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FROM: Michael S. Degan

EMPL NO.: 6422

SECRETARY: Nancy J. Johnson

RE: In the Matter of the Central Nebraska Public Power & Irrigation District

CLIENT NUMBER: 1797501-1		
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Operator: DEC 05 2022

**STATE OF NEBRASKA
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE)	PETITION FOR
CENTRAL NEBRASKA PUBLIC)	CHARTER AMENDMENT 6
POWER AND IRRIGATION DISTRICT'S)	
PETITION TO AMEND ITS CHARTER)	
)	
IN THE MATTER OF THE)	
DAWSON PUBLIC POWER DISTRICT'S)	
PEITITION FOR DISSOLUTION)	

PROTEST OF CITIZENS OPPOSED TO THE MERGER, ET AL.

Citizens Opposed to the Merger, a Nebraska non-profit corporation, Greg Heiden, Linda Heiden, Richard Waller and Susan Waller (hereinafter collectively referred to as "Protestants"), hereby submit this Protest to the Petition to Amend ("Petition") filed by the Central Nebraska Public Power and Irrigation District (hereinafter "Central" or "Petitioner") pursuant to Neb. Rev. Stat. § 70-663(1) and 285 NAC § 3-006. In support of its Protest, Citizens states the following:

1. Citizens Opposed to the Merger ("Citizens") is a mutual benefit association incorporated as a Nebraska non-profit corporation. Its members consist exclusively of Nebraska residents.
2. Citizens currently has approximately fifty (50) members and maintains its principal place of business in Kearney, Buffalo County, Nebraska.
3. Citizens was formed and is managed by persons owning or leasing irrigated land within Central's chartered territory receiving irrigation service from Central. Citizens was formed to represent the mutual interests of its members regarding the prosed merger and is authorized by its bylaws to protest the merger in these proceedings.

4. Greg Heiden and Linda Heiden (the “Heidens”) are Nebraska residents owning irrigated farmland in Phelps County, Nebraska. The land owned by the Heidens has surface water appropriation rights attached and receives surface water irrigation service from Central.

5. Greg Heiden is a member and director of Citizens.

6. Richard Waller and Susan Waller (the “Waller”) are Nebraska residents owning irrigated farmland in Phelps County, Nebraska, both individually and through wholly owned entities. The land owned by the Wallers has surface water appropriation rights attached and receives surface water irrigation service from Central.

7. Richard Waller is a member of Citizens.

8. Protestants, individually and Citizens on behalf of its constituent members, have standing to protest and oppose the Petition pursuant to Neb. Rev. Stat. § 70-663.

9. Protestants oppose and protest the Petition because: (i) the proposed amendments are contrary to and not in the best interests of Central; (ii) the proposed amendments will jeopardize and impair the rights of Protestants; (iii) the proposed amendments will jeopardize and impair the rights of rural users of irrigation water service provided by Central; and (iv) the proposed amendments will jeopardize and impair the rights of creditors.

10. In addition to the objections set forth above, Protestants oppose and protest the Petition and proposed amendments for each of the following reasons:

- a. The chartered territory described in the Petition includes areas that will not receive fifty percent of retail or wholesale power requirements from the combined district;
- b. The chartered territory described in the Petition includes areas that will not receive irrigation service from the combined district;
- c. The proposed amendments described in the Petition would prejudice rural users of irrigation water service provided by Central;

- d. The proposed combined district would not serve public convenience and welfare as required by Neb. Rev. Stat. § 70-607;
- e. The exercise of the powers of the proposed combined district would nullify, conflict with, and materially affect the existing powers, duties and responsibilities of Central in violation of Neb. Rev. Stat. § 70-662;
- f. The chartered territory of the proposed combined district fails to comply with the requirements of Neb. Rev. Stat. § 70-604.01;
- g. The operating area of the proposed combined district fails to comply with the requirements of Neb. Rev. Stat. § 70-604.02;
- h. The proposed amendments are unnecessary because the purported benefits claimed by the Petition can be accomplished through alternate means;
- i. The proposed amendments to Central's charter would jeopardize or impair the rights of the creditors;
- j. The proposed amendments would unfairly obligate irrigation customers who will not receive electricity from the combined district to guaranty debts previously incurred by Dawson Public Power District;
- k. The Petition fails to establish that the proposed merger would serve the public convenience and necessity without unnecessary duplication of facilities or operations;
- l. The Petition and proposed amendments fail to comply with the requirements of Neb. Rev. Stat. § 70-604;
- m. The Petition and proposed amendments fail to comply with the requirements of Neb. Rev. Stat. § 70-604.01;
- n. The Petition and proposed amendments fail to comply with the requirements of Neb. Rev. Stat. § 70-604.02;
- o. The Petition and proposed amendments fail to comply with the requirements of Neb. Rev. Stat. § 70-604.04;
- p. The Petition and proposed amendments fail to comply with the requirements of Neb. Rev. Stat. § 70-662;
- q. Central's resolution to approve the merger is invalid and void due to Central's violation of the Nebraska Open Meetings Act, Neb. Rev. Stat. § 84-1407 *et seq.*
- r. Central's resolution to approve the merger is invalid and void due to Central's failure to timely fill its board vacancy in violation of Neb. Rev. Stat. § 70-615(2);

- s. The proposed amendments fail to comply with statutory requirements governing irrigation districts, Neb. Rev. Stat. § 46-101 *et seq*; and
- t. The Board lacks jurisdiction to determine whether the proposed amendments comply with statutory requirements governing irrigation districts.

11. For each of the foregoing reasons, the merger and proposed amendments set forth in the Petition to Amend are not in the best interests of Central and would jeopardize and impair the rights of Protestants and all rural irrigation customers of Central.

PRAYER FOR RELIEF

WHEREFORE, Protestants respectfully request the Board to deny the Petition to Amend, disallow the proposed amendments to Central's charter, deny the proposed merger, and tax all costs of the proceedings to Petitioner.

PETITION IN INTERVENTION

In the event the Nebraska Power and Review Board ("Board") determines that Protestants lack standing pursuant to Neb. Rev. Stat. § 70-663(1), Protestants petition to intervene in these proceedings in the interests of justice pursuant to Neb. Rev. Stat. § 84-912.02 and 285 NAC § 3-003.01e. For the reasons state above, Protestants each have a direct interest in the proposed merger because the legal rights, duties, privileges, immunities, and other legal interests will be substantially affected by merger if approved for the reasons outlined herein.

Respectfully Submitted this 5th day of December, 2022.

CITIZENS OPPOSED TO THE MERGER, Inc.,
a Nebraska Nonprofit Corporation, GREG HEIDEN,
LINDA HEIDEN, RICHARD WALLER and SUSAN
WALLER Protestants.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 5th day of December, 2022, a true and correct copy of the above and foregoing served via facsimile and by U.S. Mail, first-class, postage prepaid on the Nebraska Power Review Board and sent via electronic mail, to the last-known address of the following:

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s/ Michael S. Degan
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