

IN THE DISTRICT COURT FOR PHELPS COUNTY, NEBRASKA

CITIZENS OPPOSED TO)	
THE MERGER, a Nebraska)	
non-profit corporation,)	Case No. CI22- ____
)	
Plaintiff,)	
)	
v.)	
)	COMPLAINT
CENTRAL NEBRASKA)	
PUBLIC POWER AND)	
IRRIGATION DISTRICT, a)	
Nebraska Public Corporation)	
and Political Subdivision,)	
)	
Defendant.)	

Citizens Opposed to the Merger, a Nebraska non-profit corporation, for its complaint against Central Nebraska Public Power and Irrigation District, a Nebraska Public Corporation and Political Subdivision, states and alleges as follows:

PARTIES

1. Citizens Opposed to the Merger (hereinafter “COM”) is a mutual benefit, non-profit corporation duly organized pursuant to the laws of the State of Nebraska.

2. Central Nebraska Public Power and Irrigation District (hereinafter “CNPPID”) is a Nebraska Public Corporation and Political Subdivision whose address is 415 Lincoln Street, Holdrege, Nebraska.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to NEB. REV. STAT. § 25-21,149 (REISSUE 2016) and NEB. REV. STAT. § 24-302 (REISSUE 2016).

4. Venue in this district is proper under NEB. REV. STAT. § 25-403.01.

FACTUAL ALLEGATIONS

5. CNPPID is a public power and irrigation district organized and operating pursuant to the laws of the State of Nebraska.

6. CNPPID is engaged in the business of owning and operating irrigation works and generating electric power in the counties of Dawson, Gosper, Kearney, Lincoln, Keith, and Phelps.

7. COM is a mutual benefit, non-profit corporation the members of which are engaged in the business of agriculture in the counties of Dawson, Gosper, Kearney, Lincoln, Keith, and Phelps.

8. COM Members' businesses utilize and rely upon irrigation water for their survival.

9. CNPPID is responsible for protecting, managing, and delivering the irrigation water utilized and relied upon by COM's Members.

CAUSE OF ACTION

(Nebraska Open Meetings Act, Neb. Rev. Stat. §§ 84-1407 *et seq.*)

10. COM hereby incorporates the allegations set forth in paragraphs 1-9, above, as if fully set forth herein.

11. CNPPID is a “public body” required to comply with the Nebraska Open Meetings Act (hereinafter “Act”). NEB. REV. STAT. § 84-1409(1)(a).

12. The purpose of the Act is to ensure that public policy is formulated at open meetings of the bodies to which the law is applicable. *Dossett v. First State Bank*, 261 Neb. 959 (2001).

13. In Nebraska, the formation of public policy is public business, which may not be conducted in secret. *Schauer v. Grooms*, 280 Neb. 426 (2010); NEB. REV. STAT. § 84-1408.

14. The Open Meetings Act should be broadly interpreted and liberally construed to obtain the objective of openness in favor of the public. *Schauer v. Grooms*, 280 Neb. 426 (2010).

15. For purposes of the Open Meetings Act, a “meeting” means: “all regular, special, or called meetings, formal or informal, of any public body for the purposes of briefing, discussion of public business, formation of tentative policy, or the taking of any action of the public body.” NEB. REV. STAT. § 84-1409(2).

16. On October 24, 2022, the Board of Directors of CNPPID held a joint special meeting with the Board of Directors of Dawson Public Power District (hereinafter the “October 24 Meeting”).

17. During the October 24 Meeting, the Board of Directors for CNPPID voted to adopt a “Plan of Consolidation” with Dawson Public Power District.

18. The Plan of Consolidation results in the merger of CNPPID and Dawson Public Power District, an extremely significant piece of public policy.

19. The Plan of Consolidation directly impact the interests of COM's Members.

20. During the October 24 Meeting, CNPPID did not make public all the information upon which Board's vote to approve was based.

21. There was virtually no presentation of information by CNPPID regarding the contents of the Plan of Consolidation for consideration by the Board of Directors or public during the October 24 Meeting.

22. There was no debate or discussion amongst the members of the CNPPID Board of Directors during the October 24 Meeting regarding the Plan of Consolidation.

23. Following public comment, the CNPPID Board of Directors, without further discussion, immediately voted to adopt the Plan of Consolidation at the October 24 Meeting.

24. The agenda for the October 24 meeting did not adequately inform the public the CNPPID Board of Directors would be considering approval of the Plan of Consolidation.

25. Upon information and belief, CNPPID had already agreed to and approved the terms of the Plan of Consolidation before the October 24 Meeting.

26. On August 31, 2022 the CNPPID Board of Directors held a joint meeting with the Dawson Public Power District's Board of Directors.

27. Upon information and belief, during the August 31, 2022 meeting, the Boards of two entities improperly used joint closed

sessions to discuss public business including, but not limited to, the District Integration Study.

28. Upon information and belief, during a joint closed session on August 31, Board members were asked to sign a joint Non-Disclosure Agreement to discuss the merger.

29. Upon information and belief, CNPPID improperly used a joint closed session with Dawson Public Power District to discuss matters of public business during the August 31 meeting.

30. Upon information and belief, the information CNPPID received and discussed during joint closed sessions with Dawson Public Power District on August 31 influenced the Board of Directors to approve the Plan of Consolidation, yet this information was never made public.

31. On September 6, 2022, the CNPPID Board of Directors held a regular meeting.

32. During the September 6 meeting, the Manager of CNPPID provided the Board with “an overview” of a “Consolidation Agreement” and a “general timeline” for its implementation.

33. Following the Manager’s overview and general summary of the Consolidation Agreement, the Board of Directors approved the Consolidation Agreement without further discussion.

34. The agenda for the September 6 meeting did not inform the public the CNPPID Board of Directors would be considering approval of the Consolidation Agreement.

35. During a regular meeting on October 3, 2022 the Manager of CNPPID informed the Board of Directors that “negotiation

committees” from CNPPID and Dawson Public Power District met on or about September 30, 2022 and agreed to terms for consolidation.

36. CNPPID did not provide notice of a September 30 meeting.

37. The CNPPID Board of Directors then entered executive session to discuss the details of the already agreed-upon terms during the October 3 meeting.

38. The Manager of CNPPID had, in fact, executed a “Consolidation Agreement” with the Manager of Dawson Public Power District weeks before September 30, 2022. The Consolidation Agreement was dated September 12, 2022.

39. CNPPID did not provide notice of a September 12 meeting.

40. The public, including COM’s Members, did not receive proper notice of the negotiation and execution of the Consolidation Agreement by CNPPID.

41. Many of the material terms of the October 24 Plan of Consolidation had already been agreed to through the September 12 Consolidation Agreement.

42. Upon information and belief, throughout the process of negotiating the terms of the Consolidation Agreement and Plan of Consolidation, CNPPID improperly used closed sessions to discuss information which was relied upon by the Board of Directors to support its formation of public policy.

43. Upon information and belief, such information was never made public.

44. Such information was shielded by a joint Non-Disclosure Agreement entered into by the Boards of CNPPID and Dawson Public Power District.

45. The Plan of Consolidation states that the merger “will best serve the interest [CNPPID and Dawson Public Power Districts] respective customers, rate payers, and residents of their chartered territories, and the State of Nebraska.”

46. Matters which constitute the public’s business are to be determined with transparency through open meetings. NEB. REV. STAT. § 84-1410.

47. Upon information and belief, in response to inquiries made by COM’s Members as to why CNPPID favored merger, members of the Board of Directors replied, “if you only knew what I knew.”

48. The Open Meetings Act requires CNPPID to make the public aware of the basis for its decisions.

49. CNPPID did not fully inform the public of the basis for its approval of the Consolidation Agreement and Plan of Consolidation.

50. How CNPPID acted to approve and adopt the Consolidation Agreement and Plan of Consolidation constitutes the formation of public policy in secret and thereby violated the Open Meetings Act.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully request the following relief:

1. Declare CNPPID's approval and adoption of the Consolidation Agreement violated the Open Meetings Act;
2. Declare CNPPID's approval and adoption of the Consolidation Agreement void;
3. Declare CNPPID's approval and adoption of the Plan of Consolidation violated the Open Meetings Act;
4. Declare CNPPID's approval and adoption of the Plan of Consolidation void;
5. Preliminarily enjoin CNPPID from taking any actions in furtherance of the Consolidation Agreement or Plan of Consolidation until resolution of this matter;
6. Tax all costs of this action to CNPPID;
7. Award COM reasonable attorney fees in connection with this action as provided for by Nebraska law;
8. Such other relief as this Court deems just and equitable.

Dated this 2nd day of December 2022.

CITIZENS OPPOSED TO THE MERGER, a
Nebraska non-profit corporation,

Plaintiff.

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