

**STATE OF NEBRASKA  
NEBRASKA POWER REVIEW BOARD**

IN THE MATTER OF THE COMPLAINT	)	<b>C - 41</b>
OF LEONARD HERRICK (Complainant),	)	
AGAINST	)	
THE SOUTHERN PUBLIC POWER	)	<b>ORDER</b>
DISTRICT OF GRAND ISLAND,	)	
NEBRASKA (Respondent).	)	

On the 25<sup>th</sup> day of January, 2008, the above-captioned matter came on for consideration before the Nebraska Power Review Board (the 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 (references to testimony are designated by a "T" followed by the transcript page, then the lines upon which the testimony appears, while references to exhibits are designated by "Exh."):

**FINDINGS OF FACT**

1. That on the 11<sup>th</sup> day of December, 2007, Leonard Herrick (Complainant) filed a formal Complaint with the Board against the Southern Public Power District (Southern) under the provisions of Neb. Rev. Stat. § 70-1017 and the Board's Rules of Practice and Procedure at Title 285, Nebraska Administrative Code, Chapter 3, section 8. (Exh. 1). The application was designated "C-41."

2. In the Complaint, Complainant alleged that Southern did not treat him fairly and without discrimination compared to other customers within the same rate class and denied him electric service. The Complaint alleges Southern did so by closing Complainant's account without notice and opening the same service in another person's name, without charging the new account holder the \$150 prepayment normally required from a new account holder. (Exh. 1; T29:2-5).

3. In its Reply, Southern admits that Complainant had an account for electric service with Southern during the applicable period, and that the service was taken out of Complainant's name. Southern alleges that service was not denied at the location in question, since the account was transferred to another customer's name and service was continually provided to the location. Southern generally denied any discrimination against Complainant or in favor of the new account holder. (Exh. 5).

4. That a written Notice of Complaint and Notice of Hearing was sent to Complainant and Southern. (Exh. 3). Pursuant to the notice, a hearing was held on this matter before the Board on January 25, 2008. A separate complaint had been filed simultaneously by Patsy Herrick, Complainant's wife, based on similar underlying facts and circumstances. Due to the presence of related facts and similar subject matter, the parties agreed to consolidate the two hearings, although each Complaint was to be addressed separately (T6:15-23).

5. Complainant had an account with Southern from November 1990 to the present, under account #64303301. (Exh. 1). Complainant had a second account with Southern, account # 64322600, beginning in March 2000. (T11:17-19; Exh. 1). The

second account serves a well that provided water for cattle (for purposes of clarity, account # 64322600, which is the focus of the dispute, will be referred to as the “farm account”). (T14:9-11; T20:4-9; Exh. 1). In May 2007, Complainant and Patsy Herrick contacted Southern to have the farm account transferred into Patsy Herrick’s name. Southern informed them that Patsy Herrick would be required to make a \$150 prepayment in order to transfer the account. Complainant and his wife decided to leave the farm account in Complainant’s name. (T11:10-17; T33:18-20; Exh. 2).

6. Although the account was in Complainant’s name, Patsy Herrick signed the checks and made the monthly payments to Southern on the farm account. (T13:14-16; Exh. 9). The farm account had never been shut off or disconnected due to late payments. (T13:12-14; T50:17-19). Then sometime between early September to November 2007 Complainant received notification that the service to the farm account had been changed to a new customer’s name – a Mr. Len Herrick. (T11:19-22; Exh. 1). Len Herrick is Leonard and Patsy Herrick’s son. (T12:25 to 13:1). Complainant and Patsy Herrick contacted Southern and had the farm account service transferred back into Complainant’s name. (T38:23-25). Shortly thereafter, Southern again notified Complainant that the farm account service had been transferred back into Len Herrick’s name. (T12:2-6).

7. It is uncontested that the property on which the farm account service is located has been in Len Herrick’s name since 1999 (T14:12-14; T19:22), although Len Herrick’s legal rights to the property is currently involved in a legal dispute. (T29:11-21)

8. A company doing business as Glass Gardens rented the property where the farm account is located from Len Herrick. Complainant is the president of the company,

Len Herrick is the vice-president, and Patsy Herrick is the secretary. The property was subleased to another individual for use of his cattle, including the right to water his cattle at the well served by the farm account. Apparently as a direct result of changing the name on the farm account, Len Herrick began receiving the rental payments instead of Patsy Herrick, which forced Patsy Herrick's rental operation out of business. (T21:11 to 22:7; T22:21 to 23:10; T24:22 to 28:10). The business arrangements are not entirely clear, so the Board is uncertain why Patsy Herrick or Len Herrick received the rental payments directly instead of Glass Gardens, or why this would force only Patsy Herrick out of business, when she was secretary of the company renting the property from Len Herrick. However, it does not seem to be necessary to sort out the specific business relationships between the parties involved in order to arrive at a decision in this matter.

9. Southern's president and chief executive officer testified that it is Southern's standard practice to assume that when a request to change the name on a service is received, the parties involved have already come to a mutual understanding and have agreed whose name should be on the account, and who should be responsible for the payments. An account will therefore be switched upon request under such circumstances. (T11:18-16). Southern only allows each electric service to be in one person's name. (T18:19-20). It is not unheard of for an account to be under a name different than that of the property owner. (T20:13-15). If two parties dispute whose name should be on the account, it is Southern's practice to defer to the property owner upon which the service is located. Southern does not have a formal written policy establishing this position, though. (T22:8-14). Len Herrick informed Southern that he owned the property on

which the farm account was located. Southern's position was that Len Herrick, as the property owner, had the right to have the service in his name. (T19:19-23).

10. Southern understood there to be a dispute regarding whether Len Herrick or Leonard and Patsy Herrick owned the cattle on the property and who had the right to water the cattle at the well served by Southern. Southern asked the county attorney to determine who was in fact the rightful owner of the property on which the farm account was located. The county attorney informed Southern that Len Herrick was the owner. (T20:22 to 21:8).

11. Southern has a written policy stating that a customer may be required to establish a satisfactory credit rating prior to Southern making service available to that customer. If the customer cannot do so, the customer will be asked to submit a cash deposit to guarantee payment of bills prior to making service available. (Exh. 7, page 1). Southern's policy states that there shall be no discrimination based on the customers' race, creed, color, national origin or sex. (Exh. 7, page 1).

12. Southern also has a written policy establishing the procedure when an applicant requests to connect an existing facility. A prepayment is required in order to allow an applicant to open a new account or transfer an existing account immediately. Southern then has the opportunity to determine whether a deposit is necessary. If Southern determines that the applicant does not have a satisfactory credit rating, the prepayment is converted into a deposit. If Southern determines the applicant has a satisfactory credit rating, Southern will return the prepayment to the applicant in the form

of a credit against his or her future electric bills. (T41:2-19; Exh. 8, page 2).

Complainant was not required to submit a deposit in order to open the farm account. Len Herrick was not required to place a deposit in order to transfer the account from Complainant's name to his name. (T40:10-14). The evidence indicates Southern determined that both customers had a sufficiently acceptable credit rating to avoid the need for a deposit. It is not entirely clear whether Len Herrick was required to submit a prepayment, or was not required to submit any money at all in order to switch the farm account to his name.

13. Southern requires all new customers wanting immediate service to provide a \$150 prepayment prior to providing service to that customer. After Southern reviews the customer's credit rating, if Southern determines that a deposit is necessary, Southern notifies the customer that the prepayment is being converted to a deposit. (T41:2-19; Exh. 8, page 2).

14. Complainant alleges that Southern treated him unfairly and discriminated against him by switching the farm account from Complainant to Len Herrick's name with no prior notice to Complainant, despite Complainant's years of payments without any problems. Complainant asks the Board to require Southern to switch the name on the farm account back into his name.

### **CONCLUSIONS OF LAW**

15. Pursuant to Neb. Rev. Stat. § 70-1017, retail electric power suppliers are required to furnish service to any person or entity located in the supplier's retail service area that requests such service, if it is economically feasible to service and supply the

applicant. Since Southern provided service to the farm account when Complainant originally requested such service, this provision is not an issue in C-41.

16. 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 Complaints filed by any customer of a power supplier if certain issues are involved. The Board's jurisdiction extends to allegations that a power supplier and an applicant for electric service cannot agree upon any of the terms under which service is to be furnished, or if the applicant alleges that the supplier is not treating all customers and applicants fairly and without discrimination within the same rate class.

17. One of Complainant's assertions is that Southern was, or should have been, obligated to provide Complainant with notice prior to switching the name and rights associated with the farm account from Complainant's name to Len Herrick's name. There is no statutory provision granting the Board jurisdiction over disputes regarding whether notice must be provided to an existing customer when the local power supplier switches the name on an account to a new person or entity. In the present case, the power supplier has not denied service to the location or meter in question. The fact that Complainant has a long history of timely payments, although commendable, does not confer jurisdiction to the Board on the issue. Therefore, the Board finds that it lacks jurisdiction to address the issue of Southern switching the service for the farm account from Complainant's name to the name of Len Herrick without providing prior notice to the Complainant. The issue of whether a power supplier should be required to provide

notice to an existing customer prior to switching the name on an account is one that is left up to the discretion of the governing body of a retail power supplier. Ultimately, the Legislature is the authority responsible for making policy decisions such as whether all retail power suppliers should be required to provide notice to existing customers prior to switching the name on an account, and whether the Board would have jurisdiction to hear Complaints when a power supplier fails to have or abide by such a requirement.

18. Complainant's remaining allegation is that Southern discriminated against him when Southern switched the farm account from Complainant's name into Len Herrick's name, and when Southern failed to charge Len Herrick a deposit normally required of new customers that lack a payment history with Southern. Pursuant to Neb. Rev. Stat. § 70-1017, the Board finds it does have jurisdiction over Complainant's discrimination allegations.

19. Based on the evidence adduced at the hearing, the Board finds that there is insufficient evidence to sustain the allegation that Southern is treating Complainant unfairly and without discrimination. The evidence shows that both Complainant and Len Herrick were similarly situated in many regards, and Southern treated them the same up to the point when the differences became material. Although Complainant is correct that Southern did not require Len Herrick to pay a deposit when the farm account was switched to his name, Southern likewise did not require Complainant to pay a deposit when he originally obtained service to the farm account. The Board points out that both Complainant and Len Herrick are males, and are members of the same family.



20. Southern's decision to switch the farm account from Complainant's name to Len Herrick's name was based on the fact that Len Herrick owned the property on which the service is located. Southern even requested that the county attorney confirm who was the current owner of the property. The evidence indicates that disputes where two parties disagree over who has the right to be responsible for the electric utility payments are quite rare, so there may not be examples available for comparison purposes. But when such situations do occur, the available evidence indicates Southern's practice is to allow the property owner to decide in whose name a service should be registered.

21. The Board finds Southern's actions to be reasonable, and do not demonstrate arbitrary or discriminatory behavior, particularly given the somewhat confusing and legally contested circumstances involving the farm account and the Herricks' family situation.

### **ORDER**

That during that part of its January 25, 2008, public meeting held subsequent to the hearing on C-41, a majority of the members of the Power Review Board (5 ayes, 0 nays) voted to approve a motion finding that the Board lacks jurisdiction over Complainant's allegation that it was wrongful for Southern to fail to provide notice to Complainant prior to switching the name on account # 64322600 from Complainant's name to Len Herrick's, and further that there was no demonstration that Southern engaged in discriminatory behavior against Complainant or in favor of Len Herrick when Southern switched the name on account # 64322600 without requiring Len Herrick to pay a deposit.

IT IS THEREFORE THE FINDING OF THE NEBRASKA POWER REVIEW BOARD that, pursuant to the Board's action during its public meeting held January 25, 2008, the Board lacks jurisdiction over that part of Leonard Herrick's Complainant concerning the failure of Southern Public Power District to provide notice to Leonard Herrick prior to switching the name on account # 64322600 from Leonard Herrick's name to Len Herrick's name.

IT IS THE FURTHER FINDING OF THE NEBRASKA POWER REVIEW BOARD that, pursuant to the Board's action during its public meeting held January 25, 2008, there was no discrimination demonstrated on the part of Southern Public Power District against Leonard Herrick or in favor of Len Herrick when Southern Public Power District switched the name on account # 64322600 from Leonard Herrick to Len Herrick.

NEBRASKA POWER REVIEW BOARD

BY Don Kohtz  
Don Kohtz, Chairman

DATE: 02/29/08

### 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-41 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 29<sup>th</sup> day of February, 2008.

Leonard Herrick  
506 18<sup>th</sup> Avenue  
Franklin, NE 68939

Gary Hedman  
President and CEO  
Southern Public Power District  
P.O. Box 1687  
Grand Island, NE 68802

  
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Timothy J. Texel