chapter 70 contains numerous legislative expressions that enshrine access to reliable, low-cost electricity as the cornerstones of the public policy of the State.

56. Article 10 announces that the "policy of this state" includes "provid[ing] the citizens of the state with adequate and reliable electric service at as low overall cost as possible." Neb. Rev. Stat. § 70-1001(1).

57. Article 11 declares it "to be the policy of the state to provide for dependable electric service at the lowest practical cost to all of the citizens of the state, including the residents of cities and villages." Neb. Rev. Stat. § 70-1101.

58. Article 13 states that it is the "public policy of this state to provide adequate electrical service at as low overall cost as possible." Neb. Rev. Stat. § 70-1301.

59. Article 15 indicates that it is "the public policy of this state to provide its citizens with adequate electric service at as low an overall cost as possible." Neb. Rev. Stat. § 70-1501.

60. While cost is an obvious priority, reliability and dependability are also paramount considerations. As the Legislature declared in Article 21, "the public has an interest in the uninterrupted generation and transmission of electricity by public power suppliers in this state." Neb. Rev. Stat. § 70-2102.

B.

Demand for Electricity is Growing

61. Trends—both nationwide and in Nebraska—indicate that demand for electricity is rising.

62. After a decade of minimal demand growth, beginning in the wake of the COVID-19 pandemic, demand for electricity in the United States has "surged." Nida Melek & Alex Gallin, *Powering Up: The Surging Demand for Electricity*, Federal Reserve Bank of Kansas City (Sept. 25, 2024), available at https://perma.cc/6PJV-LBD5.

63. Driven largely by commercial and industrial trends—such as the rapid proliferation of data centers—"[n]ear-term forecasts for U.S. electricity demand have been revised up substantially." *Id.*

64. "The surge in U.S. electricity demand, particularly within the commercial sector, underscores the ongoing transformation toward a more electrified economy." *Id.*

65. Demand growth is "driven by manufacturing and data centers in the near-term, and electrification of heating and transportation in the long-term." *U.S. National Power Demand Study* at 2, S&P Global Commodity Insights (Mar. 31, 2025) ("*National Power*

Demand"), available at https://perma.cc/2PNQ-Y3SU.

66. "Between 2024 and 2040, electricity demand in the US is expected to grow by 35-50% driven by a combination of underlying economic growth, large industrial loads like datacenters and manufacturing, and the electrification of transport and heating." *Id.* at 15.

67. "The integration of advanced technologies such as AI, automation, and data centers into the U.S. economy is energy-intensive but important for maintaining economic competitiveness." Melek & Gallin, *supra.*

68. OPPD has also recognized that "demand for electricity in Nebraska is expected to grow much faster than previously anticipated." Grant Schulte, *Demand for Electricity Growing Statewide*, OPPD: The Wire (Sept. 26, 2023), available at https://perma.cc/S79B-3G6A.

69. Indeed, "demand for electricity is projected to continue growing sharply over the next several years." *Id.*

70. This increase in demand represents "unprecedented load grow." Attachment A at 7.

71. OPPD anticipates receiving "approximately 2,000 megawatts of new customer requests over the next 1 years." Attachment B at 3.

72. As is the case elsewhere in the country, in Nebraska "[l]arger, industrial customers – including data centers, food processors, manufacturers, agricultural companies and others – are driving much" of the projected demand growth. Schulte, *supra.*

C.

In the Near-Term, Supply Remains Relatively Constrained

73. Over the next five years there is a "major risk of supply and demand imbalance." *National Power Demand* at 2.

74. Although nationwide generation capacity is projected to "almost double over the next 15 years," the "ability of renewables to respond to new demand growth in the short-term is constrained." *Id*. at 3.

75. The potential mismatch is also evident in Nebraska: By its own 2023 projections (which incorporate projected increases in demand), if OPPD fails to expand its generation capacity and instead relies only on "existing resources," demand would "exceed the supply of available electrical generation by 2027." Schulte, *supra*.

76. Notably, the "existing resources" that made up the available generation mix assessed in those projections were dominated by coal; "about 60%" of Nebraska's electrical generation "came from coal." *Id*.

77. OPPD has also recognized that "high demand scenarios could outpace available capacity without supportive policy and infrastructure acceleration." Attachment A at 7.

78. Replacing existing generation capability with new generation units is a time-intensive endeavor.

79. OPPD estimates that a new solar facility takes "approximately 18 months to construct." Attachment B at 1.

80. However, the 18-month timeframe can "stretch" significantly, for reasons that include "supply chain disruptions and

zoning issues." *Id.*

81. The availability of new natural gas turbines is even further constrained. At present, the lead time for acquiring a new natural gas turbine "has increased to five years or more." Bobby Noble, *Turbine Delays: Solving the Puzzle Critical to an Affordable, Reliable Energy Future*, Power Engineering (July 28, 2025), available at https://perma.cc/3PF5-XR8S.

82. That is in line with U.S. Department of Energy estimates that the lead time for bringing new gas-fired generation capacity online is usually at least three—and as much as five—years. *See Assumptions to the Annual Energy Outlook 2025: Electricity Market Module*, U.S. Energy Information Administration (April 2025), available at https://perma.cc/M5GD-6R67.

D.

Dispatchable Baseload Generation Capacity is Essential to Consistently Low-Cost, Reliable Electricity.

83. Demand for electricity fluctuates based on a variety of factors, including the time of day, season, and myriad other human and environmental considerations.

84. "Baseload" refers to the "minimum amount of electric power" that "needs to be supplied to [an] electrical grid at any given time." *Energy Education: "Baseload Power*," Univ. of Calgary, available at https://perma.cc/RMJ5-6RH3 ("*Baseload Power*").

85. "Baseload power must be supplied by constant and reliable sources of electricity." *Id.* Baseload sources are almost always "dispatchable"—they can "ramp up or shut down . . . depending on the need for electricity," *Energy Education: "Dispatchable Source of*

Electricity," Univ. of Calgary, available at https://perma.cc/3HL8-5KNA ("*Dispatchable Sources*")—so that they can "cover for unreliable intermittent electricity sources," *Baseload Power*, *supra*.

86. "Dispatchable sources of electricity are of high importance in modern society." *Dispatchable Sources*, *supra*.

87. Dispatchable sources provide "load matching." That is, they can "vary their output" to meet "the changing need for power throughout the day." *Id*.

88. Dispatchable sources cover "lead-in time." That is, they can be "deployed quickly" while other generation sources are ramping up. *Id*.

89. Because their output is easy to modulate, dispatchable sources are frequently used during "peak matching"—they help an energy provider meet the predictable spiking of demand that flows from culture, weather, geography, and other cyclical factors. *Id*.

90. Dispatchable baseload power also provides critical cover for "intermittent electricity sources" that "do not produce consistent electricity." *Id*. Although intermittent sources "provide valuable electricity, they do not provide *guaranteed* electricity." *Id*.

91. Accordingly, "dispatchable sources are required when [intermittent sources] are not meeting their production demands." *Id*. (emphasis added).

92. Dispatchable baseload power is most commonly (though not exclusively) provided by coal and nuclear power plants.

93. Dispatchable baseload power is also provided, to a somewhat lesser extent, by reservoir-based hydroelectric and natural gas power plants.

94. When the aggregate amount of dispatchable baseload

power is reduced, electrical markets are more susceptible to demand shocks that cause price hikes due to constrained supply.

95. It is axiomatic that "all else equal, a reduction in supply typically increases prices." Sarah Shenstone-Harris et. al., *Drivers of PJM's Capacity Market Price Surge and its Impacts on Electricity Consumers in the District of Columbia* at 6, Synapse Energy Economics (Apr. 25, 2025), available at https://perma.cc/SBN8-GAJR.

96. Such price increases are not merely academic or hypothetical; Washington, D.C., recently saw an estimated "9 percent increase" in the average monthly residential electrical bill due to a combination of "decreases" in the supply of generation capacity and "dramatically increasing demand projections." *Id.* at i, ii.

97. The retirement of coal-fired power plants in the grid serving D.C. was a significant factor in the reduction in available supply. *Id.* at 8–9.

98. Analysts predicted that further retirement of coal-fired generation capacity in that area would cause "major grid reliability issues." *Id.* at 9.

99. Those concerns led to the announcement of a multi-year delay of the planned retirement of coal-fired generation units serving the electric grid that provides power to D.C. *See* Sean Wolfe, *Two Fossil-Fired Plants Get a Life Extension as Part of PJM Agreement*, Power Engineering (Jan. 30, 2025), available at https://perma.cc/P94Y-7Z7M.

100. And, as other recent events—such as California's rolling brownouts in 2020 and the massive 2025 blackout event in Spain—further illustrate, when the retirement of dispatchable baseload generation sources occurs too rapidly and without adequate

replacement, acute demand spikes or supply shocks (or a combination thereof) can cause not only price spikes but also (sometimes catastrophic) grid failure. *See* Elliott Nethercutt & Chris Devon, *The Intersection of Decarbonization Policy Goals and Resource Adequacy Needs: A California Case Study*, NRRI Insights (March 2021), available at https://perma.cc/EV2E-3GL2; Marc Oestreich, *Spain's Grid Collapsed in 5 Seconds. The U.S. Could Be Next*, Reason (May 13, 2025), available at https://perma.cc/8EBH-SBTZ.

101. Thus, in the absence of sufficient dispatchable baseload generation capacity, the overall reliability of an electrical grid decreases and overall costs—especially during periods of peak demand and when intermittent sources are not producing—tend to increase.

E.

OPPD Has Adopted Policies That Prioritize Factors Other Than Cost and Reliability.

102. Despite the Legislature's enshrinement of cost and reliability as the central pillars of Nebraska's public policy regarding electric power generation, OPPD has adopted policies that prioritize other considerations.

103. In 2019, OPPD announced an "aspirational goal to reach net zero carbon emissions by 2050." See Omaha Public Power District Pathways to Decarbonization, Final Report at 11 (Feb. 2022), available at https://perma.cc/BC52-MKDD ("*Pathways to Decarbonization*").

104. It is evident on the face of the program that *Pathways to Decarbonization* prioritizes a consideration—the reduction of carbon emissions—over the maintenance of grid reliability or minimizing cost to consumers.

105. OPPD's carbon emissions' target is entirely self-imposed.

See Pathways to Decarbonization at 21; *see also* Attachment A at 1.

106. In *Pathways to Decarbonization*, OPPD declared that reaching its espoused goal of "net zero carbon emissions" would require a complete "cessation of coal generation." *Pathways to Decarbonization* at 21. "Virtual eliminat[ion]" of coal generation is targeted by 2045. *Id.* at 12. Implementing *Pathways to Decarbonization* will require OPPD's "electric portfolio [to] dramatically shift away from coal towards renewable energy, energy storage, demand flexibility, and low-carbon fuels." *Id.* at 19.

107. OPPD is aware of the important role played by baseload generation. Even *Pathways to Decarbonization* acknowledges that "wind, solar, [and] energy storage [i.e., batteries]" are considered "non-firm" generation sources because they are either "weather dependent" or have "use-limitations." *Id.* at 15.

108. *Pathways to Decarbonization* further recognizes that "firm"—that is, dispatchable baseload—generation is "necessary to support [OPPD's] system during critical periods of high . . . loads combined with multi-day low wind and solar conditions." *Id.*

109. *Pathways to Decarbonization* is part of OPPD's overarching "Power with Purpose" agenda, a set of policies which place "environmental sensitivity" alongside "affordability" and "reliability" as central to OPPD's "mission." *See* OPPD Power With Purpose: Solar + Natural Gas, available at https://perma.cc/AC58-RHR3; *see also* OPPD Resolution No. 6351 (Nov. 14, 2019).

110. As its 2025 Corporate Operating Plan declares, OPPD's mission statement places "environmental sensitivity" on par with "affordability" and "reliability." *See* OPPD 2025 Corporate Operating

Plan at 5, available at https://perma.cc/C8XH-2RZB.

111. In the words of Jeremy Bowers, OPPD's Director of Environmental and Regulatory Affairs, "the environmental piece of our mission is not just an add-on." *See* OPPD Powering the Future to 2050: Cleaner World, available at https://perma.cc/X7JR-6AEV, embedded video available at https://www.youtube.com/watch?v=XBrdGmUoEyk (last visited October 7, 2025). "Affordability, reliability, and environmentally sensitive energy are all three vital parts of the public power promise for us." *Id.*

112. Despite clear direction from the Legislature regarding the policy considerations that public power producers in Nebraska should prioritize, OPPD has formally incorporated "Environmental Justice" into its decision-making process. *See* OPPD Environmental Stewardship Revisions Discussion (Oct. 15, 2024), available at https://perma.cc/LX5U-XAKX.

113. Although "no single [policy] directive has been explicitly prioritized over any other" by OPPD's Board of Directors, *see* Attachment B at 1, OPPD's decisions and behavior illustrate that it considers "Environmental Justice" to be a policy consideration of at least equal—and arguably greater—importance than the core considerations set forth by the Legislature in Chapter 70.

114. Consistent with both "Power with Purpose" generally and *Pathways to Decarbonization* specifically, OPPD has taken or announced numerous programs, steps, or initiatives designed to "reduc[e] baseload generation." *See* OPPD Power with A Purpose: Continuing Our Journey, available at https://perma.cc/JAN2-JRCN.

115. One such step is the planned retirement of coal-fired

generation units at OPPD's North Omaha Station, which will completely eliminate that plant's capacity for coal-fired electric power generation. OPPD also plans to retire nearly three generation units providing nearly 40% of North Omaha Station's dispatchable power production. *See* Attachment A at 4.

116. The outsized importance Environmental Justice plays in OPPD's decision-making is evident.

117. For example, OPPD is pursuing the elimination of North Omaha Station's coal-firing capacity even though OPPD's generation fleet generally "operates within" its "permitted emission limitations," the North Omaha Station specifically "complies with all national ambient air quality standards" (standards which OPPD acknowledges are "stringent" and have "an adequate margin of safety . . . to protect public welfare"), the currently coal-fired generation units at North Omaha Station have "Low Emitter Status" under the federal Mercury and Air Toxic Standards, and OPPD is "unaware of any . . . evidence" that emissions from North Omaha Station are making people in surrounding neighborhoods (or anywhere else) sick. Attachment B at 2.

118. In other words, only the prioritization of considerations beyond regulatory compliance—considerations like Environmental Justice and OPPD's "net zero" carbon emissions target—can explain the decision to eliminate North Omaha Station's coal-fired generation capacity and retire other generation units capable of providing dispatchable baseload generation.

F.

The Proposed Retirement of Coal-Fired Generation Units at North Omaha Station is Contrary to the Public Policy of Nebraska.

119. In a pair of resolutions—Nos. 6006 and 6122—OPPD outlined its plan to refuel or retire five generation units at North Omaha Station. *See* OPPD Resolution 6518 & Committee Meeting Recap (Aug. 16, 2022), available at https://perma.cc/7LPX-XP7A.

120. OPPD originally scheduled to completely retire three active generation units and convert two others to use natural gas.

121. The original target date for those retirements and conversions was the end of 2023. Committee Meeting Recap at 6.

122. In August 2022, OPPD adopted a resolution delaying the planned retirement and conversions at North Omaha Station. *See* OPPD Resolution 6518.

123. OPPD explained that delay was necessary to "ensure OPPD's Reliability & Resiliency margins are preserved" which, in turn, are necessary to "prevent large scale blackouts." Committee Meeting Recap at 7.

124. Indeed, following through with the planned retirement and conversion would have left OPPD's "system degraded and in [an] unacceptable condition susceptible to large scale blackouts." *Id*. at 8.

125. By contrast, delaying the conversion and retirement would "maintain grid reliability & resiliency." *Id*.

126. Despite previously recognizing that the planned retirement of North Omaha Station's coal-generation capabilities threatened the reliability of the electrical service it provides, OPPD has recently indicated that it will forge ahead and complete the

announced retirements and conversion by 2026. *See* Tyler Rinkol, *North Omaha Coal Plant Transitioning to Natural Gas by 2026*, KETV7 Omaha (Aug. 20, 2024), available at https://perma.cc/6G5R-M7KD; *see also* Attachment A at 3; Attachment B at 2–3.

127. Both the planned complete elimination of the North Omaha Station's capacity to power via coal-firing and the reduction of the total number of generation units from five to two will significantly reduce OPPD's ability to generate dispatchable baseload power at North Omaha Station.

128. A reduced ability to generate dispatchable baseload power will undermine grid reliability.

129. A reduced ability to generate dispatchable baseload power also exposes OPPD consumers to increased costs, especially during periods of peak demand, unexpected demand surges, or supply shocks.

130. OPPD's decision to reduce the dispatchable baseload generation capacity of North Omaha Station is not driven by business conditions, public health considerations, or regulatory necessity.

131. Instead, that decision is a direct byproduct of OPPD's "Power with Purpose" policy agenda.

132. OPPD freely admits the planned retirement of North Omaha Station's coal-fired capability is in furtherance of the "net zero [carbon emissions] goal" set forth in *Pathways to Decarbonization*. Attachment A at 3.

133. "Power with Purpose" and specific policies flowing therefrom, such as *Pathways to Decarbonization*, prioritize considerations other than the cost/affordability and reliability of the electrical service OPPD provides.

134. OPPD's strategic pursuit of "net zero" caron emissions is

not predicated on reliability or affordability. *See* Attachment A at 2.

135. Indeed, in an analysis conducted in conjunction with *Pathways to Decarbonization*, OPPD estimated its decarbonization efforts would result in a "total system cost increases of 12–22%." *Id*. at 1.

136. OPPD further recognizes that since that analysis was conducted, the cost of "renewables and storage have increased significantly," and thus the cost estimate accompanying *Pathways to Decarbonization* is "likely low." *Id*.

137. OPPD explicitly acknowledges that it would be harder to serve its overall mission if North Omaha Station's coal-fired capacity is eliminated and its five currently-operating generation units are reduced to two. Attachment B at 3.

138. "In a high load-growth environment such as we are in now, retiring *any generation* makes it more difficult to serve exiting and new customers." *Id*. (emphasis added).

139. As OPPD's President and CEO Javier Fernandez has summarized: "There are positive economic and reliability benefits to maintaining North Omaha Station operations on both coal and natural gas, as it is currently operating." *Id*. at 4.

140. "It is reasonable to say" that OPPD's electric grid would "have more margin and better reliability/resiliency" if all five of North Omaha Station's generation units "remained in service with applicable maintenance and life extension work." Attachment A at 5.

141. Despite this, OPPD "plans to retire North Omaha units 1, 2, and 3" and convert "North Omaha units 4 and 5 . . . from coal to natural gas." *Id*. at 3.

142. Those plans, which will reduce the dispatchable baseload

generation capacity of North Omaha Station, directly contravene the expressly announced public policy of the State of Nebraska.

COUNT I
CIVIL INFORMATION AND COMPLAINT ADDRESSING ACTION BY A PUBLIC CORPORATION CONTRARY TO THE PUBLIC POLICY OF THE STATE

143. The State re-alleges and expressly incorporates by reference all facts set forth in the proceeding paragraphs as though fully set forth herein.

144. Chapter 70 of the Nebraska Revised Statutes governs public power providers, including public power districts like OPPD.

145. In Chapter 70, the Legislature has made numerous express declarations of the public policy of the State with regard to the generation of electricity.

146. Those declarations dictate that public power districts must prioritize providing Nebraskans with reliable, low-cost electricity.

147. OPPD's "Power with Purpose" agenda prioritizes non-cost or reliability considerations such as "environmental sensitivity," "environmental justice," and reaching "net zero carbon emissions."

148. OPPD's decision to completely retire the North Omaha Station's capability to use coal to produce dispatchable baseload generation, based on self-imposed "environmental considerations," is inconsistent with the Legislature's public policy mandate prioritizing price and reliability.

149. The same is true of OPPD's decision to retire three of the five generation units currently in operation at North Omaha Station.

150. When "the interests of the public are directly concerned," the Attorney General is authorized to "institute suit" aimed at securing

and protecting those interests and thus may "invok[e] the judgment of [a] court on such questions of public moment." *In re Equalization of Assessment*, 123 Neb. at 261.

151. The State in its sovereign capacity can "appeal to the courts for relief by injunction, whenever . . . public interests are threatened and jeopardized by any corporation, especially one of a public nature . . . seek[s] to transcend its powers and to violate the public policy of the state." *Pacific Express*, 80 Neb. at 832; *see also id.* ("Wherever the interests of the public are damnified by a company . . . acting illegally and in contravention of the powers conferred upon it . . . it is the function and duty of the Attorney General to protect the interests of the public by an information.").

152. OPPD's decision to completely retire the coal-burning capabilities of North Omaha Station and reduce the number of generation units capable of producing dispatchable baseload power threatens the public interest of the State as expressly outlined in Chapter 70.

153. That decision, being contrary to the public policy of the State, is "illegal and void." *Custer Pub. Power Dist.*, 162 Neb. at 822.

COUNT II
ULTRA VIRES ACTION

154. The State re-alleges and expressly incorporates by reference all facts set forth in the proceeding paragraphs as though fully set forth herein.

155. OPPD is a public corporation organized under Chapter 70 for a specific purpose: the furnishment of reliable, low-cost electricity to Nebraskans who live within its service territory.

156. In Nebraska, the revenue of a public corporation is

"required to be devoted to the purposes for which the corporation is being operated." *United Cmty. Servs. v. Omaha Nat. Bank*, 162 Neb. 786, 794–795 (1956). "The diversion of the revenues to [other] purposes . . . cannot be approved." *Id.* at 795.

157. The decision to retire coal-fired generation units at North Omaha Station to serve the interest of "environmental sensitivity" (and/or in pursuit of OPPD's "net zero" carbon emissions goal or some Environmental Justice principle) furthers a purpose other than that which a public power district was established for—the furnishment of reliable, low-cost electricity to the customers within its district.

158. Action taken (and revenue expended) for an improper purpose is ultra vires. *Cf. Schroll v. City of Beatrice*, 169 Neb. 162 (1959) (holding that contract to sell 60% of electricity generated by rural public power district to non-rural residents of a municipality was ultra vires and thus "null and void").

159. "The law condemns . . . ultra vires acts of [public] corporations" because ultra vires acts "seriously impair their ability to properly discharge their public duties." *State ex rel. Tyrrell v. Lincoln Traction Co.*, 90 Neb. 535, 544 (1912).

160. OPPD's decision to completely retire the coal-fired generation capacity of North Omaha Station and reduce its overall capacity to produce dispatchable baseload generation is an improper ultra vires act which impairs OPPD's ability to discharge its duty to provide reliable, low-cost electricity to the Nebraskans within its service territory.

161. Such an ultra vires act is null and void.

COUNT III
BREACH OF FIDUCIARY DUTY

162. The State re-alleges and expressly incorporates by reference all facts set forth in the proceeding paragraphs as though fully set forth herein.

163. The Legislature has declared that "public power districts . . . have an obligation to provide the inhabitants and customers of the[ir] district an adequate, reliable, and economical source of electric power." Neb. Rev. Stat. § 70-1403(2).

164. As the Supreme Court has further recognized, the public policy of the State, consistently espoused throughout Chapter 70, is that public power districts are obliged to "furnish" electricity to "the ultimate consumer at the lowest cost consistent with sound business judgment." *Custer Pub. Power Dist.*, 162 Neb. at 313.

165. Corporate officers and directors owe a fiduciary duty both to the corporation they serve and to the intended beneficiaries of that corporation. *See Dick v. Koski Pro. Grp., P.C.,* 307 Neb. 599, 655 (2020), *as modified*, 308 Neb. 257 (2021).

166. Corporate officers and directors are fiduciaries because they "control the corporation's property." *Id*.

167. A fiduciary duty arises when a party "purports to act or advise with [an]other's interest in mind." *Gonzalez v. Union Pac. R.R. Co.*, 282 Neb. 47, 73 (2011).

168. In his role as OPPD's President and CEO, Javier Fernandez owes a fiduciary duty to the consumers of electricity who reside within OPPD's service territory.

169. By undertaking any official action that prioritizes a consideration other than the cost/affordability and reliability of the

electricity OPPD provides, including, but not limited to, approving, signing off on, and/or endorsing the complete retirement of the coal-fired generation capability of North Omaha Station, and for approving, signing off on, and/or endorsing the overall reduction of North Omaha Station's capacity to generate dispatchable baseload power, and undertaking those actions primarily because of "environmental considerations," Javier Fernandez has breached his fiduciary duty to provide "adequate, reliable, and economical" electric power to the residents of OPPD's service territory.

170. In their roles as members of OPPD's Board of Directors, Amanda Bogner, Sara Howard, Mary Spurgeon, Matt Core, Craig Moody, and Eric Williams owe a fiduciary duty to the consumers of electricity who reside within OPPD's service territory.

171. By undertaking any official action that prioritizes a consideration other than the cost/affordability and reliability of the electricity OPPD provides, including, but not limited to, approving, signing off on, and/or endorsing the complete retirement of the coal-fired generation capability of North Omaha Station, and for approving, signing off on, and/or endorsing the overall reduction of North Omaha Station's capacity to generate dispatchable baseload power, and undertaking those actions primarily because of "environmental considerations," Amanda Bogner, Sara Howard, Mary Spurgeon, Matt Core, Craig Moody, and Eric Williams breached their fiduciary duty to provide "adequate, reliable, and economical" electric power to the residents of OPPD's service territory.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff State of Nebraska respectfully requests that this Court:

A. Declare that any policy adopted or action undertaken by OPPD which prioritizes some other consideration over price or reliability is contrary to the express public policy of the State;

B. Declare that the CEO and Board of Directors breached the fiduciary duty they owe to the residents of OPPD's service territory;

C. Preliminarily enjoin further action by OPPD to convert or retire the existing coal-fired generation capabilities of North Omaha Station or otherwise act to reduce North Omaha Station's capacity to produce dispatchable baseload generation, in order to maintain the status quo;

D. Permanently enjoin and restrain OPPD from adopting any policy or undertaking any action—including the proposed retirement of the coal-fired generation capacity of North Omaha Station and proposed reduction of the total number of generation units there from five down to two—that does not prioritize the cost/affordability of electricity provided by OPPD to its customers or the reliability of the electrical system OPPD oversees;

E. Grant any such further relief as this Court may deem equitable, just, and appropriate under the law.

Respectfully submitted this 9th day of October, 2025

STATE OF NEBRASKA ex Rel.
MICHAEL T. HILGERS, Attorney General

BY: MICHAEL T. HILGERS, #24483
Nebraska Attorney General

BY: */s/* Zachary A. Viglianco (#27825)
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Counsel for Plaintiff

ATTACHMENT A

Omaha Public Power District

July 14, 2025

Senator Tom Brandt
District 32
State Capitol
PO Box 94604
Lincoln, NE 68509

Sent via email

Dear Senator Brandt:

Thank you for your interest and inquiry involving OPPD regarding the impacts of net-zero plans of public utilities. As a public power electric utility, our mission is to provide affordable, reliable, and environmentally sensitive energy services to our customer-owners.

You will find the questions with answers and information enclosed for your review. This generation of OPPD employees is delivering more infrastructure this decade than any other time in our nearly 80-year history. The task is ambitious, and the goal is honorable: to provide Nebraskans with abundant, reliable and affordable electricity in ways that increasingly take care of the natural resources we, as an agricultural state, care so much about.

Please understand that OPPD's generation resources are expanding in response to load growth. Our attached responses reflect a point in time. Our load forecast, market prices and infrastructure cost, are among many variables that constantly change. This may affect some of the attached responses in the future.

We appreciate the opportunity to provide this information and welcome further dialogue, including participation in the LR 234 hearing. As a public utility, we are committed to transparency, strategic alignment, and serving the best interests of our customer-owners, while maintaining system reliability and economic growth.

Sincerely

Sincerely,
Javier Fernandez
President & CEO, Omaha Public Power District

Omaha Public Power District

What are the true costs of your net-zero plan/goal? Please provide the overall cost, the rate increase schedule, and the impact this will have on residential customers' bills.

The District does not currently have a cost estimate for what the decarbonization effort will cost. The most recent, which is aged, is OPPD's Pathways to Decarbonization results, which at the time of this study, indicated a total system cost increase of 12-22% or 1.1 -1.9 cents/kWh (2022 dollars) at completion compared to not pursuing net zero carbon equivalent emissions. As noted in this study, this total incremental cost at the time was estimated to be roughly an additional $1 billion per year at completion of the net zero goal. Since the decarbonization estimate, the cost for renewables and storage have increased significantly, along with natural gas and all relative infrastructure, thus this cost estimate is likely low. All future resource decisions will be based on updated and detailed cost projections and will balance reliability, affordability and net zero carbon considerations.

Our net zero goal also enhances our ability to mitigate financial risks by encouraging efficiency efforts that reduce costs and regulated emissions. The focus that the net zero goal places on reducing emissions across the organization not only reduces costs in the near term it also reduces current and potentially future regulatory costs if requirements become stricter. Our net zero carbon equivalent emissions goal also provides a ~25-year window in which to be achieved and allows the netting of our emissions, which does not eliminate the District's ability to use carbon emitting generation up to and beyond 2050. To rely entirely on thermal sources of energy would leave the district vulnerable to future regulatory, cost, and reputational risks.

Link to Pathways to Decarbonization document:
https://www.oppdcommunityconnect.com/6294/widgets/31502/documents/30570

What are the state and federal laws and regulations prompting your utility to pursue net-zero plans/goals?

There are no state and federal laws requiring and suggesting decarbonization outside of the existing EPA Green House Gas regulations, which the current administration has expressed their intent to either repeal or repeal and replace.

The net zero carbon equivalent emissions by 2050 goal was adopted by OPPD's publicly elected Board of Directors in 2019 as part of its Strategic Directive 7: Environmental Stewardship (SD-7). The decision reflects OPPD's long-term planning objectives and is balanced with other strategic directives, particularly those related to cost (SD-2: Rates) and reliability (SD-4: Reliability).

OPPD's resource planning is governed by Strategic Directive 9: Integrated Systems Planning (SD-9), which prescribes a rigorous, data-driven process that ensures all resource decisions meet federally mandated requirements for grid reliability and resource adequacy, including those established by the Southwest Power Pool (SPP) and the North American Electric Reliability Corporation (NERC).

SD-9 requires that OPPD maintains sufficient year-round generation capacity reserves, plans for extreme events, considers essential grid reliability services and incorporates stakeholder input while pursuing its long-term objectives. Since its original establishment in 2019, the Board has continued to refine SD-7 to balance greenhouse gas emission goals with reliability obligations and, in particular, the need for increasing focus on resiliency in response to climate change and the extreme weather events that we have seen in recent years.

Our pragmatic approach to climate change is especially important to ensuring that all of our customer owners have access to affordable, reliable, and environmentally sensitive power.

Please provide the reliability, resiliency, and affordability impacts due to the pursuit of your net-zero plan/goal.

In coordination with the President and Chief Executive Officer (CEO), OPPD's Board identifies and defines the vision and mission of OPPD, and "establishes the strategic directives OPPD is to achieve, communicating them in the form of policy." Collectively, these policies guide resource planning and prioritization.

Board policy SD-7: Environmental Stewardship states that OPPD shall "strive to achieve net zero carbon equivalent emissions by 2050 relative to OPPD's 2013 benchmark," as well as "the board also understands that climate change is a significant issue that requires pragmatic solutions recognizing technology advancement, energy supply sufficiency, and climate resilience as co-equally important to carbon emissions reductions".

Other Board policies provide clear direction regarding expectations of reliability and affordability. Specifically, SD-4: Reliability indicates OPPD shall "maintain top quartile distribution performance for a benchmark of comparable electric utilities, excluding Major Event Days for key reliability indicators, System Average Interruption Duration Index (SAIDI) and System Average Interruption Frequency Index (SAIFI). SD-2: Rates indicates that OPPD will "Pursue a directional rate target of 10% below average published rates...".

Each of these policy directives work in a complementary nature to ensure the OPPD mission is accomplished. Each also provide clear operational expectations for each subject of affordable, reliable, and environmentally sensitive services. The expectation is all the policies are satisfied for their respective subjects.

Below is a link for your reference:
https://oppd.com/media/317195/oppd-board-policy-binder.pdf

Does your net-zero plan/goal have a reliability off-ramp/mechanism in case reliability is compromised? If yes, please provide the language to the Committee.

There is no "off-ramp" *per se* in SD-7 as it does not discuss reliability or affordability. Each expectation for operational performance for the subjects of affordable, reliable, and environmentally sensitive energy services is contained in the respective policy directive.

Does your net-zero plan/goal have a cost cap to ensure your plan/goal does not drastically increase rates? If yes, please provide the language to the Committee.

There is no cost cap to the decarbonization effort, but OPPD has an approved policy, SD-2: Rates, to target rates 10% below the regional average. As of 2023, our rates were 15.8% percent below regional average and 27.4% below the national average.

Does your net-zero plan/goal anticipate any baseload generation facility closures? If yes, please provide the current employment numbers and the anticipated reductions from the inception until full implementation of your plan/goal.

In 2014, the Board voted to retire North Omaha coal units 1, 2, and 3 and refuel coal units 4 and 5 to natural gas. Subsequent to that Board vote, North Omaha units 1, 2, and 3 were converted to gas and units 4 and 5 remained on coal, and the retirements and fuel conversions have been delayed. Full time staffing at North Omaha Station is expected to be reduced from 184 to 162 staff members, following retirements and fuel conversion. This would include OPPD and contract employees, and OPPD would continue to use existing staff to maintain new generation assets.

In OPPD's Pathways to Decarbonization report, it identified the possibility to retire/refuel Nebraska City units 1 and 2 to achieve the net zero goal. To date, the Board has not adopted a resolution to retire or refuel Nebraska City Station, which is currently staffed at 188 employees.

Please provide the economic impact of baseload generation facility closures on local economies where these facilities are located.

OPPD has not recently studied the economic impact of baseload generation facility closures on local economies where facilities are located. An economic impact analysis of Nebraska City Station was completed within the last five years. From this analysis, the OPPD Nebraska City Station power plant generates a total annual economic impact on the OPPD service area of $185.11 million and approximately 1,123 jobs (direct, indirect, and induced effects).

Does your organization have any plans to retire or refuel any electric generation units in the next 5 years?

Yes. OPPD plans to retire North Omaha units 1, 2, and 3 (~250MW), which currently operate on natural gas. These are the oldest units in OPPD's generation fleet and currently operate in a relatively limited fashion compared to their historical output. At the same time, OPPD plans to convert North Omaha units 4 and 5 (~300MW) from coal to natural gas, using the available, but infrastructure-limited, gas supply at the site.

Both the retirement of units 1–3 and the fuel conversion of units 4 and 5 are contingent upon the successful completion and interconnection of Turtle Creek Station (450 MW) and Standing Bear Lake Station (150 MW) and completion of all SPP required studies identifying the presence or absence of network upgrades.

These new dual-fuel combustion turbine facilities offer significantly greater operational flexibility and responsiveness, with the ability to reach full output in under 11 minutes—far exceeding the

capabilities of coal units while also ensuring other Essential Grid Reliability Services such as local grid voltage support and system frequency response and inertia are maintained.

OPPD is also enhancing Cass County Station by adding dual fuel (fuel oil) capability to ensure continued operation during extreme cold weather or natural gas supply constraints. These actions support OPPD's broader strategy to modernize its generation portfolio, strengthen grid reliability, and meet the growing needs of its customer base.

If so, please provide the following information for each generation unit with planned retirement of refuel:

i. **Name and location of the unit**

   North Omaha Station (NOS) is located in Omaha.

   First year grid operations – See below table

ii. **Nameplate capacity (MW)**
iii. **Primary fuel currently used**
iv. **SPP accredited capacity (summer vs. non-summer)**
v. **If plans to refuel: Explain the nature of the refueling plans**
vi. **Average annual energy (MWh) produced in the past 5 full calendar years**
vii. **General asset condition of the unit and engineering estimate of the year it could continue to operate.**

	NO1	NO2	NO3	NO4	NO5
ii. First year grid operations	1954	1957	1959	1963	1968
iii. Nameplate capacity (MW)	63.0	71.8	92.5	117.7	216.2
iv. Primary fuel currently used	Natural Gas	Natural Gas	Natural Gas	Coal	Coal
v. SPP accredited capacity (summer vs. non-summer)	63.0 (no Winter accreditation)	83.4 (No Winter Accreditation)	93.6 (No Winter Accreditation)	117.7	206.2
vi. If plans to refuel: Explain the nature of the refueling plans	Retire	Retire	Retire	Refuel to Natural Gas, No Winter Accreditation	Refuel to Natural Gas, No Winter Accreditation
vii. Average annual energy (MWh) produced in the past 5 full calendar years	6,929 MWh	10,423 MWh	66,555MWh	612,678 MWh	878,663 MWh

viii. General asset condition of the unit and engineering estimate of the year it could continue to operate.	North Omaha Station units have been maintained to ensure safe and reliable operations. The duration of operations of any asset require investment; however, applied engineering and asset management practices have proven that the service lives of OPPD generating units (and U.S. fleet generating units in general) can exceed 70 years.

Please explain the reason for the planned retirement/refueling of the units listed above and provide any documentation supporting such decision.

OPPD's original decision to retire and refuel the North Omaha Station (NOS) units in 2014 is the result of a decade-long planning process aimed at modernizing its generation fleet, while also maintaining compliance with all regulatory requirements. There were three primary factors that drove the decision at the time:

- Customer demand for electricity was projected to be effectively flat at the time
- Environmental regulatory landscape at that time,
- OPPD had more electricity to supply than customer demand

Are the plans to retire/refuel generation units in any way expected to negatively affect grid reliability?

Post -refuel and retirement of the North Omaha Station, the system is expected to be reliable as prescribed by federal and regional grid reliability regulations. Even though the system is forecasted to be reliable, it is reasonable to say the system would have more margin and better reliability/resiliency had the assets remained in service with applicable maintenance and life extension work. In addition to OPPD reliability assessments, the Southwest Power Pool also completes reliability reviews, primarily for power flow and system stability concerns, when a generator is going to cease operations.

Currently, there are concerns in the industry involving the changing generation resource mix's impact on grid reliability margins. This changing resource mix will continue to be a reliability challenge for system planners and operators, now and into the future. In addition to the changing resource mix, the magnitude and timing of load growth continues to pose reliability challenges for utilities.

Does your utility have plans to replace the capacity (MW) and energy (MWh) lost due to the retirement and refueling of the units mentioned above? If so, please list the type of generation, nameplate capacity, SPP accredited capacity (summer vs. non-summer) and first expected year of operations of the new units.

OPPD has secured a number of critical resources to replace loss in energy supply from North Omaha as well as to facilitate the growth in eastern Nebraska. Eastern Nebraska peak growth has increased approximately 500MW in the last 5 years. If and when sustained load growth continues, the District would expect sustained challenges in securing more resources to ensure reliable, affordable, and timely electric service.

Details of the new generation sources are in the table below:

	Turtle Creek 1 and 2	Standing Bear Lake 1-9	Platteview Solar
ii. First year grid operations	June 2025	Q3 2025	Q2 2025
iii. Nameplate capacity (MW)	450	150	81
iv. Primary fuel currently used	Natural Gas Fuel Oil as back up	Natural Gas Fuel oil as backup	N/A
v. SPP accredited capacity (summer vs. non-summer)	450MW Summer & Non-Summer	150MW Summer & Non-Summer	42MW Summer & 29MW Non-Summer

Additionally, to support both the rising planning reserve margin and more customer load demand, the District is also constructing or purchasing, the following facilities:

	Turtle Creek Station 3	Cass County 3, 4, and 5	Pierce County Energy Center
ii. First year grid operations	2029	2029	2027
iii. Nameplate capacity (MW)	225	675	420
iv. Primary fuel currently used	Natural Gas Fuel Oil as back up	Natural Gas Fuel oil as backup	Solar & Battery Storage
v. SPP accredited capacity (summer vs. non-summer)	225MW Summer & Non-Summer	675MW Summer & Non-Summer	400MW Summer & 200MW Non-Summer

Considering any and all the planned additions to your utility's generation portfolio, less the planned retirement and refueling of the units listed under No.1 above: Does your utility have enough capacity and energy to serve all the requests for new electric service on a timely manner as requested by your current or prospective customers? If not, please list the MW and annual MWh deficit by requested year of the aggregate requests for service that could not be satisfied under your utility's current plans. Please list, in aggregate, the estimated number of lost opportunities measured in jobs, infrastructure investment and gross domestic product by each year of delayed service.

OPPD currently has sufficient capacity and energy to serve all existing load and traditional levels of new residential, commercial and industrial load growth consistent with how OPPD reports its forecasted load growth with other utilities in the Nebraska Load and Capability Report submitted to the Nebraska Power Review Board.

OPPD is actively working to address unprecedented load growth and faces execution and timing challenges with local planning and zoning (permitting), supply chains, workforce availability, and regulatory approvals to bring new electric supply to the market. The degree to which these load requests may materialize varies and some are 'prospecting' for potential sites across many different utilities. Based on active and prospective project requests, there is currently approximately 2 GW of new demand anticipated over the next 10-year horizon. Any impact on jobs or delayed investment opportunities is the domain of and managed by economic development organizations.

	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035
Current Available Load Growth[1], MW	524	313	300	406	518	422	310	264	239	136	87
Incremental Customer Load Requests, MW	16	146	234	523	787	1097	1352	1611	1746	1870	1956
MW Deficiency	-	-	-	(117)	(269)	(675)	(1,042)	(1,347)	(1,507)	(1,734)	(1,869)
Current Energy Position Relative to Owned and Contracted Resources[2], MWh	1,593,261	1,256,368	(148,251)	(138,928)	657,634	783,640	328,523	(478,956)	(149,498)	(508,138)	(943,188)
Energy from New Load Requests Assuming 75% Load Factor	106,851	958,826	1,536,851	3,435,089	5,172,411	7,207,023	8,880,907	10,582,174	11,468,565	12,283,854	12,848,626
MWh Deficiency	1,486,410	297,543	(1,685,102)	(3,574,016)	(4,514,778)	(6,423,383)	(8,552,383)	(11,061,130)	(11,618,063)	(12,791,992)	(13,791,814)

1. Relative to OPPD's new resources being available as planned.
2. Energy position is net of 261M load which is market based pricing.

While we strive to meet all load requests, high demand scenarios could outpace available capacity without supportive policy and infrastructure acceleration. At the pace and requested timeline of these new, very large service requests, and without additional capacity resources beyond those in service and planned, OPPD will face a deficiency in our ability to serve new large load requests between a few hundred and nearly two thousand megawatts over the next 10 years depending on which loads materialize. OPPD is using multiple solutions to address these prospective projects including creating processes for readiness requirements and financial commitments to provide clearer signals to both customer and utility.

Regarding the units planned for retirement/refuel: Provide an economic analysis estimating the net economic cost or revenue (including, but not limited to lost revenue opportunity, infrastructure costs, operating and maintenance expenses, etc.) comparing current retirement/refueling plans to a scenario where the units could run to the last year the units could operate as states in question 1.h.

OPPD recently analyzed net costs or savings comparing North Omaha Station plans for retirement/refueling versus maintaining current status quo. If OPPD were to place on hold its current plans for retirement/refueling for 5 years, it has the potential of net savings of approximately $36 million with potential retail revenue growth included by delayed retirement.

Please note that with the 5-year option, other resources would need to be online within that 5-year period to keep the expanded retail growth. If OPPD were to place on hold its current plans for retirement/refueling for 15 years, it could result in approximately $439 million in net savings with potential retail revenue growth included. Please note these assumptions are based on the current status of federal laws and regulations, including but not limited to EPA regulations, which are subject to future changes.

ATTACHMENT B

Omaha Public Power District

October 1, 2025

Senator Jared Storm
District 23
State Capitol
PO Box 94604
Lincoln, NE 68509

Sent via email

Dear Senator Storm:

Thank you for your follow-up questions. You will find the questions with answers and information enclosed for your review.

We appreciate the opportunity to provide additional information. As a public utility, we are committed to transparency, strategic alignment, and serving the best interests of our customer-owners, while maintaining system reliability and economic growth.

Sincerely

Sincerely,
Javier Fernandez
President & CEO, Omaha Public Power District

Omaha Public Power District

LR234 Follow-up Questions for OPPD

1. **Between these two, which is most important to your board – prioritizing sustainability, retirement of carbon resources, and net-zero plans, or using all resources available for load growth and economic development?**

   That is a strategic question that ultimately lies with our Board of Directors. OPPD follows 15 strategic directives, which are approved through the OPPD Board of Directors, to carry out District objectives. Among the strategic directives focused on sustainability and economic development, no single directive has been explicitly prioritized over any other by our Board of Directors.

2. **Does your utility have to shut down any of your fossil fuel generating units in order for you to achieve your net zero goal/plan?**

   Under our 2014 board resolution, OPPD has identified the retirement and refueling of its North Omaha units.

   For context, OPPD's Pathways to Decarbonization study identified a scenario to retire/refuel Nebraska City units 1 and 2 to achieve the 2050 net zero goal. To date, the Board has not adopted a resolution to retire or refuel Nebraska City Station.

3. **How much is a 1% rate increase for your utility?**

   In 2025, we estimate it at approximately $15 million.

4. **I have heard you say that solar is the quickest to build. How fast can you build a solar farm? Please factor in the time to get the local zoning issues as well.**

   In our experience, it takes approximately 18 months to construct a solar facility, provided that planning and zoning are finalized and reliable and all necessary equipment has been secured. While this is the quickest generation technology to construct currently, the timeline can stretch for reasons that may include supply chain disruptions and zoning issues. Zoning issues can take several months to

several years depending upon county approvals. Some counties have effectively prohibited solar facilities through restrictive zoning requirements.

5. **Is there any scientific evidence that shows the emissions from your North Omaha Station (NOS) are making people sick in the neighborhoods near the plant?**

   OPPD is unaware of any such evidence related to this site.

   Emissions from the facility are strictly regulated at both the state and federal level and include stringent air quality standards called National Ambient Air Quality Standards, or NAAQs. These standards are designed to protect public health with an adequate margin of safety and to protect public welfare from any known or anticipated adverse effects. The standards are also set after a lengthy, public scientific review process that includes comprehensive scientific and risk exposure assessments and expert review. Omaha, including the area around our North Omaha facility, complies with all national ambient air quality standards.

6. **Are you meeting all your regulatory requirements on emissions from your coal plants? Are you reducing emissions?**

   Yes. OPPD operates within our permitted emission limitations. Additionally, it should be noted that North Omaha Station units four and five both hold Low Emitter Status for those emissions regulated under the Mercury and Air Toxic Standards (MATS).

   We have reduced fleetwide CO2 emissions by 40% from a 2013 peak; fleetwide SO2 emissions by 50% from a 2015 peak; and fleetwide NOx emissions by 40% from 2010. Also, mercury has been reduced by more than 90% at Nebraska City and North Omaha due to the installation of Activated Carbon Injection control equipment in 2016 to be compliant with the new Mercury and Air Toxic Standards (MATS).

7. **Why are you shutting down NOS if we need more generation?**

   We're following a plan to refuel and retire North Omaha Station that was approved by our board of directors in 2014 and was primarily based on environmental

considerations. We extended North Omaha Station's retirement timeline in the past when circumstances required it, such as system reliability concerns, or when regulatory issues or other requirements arose.

OPPD is actively working to address unprecedented load growth and faces execution and timing challenges with local planning and zoning (permitting), supply chains, workforce availability, and regulatory approvals to bring new electric supply to the market.

8. **Do you have potential customers waiting for power today?**

Yes. We're actively working with prospective customers, and we anticipate receiving approximately 2,000 megawatts of new customer requests over the next 10 years. That includes prospects working through OPPD's process to bring their operations online. The size and scale of the requests we are fielding today range from tens of megawatts to hundreds of megawatts of new load per project.

OPPD is undergoing an Integrated Resource Plan in 2026. OPPD's forecasted load growth is currently estimated to be approximately 1,000 megawatts over the next 10 years.

To put that in perspective, just ten years ago we saw load growth that was relatively flat. From 2022 to 2023, we saw significant increases in customer demand. The scale and pace of today's requests are incredible, not just for OPPD, but for utilities across the country.

9. **Would it make it harder to serve your load if you shut down NOS?**

Yes. In a high load-growth environment such as we are in now, retiring any generation makes it more difficult to serve existing and new customers.

10. **How many jobs would be lost if you shut down your NOS?**

A reduction of workforce in approximately 25 positions would follow fuel conversion. That number includes both OPPD and contract personnel.

11. In your professional opinion, should OPPD shut down your NOS at this time?

There are positive economic and reliability benefits to maintaining North Omaha Station operations on both coal and natural gas, as it is currently operating. That being said, there are also environmental factors to be considered. As for my professional opinion, I respectfully must reserve that for our publicly elected board that has hired me to provide direction and implementation of the board's strategic goals and policies.