

**STATE OF NEBRASKA  
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE COMPLAINT	)	<b>C - 40</b>
OF MARLIN ROTH (Complainant)	)	
AGAINST	)	
THE CEDAR-KNOX PUBLIC POWER	)	<b>ORDER</b>
DISTRICT OF HARTINGTON,	)	
NEBRASKA (Respondent).	)	

On the 20<sup>th</sup> day of September, 2002, the above-captioned matter came on for consideration before the Nebraska Power Review Board. The Board, being fully advised in the premises, and upon reviewing said application and all filings, information, and evidence submitted to the Board, HEREBY FINDS AS FOLLOWS:

**FINDINGS OF FACT**

1. That on the 25<sup>th</sup> day of July, 2002, Marlin Roth (Complainant) filed a Complaint with the Nebraska Power Review Board (the Board) against the Cedar-Knox Public Power District (Respondent) under the provisions of Neb. Rev. Stat. §70-1017 (Reissue 1996). The application was designated "C-40."

2. In the Complaint, Complainant alleged that Respondent failed to provide him with electric service after he requested electric service for his property and that such service is economically feasible. Complainant also alleged that Respondent was not treating him fairly and without discrimination as compared to other applicants for service in the same rate class. The Complaint states that the issue is whether the Complainant must pay extra costs to bury the transmission line (as opposed to receiving service via an overhead transmission line) when other customers in the area are not required to do so.

In its Reply, the Respondent generally denied the allegations set out in the Complaint, asserted that overhead lines would interfere with the operation of a center pivot irrigation system, and denied that it was not treating all customers and applicants fairly and without discrimination within the same rate class. Respondent asserted that the matter was a dispute in which the supplier and the applicant cannot agree upon any of the terms under which service is to be furnished, as set out in Neb. Rev. Stat. § 70-1017.

3. That pursuant to notice to the parties, a hearing was held on this matter before the Board on September 20, 2002.

4. The property for which Complainant desires electric service is located about four miles north of Wynot, Cedar County, Nebraska, along the Missouri River. (T13:20-25). It is uncontested that Complainant's property is located inside Respondent's certified service area.

5. Complainant's property is bordered to the north by the Missouri River, to the south by property owned by the Ketter family, and to the west by Wynot River Farms. (T14:1-11). The property is surrounded by other properties and a river, so that it is not possible to construct a transmission line to serve Complainant's property without building said line across either the Ketter family's property or Wynot River Farms' property. (T14:9-11). Respondent has access to his property by a small private road. (T14:12-18).

6. Complainant has a campground on his property, and has taken steps to begin building a residence on the property. (T15:12-19). The property currently does not have electric service. (T15:20-21).

7. Complainant first requested that Respondent provide him with electric service to his property sometime in 1993 or 1994. (T47:9-11). Complainant testified that he has requested electric service during each of the past eight or so years. (T51:11-20). Complainant was willing to provide some financial contribution to the construction of the transmission line. (T37:24 to T38:11; T40:7-12). In response to the request, Respondent informed Complainant that Respondent could not build the line because it believed it lacked an easement necessary to build across Wynot River Farms' property. Respondent continues to believe it does not have a valid easement which it can use in order to provide electric service to Complainant's property. (T104:24 to 105:3).

8. In January 2002 Complainant requested Respondent to provide him with an estimate of the financial contribution he would have to pay in order to have service to his property. Respondent provided Complainant with an estimate dated January 16, 2002, stating that the cost would be \$1.50 per foot for underground line, and 75 cents per foot for overhead line. (Exh. 17, p.2).

9. Complainant requested Respondent to provide electric service to his property using poles for overhead line. Complainant deposited two thousand dollars in either January or February 2002 as financial contribution for construction of the line needed to establish service to his property. (T20:16-19; T99:10-17).

10. Complainant is willing to pay 75 cents per foot financial contribution to Respondent in order to have electric service provided to his property via overhead utility poles. (T38:3-11; T39:22 to T40:12).

11. Respondent was provided an easement by Wynot River Farms on May 8, 2002 that would allow the installation of electric transmission lines that could serve Complainant's property. (Exh. 18, page 14). The easement gives Respondent "the right to excavate for, install, construct, maintain, operate and inspect underground and/or overhead electric transmission lines" across 3,090 feet along the east side of the Wynot River Farms' property. (Exh. 18, page 14; T60:4-8). The easement was signed by Craig Ebberson. On May 8, 2002, Craig Ebberson was the farm manager and a general partner in the Wynot River Farms partnership. (T56:19 to 57:19; T59:17-20). The easement was filed with the Cedar County Clerk/Register of Deed's office on May 9, 2002. (Exh. 18, page 14).

12. Wynot River Farms signed an easement on April 25, 1997 that would allow the installation of electric transmission lines that follow the road where the transmission lines serving Complainant's property would need to be located. (T58:11-17). The easement gives Respondent "the right to excavate for, install, construct, maintain, operate and inspect underground and/or overhead electric transmission lines. . . ." (Exh. 18, page 14). The easement was signed by John Skoog, who on April 25, 1997 was a general partner in the Wynot River Farms partnership. (T58:1-19). It is not clear whether the 1997 easement was ever filed with the Cedar County Clerk/Register of Deed's office.

13. Although the Wynot River Farms partners prefer and perhaps expect that underground transmission line would be used if a line were built across their property (T60:2-14; T62:13 to 63:1; T64:19 to 65:5), the language in the easements, including the

easement filed with Cedar County, allows for the installation of either above-ground or underground transmission lines. (T87:16 to 88:15).

14. Respondent's field engineer testified that customer contribution fees for establishing overhead service to a permanent residence would be 75 cents per foot for the entire project. (T84:18 to 85:1). For underground line to a permanent residence, the district's current policy is for the customer to pay \$2.00 in contribution fees for the underground portion of a line. (T85:2-7). Complainant testified that he intends to, and has taken steps toward, building a home on the property. (T15:12-19).

15. Respondent is prepared to provide electric service to Complainant's property if Respondent can obtain access rights and arrive at an agreement whether the service should be provided by overhead or underground transmission lines. (T87:24 to 88:2).

16. As of September 20, 2002, Cedar-Knox Public Power District had not established electric service to Complainant's property.

### **CONCLUSIONS OF LAW**

17. Pursuant to Neb. Rev. Stat. §70-1017 and the Board's Rules of Practice and Procedure, Title 285, Nebraska Administrative Code, Chapter 3, § 008, the Board has jurisdiction to conduct a hearing and render a determination on the matters set out in the Complaint.

18. Respondent has a valid, recorded easement that would allow it to construct transmission lines across the necessary portion of Wynot River Farms' property via either

overhead or underground transmission lines in order to establish electric service to Complainant's property.

19. Given Complainant's willingness to provide financial contribution in aid of construction of transmission lines to serve his property, it is economically feasible for Respondent, as a supplier of electricity at retail, to furnish Complainant with electric service. Respondent has already accepted a deposit from Complainant in order to begin construction of the transmission line needed to serve Complainant's property.

20. Complainant (an applicant for electric service) and Respondent (a supplier of electric service) cannot agree upon certain terms under which electric service is to be furnished.

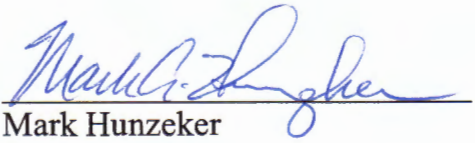
21. Respondent has not furnished electric service to Complainant within a reasonable time after Complainant first made such request for service.

### **ORDER**

That during that part of its September 20, 2002, public meeting held subsequent to the hearing on C-40, a majority of the members of the Power Review Board (4 ayes, 0 nays) voted to approve a motion finding generally for the Complainant in C-40, finding that Respondent should provide electric service to the Complainant's property that is the subject of this Complaint, that Complainant should be required to pay no more than seventy-five cents per foot as his financial contribution for construction of the distribution line, that the line could be underground or overhead according to whichever is preferred by Respondent and Wynot Farms, and that the costs of the hearing (not to include attorney's fees) be assessed against the Respondent.

IT IS THEREFORE THE FINDING OF THE NEBRASKA POWER REVIEW BOARD that, pursuant to the Board's action during its public meeting held September 20, 2002, the Board finds generally for Marlin Roth and sustains his complaint; that the Cedar-Knox Nebraska Public Power District should provide service to Marlin Roth's property located along the Missouri River; that the service should be provided for no more than seventy-five cents per foot financial contribution on the part of Mr. Roth; that the distribution line can be either underground or overhead at the discretion of the Cedar-Knox Public Power District, and that all costs of the hearing, not to include attorney's fees, will be assessed against the Cedar-Knox Public Power District.

NEBRASKA POWER REVIEW BOARD

BY   
Mark Hunzeker  
Chairman

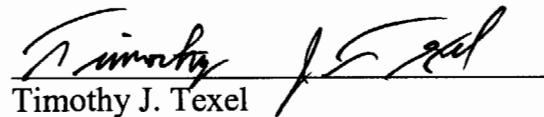
DATE: 11-7-02

## CERTIFICATE OF SERVICE

I, Timothy J. Texel, Executive Director and General Counsel for the Nebraska Power Review Board, hereby certify that a copy of the foregoing **Order** in complaint C-40 has been served upon the parties by mailing a copy of the same to the following persons at the addresses listed below, via certified United States mail, return receipt requested, first class postage prepaid, on this 7<sup>th</sup> day of November, 2002.

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Timothy J. Texel