

PLEASE TYPE OR PRINT CLEARLY

EL96-011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

RECEIVED JUN 13 1996 SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

COMPLAINT

Complainant(s): (The party filing the complaint)		Respondent(s): (The person or Company complained against)	
Name	Redney + Ken Johnson	Contact Person	Tom Ploster
Address	4225 Mary Drive	Company	Black Hills Electric Coop
City, State, Zip	Rapid City SD 57702	Address	Po Box 112
Work Phone	394-3300	City, State, Zip	Custer, SD 57730
Home Phone	348-5408	Work Phone	673-4461
Cellular Phone	.	Cellular Phone	
Fax	341-3446	Fax	673-3147

If the Complainant is represented by an attorney, please list the attorney's name, address, telephone number and fax number below: If Complainant is not represented by an attorney, please leave blank: 341-2400 731 St. Joseph St Jerry D Johnson of Banks Johnson + Colbath Rapid City SD 57701

The facts giving rise to my complaint:

Please see Exhibit A.

NOTE: Please attach additional pages, if necessary, to explain your situation. Also enclose copies of any bills or other documents which may pertain to your complaint.

RESOLUTION REQUEST

I ask that the Public Utilities Commission grant the following relief. (What do you think the Commission should do to solve this problem?)

Blank lines for resolution request details.

NOTE: Please attach any additional pages, if necessary.

VERIFICATION

Signature must be witnessed by a notary public.

Redney + Ken Johnson Ken Johnson 5-31-96 Complainant's Signature Date

State of South Dakota) County of Pennington) SS

On this 31 day of May 1996, before me personally came and appeared Redney + Ken Johnson + Ken Johnson known to me to be the individual described herein and who executed the foregoing instrument, and who duly acknowledged to me that he/she executed same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Auburn A Wierzbicki Signature of Notary Public

(Sic) My commission expires: 7/27/97

The facts giving rise to my complaint:

Rodney and Keri Johnson, as well as Dan and Glenda Adams, originally purchased a 40-acre parcel of land. That land was then replatted into two 20-acre parcels. The parcel owned by the Johnsons is described as Lot 1 of Eagles Nest Subdivision. The parcel owned by the Adams is described as Lot 2 of Eagles Nest Subdivision. In an effort to obtain electrical service for those parcels, contact was made with Black Hills Electric Coop around the first part of March 1996 when Rod and Keri Johnson met with Tom Plooster at the property. Mr. Plooster explained the standard policy of Black Hills Electric Coop as follows: Black Hills Electric Coop would absorb \$4,000 for each new service on a residential dwelling. If both parties were to develop at approximately the same time, there would be an \$8,000 allowance for the new installations. If the installation costs were in excess of a total of \$8,000 for both homes, the property owner would be expected to pay the excess amount.

At this first meeting, Mr. Plooster was shown the planned locations of the two homes. The property was then walked and a route picked for the placement of an overhead power line to serve those home sites. At that time, Mr. Plooster was also advised that the final stages of replating the land would be finalized in the next few weeks. Mr. Plooster asked to be contacted closer to the start of development so that the actual location of the overhead power line could be finalized.

Upon completion of the replating, the undersigned met with Mr. Plooster on April 4, 1996, at 10:30 a.m., to discuss proceeding with the installation of the overhead power line. At that time, Mr. Plooster indicated that there would be no need for any cash deposit or cost to either party beyond the \$8,000 allowance provided that we clear a 10-foot centerline pathway through the tree line and did some development on the property. We agreed to make development improvements, including the clearing of a 10-foot centerline pathway, and requested that Mr. Plooster place the sites on the schedule for the installation of the overhead power line.

It was at this meeting that Mr. Plooster for the first time presented to us two documents: the first was a power easement form, and the second was a state electrical inspection form. Mr. Plooster completed both forms and asked that we sign them. It was noted that the power easement form contained a statement which allowed Black Hills Electric Coop to automatically extend power to any potential customer surrounding these parcels. The form further indicated that the power easement was for the entire 40 acres (two 20-acre parcels) of land. We expressed concern to Mr. Plooster over granting this type of an easement since it allowed Black Hills Electric Coop complete discretion as to where it felt appropriate to place such an easement across the property. Mr. Plooster was advised that the 40 acres to the west of this property were for sale and that we were concerned with the aesthetic impact of an overhead power line being placed across the hay meadow on our property and in front of the picture windows of our homes. We then inquired as to the possibility of granting only an underground easement to service the property to the west. Mr. Plooster advised that if we did not want the whole 40 acres subject to an easement, then it was up to us to have a specific easement dedicated through a land surveyor

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51

at our expense. Further, Mr. Plooster advised that Black Hills Electric Coop would not entertain any ideas of underground power to the property to the west. In rereading the easement document, it was noted that a provision immediately following the legal description stated that a power line could be extended in likeness to the one placed to our homes. Therefore, we asked Mr. Plooster about the possibility of placing underground power to our home sites in lieu of an overhead power line which would then require that any easement to the west be limited to an underground line as well. Mr. Plooster strongly disagreed with this idea and proceeded to withdraw from the discussion of underground power and any easement to the west. He stated that he would not make any adjustments to Black Hills Electric Coop's standard easement form and that underground power was not cost effective. He then stated that there was no need to proceed with the power installation to our lots until we signed the easement form. Mr. Plooster then ended the meeting.

Mr. Plooster was contacted once again, but he indicated he was not going to put any more time into our electrical needs until he was given the easement he wanted. He once again indicated that he would not consider any underground power easement for the property to the west. Rod Johnson then called the general manager at Black Hills Electric Coop, Dan Hutt. Mr. Hutt indicated that if an underground power easement would go to the west the cost differential for what would be expended in placing overhead lines and the cost of an underground line would have to be paid by us and not the property owner to the west.

We feel that our concerns are valid and have offered a reasonable alternative to an easement for an overhead electrical line to service the property to the west. In talking with an attorney, Jerry D. Johnson, of Banks, Johnson, & Colbath, in Rapid City, it appears that Black Hills Electric Coop is violating its duty under SDCL 49-34A-2 to provide *adequate, efficient, and reasonable service*. Further, they are violating SDCL 49-34A-3 which states that "no public entity may, as to rates or service, ... or subject any person to any unreasonable prejudice or disadvantage." We feel that Black Hills Electric Coop is placing us at an unreasonable disadvantage by conditioning the provision of electrical service to our property with the requirement that we grant an overhead line easement to the property to the west which could seriously damage the aesthetic value of our property. The Public Utilities Commission is requested to enter an order requiring Black Hills Electric Coop to provide us with service and that if an easement has to be provided in conjunction with that service, that it be an easement for underground power line the location of which is to be determined by us.

Rod and Keri Johnson
Dan and Glenda Adams

P. 05/05

FAX NO. 806 873 3147

BLACK HILLS ELECTRIC
MAY-10-96 FRI 12:43 PM

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For Sale

Johnson USFS Adams

USFS
potential
Service for Adams

existing
OH line

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USFS

USFS

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Box 112
Custer, S.D. 57730
Phone: (605) 673-4461
or 1-800-742-0085
Fax: (605) 673-3147

TO: Mr. William Bullard COMPANY: S.D. P.U.C.

FAX NUMBER: 605-773-3809 NUMBER OF PAGES, INCLUDING THIS PAGE: _____

FROM: Dan Hutt

RE: Rodney Johnson Complaint

DATE: 6/4/96

SPECIAL INSTRUCTIONS: _____

RETURN REPLY REQUESTED. Yes No



One of America's Consumer-Owned Rural Electric Systems

SENT BY: [Signature]



Black Hills Electric Cooperative, Inc.

P.O. Box 112
Custer, SD 57730
Telephone: 605/673-4461
Toll Free: 800/742-0085

June 4, 1996

Mr. William Bullard
SD Public Utilities Commission
State Capitol
Pierre SD 57501-5070

Re. Rodney Johnson Complaint

Dear Mr. Bullard:

I have enclosed a sketch of the properties impacted by the easement situation with Mr. Johnson. Since my letter to Steve Wegman on May 10, 1996, we have researched Pennington County regulations and existing platted easements on the involved properties. Although some of the counties we serve require platted easements on all interior property lines, Pennington County does not. However, prior to purchasing their 40 acres, Mr. Klontz and Ms. Zugich insisted upon an easement and access permit across the properties now owned by Mr. and Mrs. Adams and Mr. and Mrs. Johnson. At that time all three properties were owned by Vincent and Gail Baumgartner. The easement is recorded in Pennington County book 51, pages 2853-2856. The easement states: "This Agreement is binding upon the parties, legal heirs, executors and administrators, assigns, and successors in interest." Additionally it states: "Any transfer or conveyance of the real property described above shall transfer the easement established hereby pursuant to SDCL §43-25-30."

From the start Mr. Johnson has indicated that he does not want a power line located across the north end of his property. We have tried to work with him to arrive at an alternative solution which is acceptable to him, Mr. and Mrs. Adams, and the cooperative, while preserving the rights of Mr. Klontz and Ms. Zugich.

We have suggested that in lieu of utilizing the existing easement, Mr. and Mrs. Johnson grant the cooperative an easement with the right to extend at any suitable location preferred by them. After reviewing our suggestion, Mr. Johnson had two concerns. He insisted that Black Hills Electric Cooperative be responsible for the costs of surveying an alternative specific easement route and that the right to extend be limited to underground construction. He further insisted that he share no portion of the cost of underground construction across his property.

Before purchasing their property, Mr. Klontz and Ms. Zugich clearly understood that their 40 acre parcel was bordered on three sides by Black Hills National Forest and that access and utilities would be available only through a private corridor to the east. They purchased those rights to protect themselves from future threats of forced isolation.

Black Hills Electric Cooperative cannot unilaterally abrogate the easement and access rights they secured.

I have enclosed a standard Black Hills Electric Cooperative "Right-of-Way Easement" form for your review. We must have an executed Right-of-way Easement before we can legally enter lands to construct, operate, and maintain our electric facilities. We offer the following alternatives for the document:

- We will accept a signed easement from Mr. and Mrs. Johnson that has deleted the clause "with the further right to extend such line in similar form to serve additional consumers of Black Hills Electric Cooperative." However if the owners of the property bordering them on the west request power, we would have no choice but to utilize the existing easement along the north boundary of the Johnsons' and Adams' property. That power line would not be limited to underground construction.
- We will also accept an easement from Mr. and Mrs. Johnson which specifically defines the easement within their property as long as the easement states that they are responsible for all costs needed to define the specific limits they prefer, the route is reasonable, and as long as they do not limit the right to extend to only underground construction.
- We will also accept an easement from Mr. and Mrs. Johnson which specifically defines the easement within their property and limits any future extension to underground construction as long as the easement states that they are responsible for all costs needed to define the specific limits they prefer and the added costs of underground construction on their property and as long as the specified route is reasonable.
- We will accept the completed standard easement form.

We cannot extend the line to Mr. and Mrs. Adams' service location without an easement from them. We cannot extend the line from Mr. and Mrs. Adams' service location to Mr. and Mrs. Johnsons' property without an easement from Mr. and Mrs. Adams which also meets one of the alternatives listed above.

We have tried to work with Mr. Johnson to arrive at a solution which meets his preferences while preserving the rights of Mr. Kiontz and Ms. Zuglich. We have tried to remain flexible while protecting our members from costs associated with changes requested by Mr. Johnson for his sole benefit. We remain receptive to discussions of alternatives which meet those criteria.

Thank you

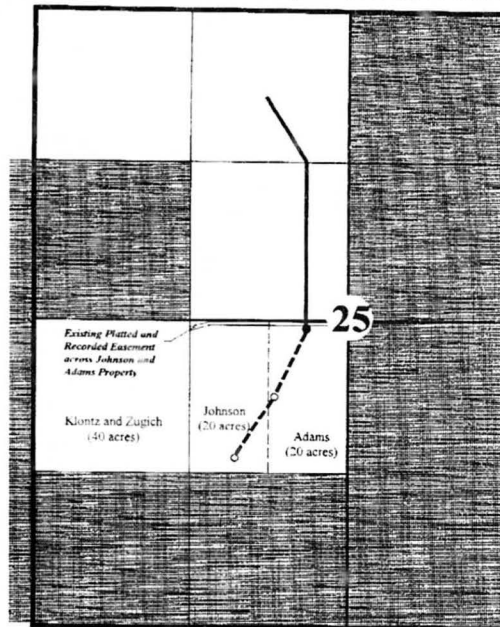
Sincerely,

BLACK HILLS ELECTRIC COOPERATIVE, INC.

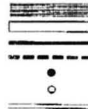
Daniel E. Hutt
Daniel E. Hutt
General Manager

Enclosures

Sketch of Section 25 (T1S, R6E, B.H.M.)



U. S. Forest Service
Private Property
Existing Overhead Power Line
Owners' Proposed Route of Overhead Power Line
Existing Electric Service
Proposed Electric Service
Existing Platted and Recorded Easement



RIGHT-OF-WAY EASEMENT
BLACK HILLS ELECTRIC COOPERATIVE, INC.
CUSTER, SOUTH DAKOTA

The undersigned _____
(married/unmarried) (husband/wife), for good and valuable consideration, the receipt whereof is hereby acknowledged, do (does) grant and convey to Black Hills Electric Cooperative, Inc., a Cooperative Corporation, of P.O. Box 112, Custer, South Dakota, 57730, and to its successors and assigns, the right, privilege, and easement to enter upon the lands of the undersigned, situated in the County of _____, State of South Dakota, and more particularly described as follows:

DESCRIPTION: _____ SECTION: _____ TWP. _____ RGE. _____

to construct, reconstruct, replace, operate and maintain on the above-described real property an underground or overhead distribution line, with the further right to extend such line in similar form to serve additional consumers of Black Hills Electric Cooperative, Inc., and provide ingress and egress to the easement area, and together with the right to extend to any other company the right to use jointly with Black Hills Electric Cooperative, Inc., any pole placed pursuant to the easement granted herein upon or adjacent to the aforescribed real property. The right-of-way shall extend ten (10) feet on either side of the center line of the distribution power line and all attachments; to further cut and trim trees and shrubbery to the extent necessary to keep them clear of said lines and poles and to further cut down all dead, weak, leaning or dangerous trees that may strike or interfere with the electrical facilities, and to enter upon all streets, roads or highways on, or, abutting said real property.

The undersigned covenant that they are the owners of the above-described real property and that said lands are free and clear of encumbrances and liens of any kind except those held by the following persons:

The undersigned further agree that all poles, wires or facilities, including any main service entrance equipment, installed on the above-described real property at the expense of Black Hills Electric Cooperative, Inc., shall remain the property of said Cooperative and be removable at the option of the Cooperative, upon termination of service to the premises.

DATED THIS _____ DAY OF _____, 19 _____.

Prepared by: BHCC Employee _____ Date: _____
Address: Black Hills Electric Cooperative, Inc., PO Box 112, Custer, SD 57730
Telephone: 605-673-4441

STATE OF SOUTH DAKOTA)
) SS

to construct, reconstruct, replace, operate and maintain on the above-described real property an underground or overhead distribution line, with the further right to extend such line in similar form to serve additional consumers of Black Hills Electric Cooperative, Inc., and provide ingress and egress to the easement area, and together with the right to extend to any other company the right to use jointly with Black Hills Electric Cooperative, Inc., any pole placed pursuant to the easement granted herein upon or adjacent to the aforescribed real property. The right-of-way shall extend ten (10) feet on either side of the center line of the distribution power line and all attachments; to further cut and trim trees and shrubbery to the extent necessary to keep them clear of said lines and poles and to further cut down all dead, weak, leaning or dangerous trees that may strike or interfere with the electrical facilities, and to enter upon all streets, roads or highways on, or, abutting said real property.

The undersigned covenant that they are the owners of the above-described real property and that said lands are free and clear of encumbrances and liens of any kind except those held by the following persons:

The undersigned further agree that all poles, wires or facilities, including any main service entrance equipment, installed on the above-described real property at the expense of Black Hills Electric Cooperative, Inc., shall remain the property of said Cooperative and be removable at the option of the Cooperative, upon termination of service to the premises.

DATED THIS _____ DAY OF _____, 19 _____.

Prepared by: BHCC Employee _____ Date: _____
Address: Black Hills Electric Cooperative, Inc., PO Box 112, Custer, SD 57730
Telephone: 605-673-4441

STATE OF SOUTH DAKOTA)
) SS
COUNTY OF _____)

On this the _____ day of _____, 19 _____, before me, the undersigned, a Notary Public, within and for said County and State personally appeared _____, described in and who executed the foregoing instrument and who acknowledged that they executed the foregoing instrument for the reasons therein contained.

(SEAL)

Notary Public - South Dakota

My Commission Expires: _____ (Month/Day/Year)

To: Public Utilities Commission
Mr. Steve Wegman
State Capitol
Pierre, SD
57501-5070

Date: 8-15-96

RE: Electrical power
installation.

Dear Mr. Wegman

The situation between Black Hills Electric Cooperative and myself appears to be resolved at this time. I would like to thank you for your time and help in this matter.

Sincerely,



Rodney K. Johnson

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT OF) RODNEY AND KERI JOHNSON, RAPID CITY,) SOUTH DAKOTA, AGAINST BLACK HILLS) ELECTRIC COOPERATIVE, INC. REGARDING) AN EASEMENT)	ORDER DISMISSING COMPLAINT AND CLOSING DOCKET EL96-011
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On June 3, 1996, the Public Utilities Commission (Commission) received a formal complaint from Rodney and Keri Johnson (Johnsons), Rapid City, South Dakota, against Black Hills Electric Cooperative, Inc., Custer, SD (Black Hills) concerning an easement and the conditions thereof which Black Hills Electric Cooperative was seeking from Johnsons in providing electric service to their property. Staff indicated that the parties had resolved all the issues raised in the complaint without the necessity of the matter proceeding further.

On September 4, 1996, at its regularly scheduled meeting, the Commission reviewed this matter. The Commission has jurisdiction over this matter pursuant to SDCL 49-34A-2, 49-34A-4, 49-34A-6, 49-34A-9, and ARSD 20 10 01 07 01 and 20 10 01 08 01. As Johnsons and Black Hills have resolved all the issues complained of by Johnsons, Commission Staff recommended that the Commission dismiss the complaint and close the docket. It is therefore

ORDERED, that the complaint be dismissed and that docket EL96-011 be closed.

Dated at Pierre, South Dakota, this 16th day of September, 1996.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail in properly addressed envelopes, with charges prepaid thereon.
By: <u><i>William Kabe</i></u>
Date: <u>9/17/96</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION

Kenneth Stofferahn
KENNETH STOFFERAHN, Chairman

James A. Burg
JAMES A. BURG, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner