

Nebraska Public Service Commission
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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service) Application No. BEAD-1
Commission, on its own Motion to implement the)
Precision Agriculture Infrastructure Grant Act.)

REPLY COMMENTS OF REINKE MANUFACTURING CO., INC., THE HAMILTON TELEPHONE COMPANY AND NEBRASKA CENTRAL TELEPHONE COMPANY

Reinke Manufacturing Co., Inc. (“Reinke Manufacturing”), The Hamilton Telephone Company and Nebraska Central Telephone Company (collectively the “Telcos”) submit these Reply Comments addressing certain of the contentions raised in the comments filed by other interested parties in response to the Nebraska Public Service Commission (the “Commission”) Order Opening Docket and Seeking Comment entered on August 16, 2022 (the “Order”), to implement the Nebraska Precision Agriculture Infrastructure Grant Act (the “Act”).¹ Reinke Manufacturing and the Telcos appreciate the opportunity to provide these Reply Comments.

DISCUSSION

A. Entities Eligible to Receive Grants

As stated in the Act and in the Order, one of the purposes of the Precision Agriculture Infrastructure Grant Program (“PRO-AG”) is to “[p]ropel Nebraska agricultural producers to lead the nation in precision agriculture connectivity, sustainability, traceability, and autonomy to accelerate rural economic development.”² As stated in the “Background” section of the Comments filed by Reinke Manufacturing and the Telcos, Reinke Manufacturing is a Nebraska-based manufacturer that regards itself as an “agricultural producer” based upon its design and

¹ *Neb. Rev. Stat. § 86-1401 et seq.*

² *Neb. Rev. Stat. § 86-1403(1)(a)* and Order at 1.

manufacture of irrigation systems that are critical to production agriculture in Nebraska and throughout the world.³

The Comments filed by the Nebraska Agriculture Leaders Working Group assert that “agricultural producer” as such terms are used in the Act should be defined as provided in 7 C.F.R. § 4280.103 as “an individual or entity directly engaged in the production of agricultural products.”⁴ However, the Act provides no definition for the terms “agricultural producer.” Section 86-1402 provides definitions for certain terms used in the Act, however, no definition of “agricultural producer” is included. Furthermore, Section 86-1403(1)(b) includes definitions of the terms “farm sites” and “unserved areas” by cross references to other existing statutory sections. Clearly, had the Legislature intended for the definition provided in 7 C.F.R. § 4280.103 to define “agricultural producer” for the purposes of the Act, it would have expressly so provided in the Act. But the Legislature *did not do so*.

Reinke Manufacturing’s irrigation systems improve soil health and the judicious use of water resources through the utilization of water management tools and sensors. As such, Reinke Manufacturing’s irrigation systems and technologies promote and serve the Act’s purposes to advance precision agriculture sustainability and to accelerate rural economic development in this State. As such, Reinke Manufacturing should be eligible to apply for and to receive grants when available pursuant to the Act and the Commission’s guidelines.⁵

³ See, Comments of Reinke Manufacturing and the Telcos, pp. 1-2 (Sept. 30, 2022) (the “Reinke/Telcos Comments”).

⁴ See, Nebraska Agricultural Leaders Working Group Comments, p. 3 (Sept. 30, 2022).

⁵ Additional analysis regarding Reinke Manufacturing’s eligibility to apply for and to receive grants provided pursuant to the Act is set forth in the Reinke/Telcos Comments, pp. 4-5.

B. Funding Sources

In their Comments, Reinke Manufacturing and the Telcos provided an analysis to support the conclusion that funding for PRO-AG is an eligible use of funds provided through the Broadband Equity, Access, and Deployment Program (“BEAD”) and the Notice of Funding Opportunity (“NOFO”) released by the National Telecommunications and Information Administration (“NTIA”) for the BEAD program.⁶ The Comments of the Nebraska Agricultural Leaders Working Group support the conclusion that the purposes of PRO-AG are allowable uses of BEAD funding, subject to specific non-allowable uses of BEAD funding set forth in BEAD and the NOFO.⁷ Similarly, the Comments of the Nebraska Rural Broadband Alliance (“NRBA”) and of Paige Wireless support this conclusion.⁸

Notwithstanding the foregoing consensus among the commenters, the Commission may want to provide the NTIA with information regarding the Act’s PRO-AG funding directives to obtain further clarity as to whether any potential obstacles exist under the terms of the NOFO to the use of BEAD funds for projects as enumerated in the Act. If NTIA declares that the funding required to be distributed pursuant to the Act does not fall within BEAD acceptable uses, the Commission should revisit the funding source for PRO-AG with the Legislature so that the Legislature can determine whether to amend the Act to permit other funding sources for grants pursuant to PRO-AG.

⁶ *Id.*, pp. 5-6.

⁷ *See*, Nebraska Agricultural Leaders Working Group Comments, pp. 4-5.

⁸ *See*, NRBA Comments, pp. 3-5 and Paige Wireless Comments, p. 3 (Sept. 30, 2022).

C. Grant Priorities

In their Comments, Reinke Manufacturing and the Telcos strongly suggest that it would be reasonable for the Commission to adopt the Nebraska Broadband Bridge Program (the “NBBP”) Guide for Program Year 2022 to govern the competitive bidding process and other administrative aspects relating to PRO-AG.⁹ This position is supported by two other commenters.¹⁰

D. Match Percentage and Grant Amounts

The positions of the commenters regarding whether the Commission should require matching funds to be provided by a grant applicant varied widely. CTIA and Paige Wireless recommended that matching funds not be required.¹¹ However, NRBA and the Nebraska Agricultural Leaders Working Group both recommended that applicants be required to provide matching funds.¹² Reinke Manufacturing and the Telcos reiterate their recommendation that the Commission should not mandate a matching fund requirement for PRO-AG project, but should grant preference to PRO-AG project proposals in which the applicant offers to provide some percentage of matching funding. The procedures that have been implemented in the NBBP to award additional points for competitive application scoring on a sliding scale basis in return for

⁹ See, Reinke/Telcos Comments, pp. 6-8; see also, *In the Matter of the Nebraska Public Service Commission, on its own motion, to administer the Nebraska Broadband Bridge Program in the 2022 program year*, Application No. C-5368, Order (May 10, 2022) and attachments.

¹⁰ See, Paige Wireless Comments, p. 3; and Nebraska Agricultural Leaders Working Group Comments, p. 6.

¹¹ See, CTIA Comments, p. 4; and Paige Wireless Comments, p. 4.

¹² See, NRBA Comments, p. 6 (recommending a minimum 25% match); and Nebraska Agricultural Leaders Working Group Comments, p. 8 (recommending mirroring of the NBBP matching requirements).

increased match percentages provided by applicants seem reasonable for use in connection with PRO-AG grants.

Regarding the Commission's question as to whether a maximum amount of support to be awarded for any single project should be established, commenters also offered differing opinions. The Nebraska Agricultural Leaders Working Group recommended a maximum grant amount of \$250,000 per single project.¹³ CTIA, Paige Wireless and NRBA did not comment on this issue. Reinke Manufacturing and the Telcos reiterate the recommendation in their Comments that the Commission should not establish a maximum single project funding amount at least in the first year of grant applications. If the level of demand for PRO-AG grant funding is large, it may be advisable to set a maximum project funding amount for subsequent years.

E. Completion of Grant Projects and Program Schedule

Project applications submitted pursuant to Section 86-1404(2)(a) should be subject to the completion requirements specified in Section 86-1405. Project applications submitted pursuant to Section 86-1404(2)(b), (c) or (d) should be considered complete as soon as the deliverable that is the subject of the application is available for use.

Reinke Manufacturing and the Telcos reiterate the positions stated in their Comments relating to Program schedule.¹⁴

¹³ Nebraska Agricultural Leaders Working Group Comments, p. 9.

¹⁴ See, Reinke/Telcos Comments, pp. 9-10.

CONCLUSION

As stated above, Reinke Manufacturing and the Telcos appreciate the opportunity to provide these Reply Comments in response to the Order and look forward to continuing their participation in this proceeding.

Dated: October 28, 2022.

Respectfully submitted,

Reinke Manufacturing Co., Inc., The Hamilton
Telephone Company and Nebraska Central
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 28th day of October 2022, an electronic copy of the foregoing Reply Comments were delivered to:

Nebraska Public Service Commission

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Also, electronic copies of the foregoing Reply Comments were electronically delivered to the other parties to this docket.

Paul M. Schudel
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