

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

---

Case No. 2009-141246

---

**RECEIVED**

APR 11 2014

**SC Court of Appeals**

Blue Ridge Electric Cooperative, Inc. . . . . Appellant,

v.

Kathleen J. Gresham . . . . . Respondent.

---

**RECORD ON APPEAL**

---

Larry C. Brandt (S.C. Bar #856)  
**Larry C. Brandt, P.A.**  
P.O. Box 738  
3691 Blue Ridge Boulevard  
Walhalla, SC 29691  
864/638-5406  
**Attorney for Appellant**

Steven W. Hamm (S.C. Bar #2634)  
**Richardson Plowden & Robinson, PA**  
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1900 Barnwell Street  
Columbia, SC 29201  
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**Attorney for Appellant**

**Respondent**

Kathleen J. Gresham (Pro Se)  
1524 Highway 11  
Landrum, SC 29356

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v.

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1900 Barnwell Street  
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**Attorney for Appellant**

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1524 Highway 11  
Landrum, SC 29356

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## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

PCST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

July 03, 2013

Mr. Larry C. Brandt  
PO Box 738  
Walhalla SC 29691

Kathleen Jennings Gresham  
1524 Highway 11  
Landrum SC 29356

Re: Blue Ridge v. Gresham, Kathleen  
Appellate Case No. 2009-141246

Dear Counsel:

We acknowledge receipt of the transcript of the reconstruction hearing held in the circuit court April 29, 2013.

All parties are advised that this matter is no longer held in abeyance. Appellants' initial briefs and designations of matter must be served and filed no more than thirty days from the date of this letter. Due to the age of this case, no extensions will be granted absent extraordinary circumstances.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

RECEIVED  
4-16-2013

## The South Carolina Court of Appeals

Blue Ridge Electric Cooperative, Inc.,  
Appellant/Respondent,

v.

Kathleen J. Gresham, Respondent/Appellant.

Appellate Case No. 2009-141246

---

### ORDER

---

This court remanded this matter to the trial court for reconstruction of the record on December 12, 2010, urging the trial court to act expeditiously and requiring Appellant/Respondent to provide this court with status updates.

On December 14, 2010, Respondent/Appellant filed a letter with this court explaining that she would be unavailable for approximately three months "due to major surgery." On March 9, 2011, the trial court notified this court that the hearing to reconstruct the record would not be heard until late April because of Respondent/Appellant's health problems.

On April 19, 2011, the trial court forwarded a letter from Respondent/Appellant to this court, stating "I plan to be back in the upstate after May 9th, prior to a trip out of state with my son to return the end of May, if my medical condition allows."

On May 31, 2011, we received a status update from Appellant/Respondent, explaining "[t]o date, . . . due to health issues of [Respondent/Appellant], a final resolution has not been reached." Then, on July 19, 2011, the trial court notified us that because of Respondent/Appellant's health concerns, "it may be September 2011 before a hearing [could] be held in this matter." The trial court also submitted a copy of a letter it sent to Respondent/Appellant on June 2, 2011, requesting updates every forty-five days.

On October 12, 2011, the trial court mailed a letter to Respondent/Appellant, reminding her of its request for status updates and the need to have a hearing to reconstruct the record.

In November 2011, the trial court notified us that "[b]ased on the representations . . . from [Respondent/Appellant] and her physician, she is currently unavailable for activities and will be 'for some time' in the future."

On February 16, 2012, having not received a status update from Respondent/Appellant, the trial court sent another request for a status update. In response to the request, Respondent/Appellant's husband notified the trial court that Respondent/Appellant had to travel out of the country to be with her son who "was experiencing urgent medical difficulties."

On April 2, 2012, the trial court again requested a status update. Respondent/Appellant responded, "I remain in the United Kingdom with my son who is under medical care not to return to S.C. until mid-June." Respondent/Appellant further requested that the trial court advise her "of the status and results of the court's inquiry into the mysterious disappearance of . . . the trial record." She added, "This entire bogus lawsuit and its equally bogus appeal has reaked enough stress on my family . . . ."

On June 22, 2012, Respondent/Appellant filed a letter with the trial court, explaining she was back in Greenville and was available at a mutually agreeable time to attempt to reconstruct the record. On August 2, 2012, the trial court sent a letter to the parties acknowledging their responses to potential hearing dates, and tentatively scheduling the matter for September 24, 2012.

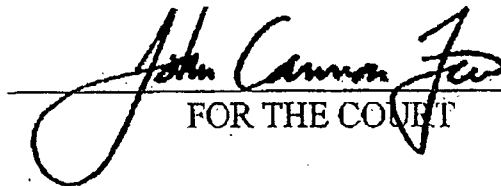
The parties met on September 26, 2012, and agreed to the matters that were missing from the transcript and further agreed to exchange proposed stipulations as to the missing information on or before November 2, 2012. The parties, however, were unable to come to an agreement, and requested an extension of time to submit their proposals for reconstruction of the record until November 19, 2012.

Appellant/Respondent provided a submission of missing testimony and evidence on November 16, 2012. Although Respondent/Appellant filed a letter with this court on January 31, 2013, indicating she provided the trial court with an "assessment of omissions" and her copy of the "surviving transcript," this court has no documentation of the submissions. Respondent/Appellant further informed this

court she will "be unavailable for any more input or response to [this court] or others until early summer."

On April 1, 2013, the trial court notified us "an attempt to reconstruct the record in this matter was set for March 11, 2013" and the parties were notified, but Respondent/Appellant failed to appear. The trial court explained it received a letter from Respondent/Appellant's husband's physician dated March 7, 2013, explaining that the physician is currently treating Respondent/Appellant's husband for a condition "that requires specific treatment, including surgical intervention and recovery for him and his care givers, primarily his wife." The letter further provides, "Participation in non-health related matters, until proper recovery is realized, is not medically recommended."

It is troublesome to this court that reconstruction has not occurred in this case as ordered in December 2010. We note that the trial court has made every effort to schedule a hearing, and it appears that all delays are attributable to Respondent/Appellant. Although we recognize Respondent/Appellant's personal and family medical issues may have contributed to some of the delay, our review of this matter indicates Respondent/Appellant is purposefully delaying this appeal. It is not acceptable, and it is unduly prejudicial to Appellant/Respondent, for this appeal to be held in abeyance for two years and four months. Accordingly, the parties shall appear before the trial court within sixty days for a hearing to reconstruct the record. Any excuse or request for a delay must be approved by the trial court prior to the hearing. The penalty for noncompliance with this order is contempt of court including, if warranted, vacating the judgment below. The parties shall provide this court with a status update within sixty days.

 C.J.  
FOR THE COURT

Columbia, South Carolina

cc:

Larry C. Brandt

Kathleen Jennings Gresham

The Honorable R. Lawton McIntosh

The Honorable Paul B. Wickensimer

**FILED**  
4/15/12 

# The South Carolina Court of Appeals

Blue Ridge Electric Cooperative, Inc., Appellant/Respondent,

v.

Kathleen J. Gresham, Respondent/Appellant.

The Hon. R. Lawton McIntosh  
Greenville County  
Trial Court Case No. 2008-CP-23-05245

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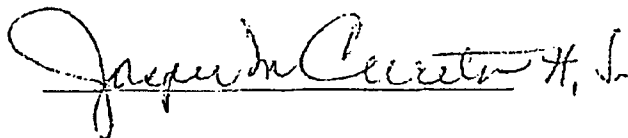
## ORDER

---

Appellant/Respondent Blue Ridge Electric Cooperative seeks to remand the case to the trial court to reconstruct the record/or in the alternative, to grant a new trial. Blue Ridge first requested the transcript on September 29, 2009. Blue Ridge's motion recounts the numerous attempts made by Blue Ridge in order to obtain the transcript. Blue Ridge not only contacted the court reporter, but also contacted Court Administration, in order to obtain the transcript. Eventually, Blue Ridge received an incomplete transcript, consisting of 259 pages. Blue Ridge now seeks to have the case remanded to the trial court for reconstruction of the transcript.

The motion is granted. The trial court is urged to act expeditiously in this matter. Blue Ridge is ordered to provide this Court with an update on this matter within sixty days.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
R. Lawton McIntosh, J.

FILED

12/2/10

Columbia, South Carolina

cc: Larry C. Brandt, Esquire  
Kathleen Jennings Gresham  
The Honorable Paul B. Wickensimer

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

CASE NO. : 2008-CP-23-5245

IN THE COURT OF COMMON PLEAS

***Blue Ridge Electric Cooperative, Inc. vs. Kathleen J. Gresham***

**CHECK ONE:**

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other: \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: \_\_\_\_\_

**IT IS ORDERED AND ADJUDGED:**

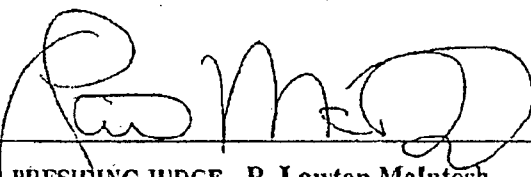
☐ See attached order;

☒ Statement of Judgment by the Court:

The Plaintiff's Motion for a Judgment NOV or, in the alternative for a New Trial Absolute is DENIED.  
The Defendant's Motion to Court following Jury Verdict for Defendant is DENIED

Dated at Greenville, South Carolina, this 10th day of September, 2009.

Court Reporter: \_\_\_\_\_



**PRESIDING JUDGE - R. Lawton McIntosh**

This judgment was entered on the 11 day of Sept, 2009, and a copy mailed first class this 11 day of Sept, 2009 to attorneys of record or to parties (when appearing pro se) as follows:

Larry C. Brandt, P.A.  
3691 Blue Ridge Boulevard  
Walhalla, SC 29691

Kathleen J. Gresham, Pro Se  
1524 Highway 11  
Landrum, SC 29356

\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP2305245

Blue Ridge Electric Cooperative Inc vs. Kathleen J Gresham

CHECK ONE:

- ☒ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other:

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

Plaintiff dismissed its claim against Stephen Gresham & Stephen Gresham dismissed his counterclaim. Plaintiff and remaining defendant Kathleen Gresham given ten(10) days to file post-trial motions.

Dated at Greenville, South Carolina, this

Court Reporter: Mary DiGirolamo

PRESIDING JUDGE - R. Lawton McIntosh

This judgment was entered on the 31st day of Aug, 09 and a copy mailed first class this 31st day of Aug, 09 to attorneys of record or to parties (when appearing pro se) as follows:

Larry C. Brandt Larry C. Brandt, PA P.O. Box  
738 Walhalla, SC 29691

Steve Gresham 1524 Highway 11 Landrum,  
SC 29356  
Kathleen J Gresham 1524 Highway 11  
Landrum, SC 29356

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24/FORM 4

Paul B. Wickensimer - Clerk of Court

STATE OF SOUTH CAROLINA )  
)  
)  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS

Blue Ridge Electric Cooperative Inc.)

Plaintiff )

vs. )

Kathleen J Gresham )

Defendant. )

VERDICT

2008-CP-23-005245

2008 AUG 31 A 9 41

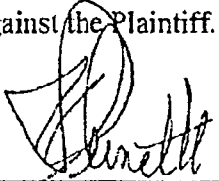
In the matter of Blue Ridge Cooperative Inc., Plaintiff, vs. Kathleen J Gresham, Defendant, et al, case number 2008-CP-23-005245:

**I. On the Issue of the Plaintiff's Breach of Contract Claim:**

We, the Jury, find for the Plaintiff against the Defendant in the amount of \_\_\_\_\_  
\_\_\_\_\_ actual damages..

\_\_\_\_\_  
Signature of Foreperson

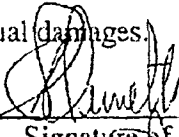
We the Jury find for the Defendant against the Plaintiff.

  
\_\_\_\_\_  
Signature of Foreperson

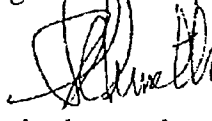
**II. On the Issue of the Defendant's Counterclaim against the Plaintiff for Trespass**

We the Jury find for the Defendant against the Plaintiff on the counterclaim for Trespass in

the amount of \$ 0.01 actual damages.

  
\_\_\_\_\_  
Signature of Foreperson

zero dollars and one cent

 8/28/09

We the Jury find for the Plaintiff against the Defendant on the counterclaim of Trespass.

\_\_\_\_\_  
Signature of Foreperson

August 28, 2009

A Certified Copy

Paul B. Wislenski  
Clerk of Court C.P. & G.S.  
Greenville County, SC

Dated 8/31/09

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NO: 2008CP2305245

Blue Ridge Electric Cooperative Inc vs. Kathleen J Gresham

2008 NOV -6 P 4:13

6  
FILED CLERK OF COURT  
GREENVILLE CO SC  
ON NOV 6 2008  
ENTERED COMPUTER

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a),  
SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;  
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
☐ Other: \_\_\_\_\_

IT IS ORDERED AND ADJUDGED:

☐ See attached order;

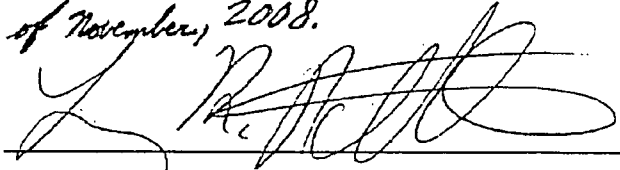
☒ Statement of Judgment by the Court:

*The motion of the defendant, Steve Gresham, to dismiss is denied. Pursuant to a 12 b 6 motion the court may only consider the face of the pleading and any reasonable inferences from the pleadings. No Plaintiff is entitled to any relief from the allegations in the pleadings the motion must be denied. JRP*

Dated at Greenville, South Carolina, this 5th of November, 2008.

Court Reporter:

*Digirolamo*

  
PRESIDING JUDGE - LARRY R. PATTERSON

This judgment was entered on \_\_\_\_\_, and a copy mailed first class on \_\_\_\_\_, to attorneys of record or to parties (when appearing pro se) as follows:

Larry C. Brandt Larry C. Brandt, PA P.O. Box 738  
Walthalla, SC 29691

ATTORNEY(S) FOR THE PLAINTIFF(S)

Steve Gresham 1524 Highway 11 Landrum, SC 29356  
Kathleen J Gresham

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRPC APP-24 FORM 4

Paul B. Wickensimer - Clerk of Court

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

---

Case No. 2008-CP-23-5245

---

Blue Ridge Electric Cooperative, Inc. .... Appellant/Respondent,

vs.

Kathleen J. Gresham ..... Respondent/Appellant.

---

**APPELLANT/RESPONDENT'S  
MOTION TO REMAND CASE TO TRIAL COURT  
FOR RECONSTRUCTION OF THE RECORD OR,  
IN THE ALTERNATIVE, GRANT A NEW TRIAL**

---

The undersigned, counsel for the Appellant/Respondent, pursuant to **SCACR 240**, hereby moves for an order remanding the above captioned case to the Trial Court for the purpose of reconstructing the record or, in the alternative, granting a new trial.

In support of this Motion, Appellant/Respondent would show that on September 28, 2009, it filed a Notice of Appeal in the above matter with the South

Carolina Court of Appeals and sent its written request to Mary E. DiGirolamo, Court Reporter, to obtain a copy of the trial transcript as provided in **SCACR 207(a)**.

On September 29, 2009, via email communication, Ms. DiGirolamo advised Appellant/Respondent's attorney that she required the payment of a \$500.00 deposit prior to transcribing the record. Based upon this fact, Appellant/Respondent's attorney requested that an invoice be issued and upon receipt of same, a check was written and sent to the Ms. DiGirolamo on September 29, 2009.

As of January 12, 2010, the trial transcript had not been received and no extension had been received from either Ms. DiGirolamo or the Office of Court Administration. On this date, an email message was sent from Appellant/Respondent's attorney's office to Ms. DiGirolamo inquiring as to the status of same. Although an exact date was not recorded, Ms. DiGirolamo contacted Appellant/Respondent's attorney's office by telephone approximately one week later and stated that she had not completed the transcript.

On March 31, 2010, a letter from the South Carolina Court of Appeals was received by Appellant/Respondent's attorney requesting an update regarding the status of the transcript in this matter, and a response was promptly sent on March 31, 2010 advising the Court that the transcript had not been received.

On June 7, 2010, a letter from the South Carolina Court of Appeals was received by Appellant/Respondent's attorney stating that its records indicated that the trial transcript should have been delivered and that notice of receipt had not

been received. The letter further stated that if the trial transcript had not been received, that the Office of Court Administration should be contacted.

On June 8, 2010, Appellant/Respondent's attorney's office contacted both Ms. DiGirolamo and the Office of Court Administration, via email, regarding this matter. Shortly after receiving the email, Ms. DiGirolamo called Appellant/Respondent's attorney's office and stated that she had started working on the transcript but got interrupted with something else and that she would have it to Appellant/Respondent's attorney at the beginning of the week of June 14, 2010. This information was provided to the South Carolina Court of Appeals by letter dated June 8, 2010.

On June 21, 2010, an email was sent to the Office of Court Administration advising that the transcript had not been received as promised. The Office of Court Administration advised that Ms. DiGirolamo had sent Appellant/Respondent's attorney a letter stating that the transcript would be delivered on June 28, 2010. Appellant/Respondent's attorney did not have the referenced letter in his possession and a copy was provided to him by the Office of Court Administration which was forwarded to the South Carolina Court of Appeals by letter dated June 21, 2010. Appellant/Respondent's attorney received the original letter from Ms. DiGirolamo on June 22, 2010.

On June 30, 2010, Appellant/Respondent's attorney, by email, notified the Office of Court Administration that the transcript had not been received as promised on or before June 28, 2010.

On July 2, 2010, an email was received by Appellant/Respondent's attorney's office from Ms. DiGirolamo apologizing for another delay in getting the transcript. She explained in this communication that she was having printer issues and that, due to the holiday weekend, would send the transcript the following week (week of July 5, 2010). A letter was sent on July 2, 2010 to the South Carolina Court of Appeals giving an update on the delivery of the transcript.

On July 14, 2010, Appellant/Respondent's attorney's office received an email from Ms. DiGirolamo containing an attachment which was a letter dated July 12, 2010 addressed to Appellant/Respondent's attorney, advising that she had been unable to finish the transcript; that she had estimated the pages to be approximately 325 but it had turned out to be close to 500 pages; that she did not have a backup for this transcript; that her digital recorder did not work; and that if she had a backup she would have asked for help in getting the transcript done. She further explained other reasons that had prevented her from completing the transcript as promised and that she was asking for a leave to finish the transcript and would have it delivered on July 23, 2010. Appellant/Respondent's attorney's office immediately notified the Office of Court Administration of this status by email and sent an update to the South Carolina Court of Appeals.

On August 24, 2010, Appellant/Respondent's attorney received a letter from the South Carolina Court of Appeals indicating that it still did not have any record of an extension being granted to the court reporter and that the Office of Court Administration should be advised of same. Appellant/Respondent's attorney's office immediately called the Office of Court Administration and the South Carolina Court

of Appeals and inquired as to what further action should be taken since it had been almost a year since this trial and the court reporter continued to fail to produce the transcript.

On August 30, 2010, Appellant/Respondent's attorney's office sent a letter to the South Carolina Court of Appeals providing an update on the delivery of the transcript and setting forth information related to conversations that had taken place with Ms. DiGirolamo wherein she advised that due to her equipment malfunctioning during the trial that she did not have the entire trial transcript. Ms. DiGirolamo was told that Appellant/Respondent wanted as many pages of the transcript as she could provide and she promised to deliver a partial transcript during the week of August 30, 2010.

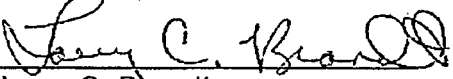
On September 9, 2010, a portion of the transcript was received which consisted of 259 pages, and on September 14, 2010, notice was sent to the South Carolina Court of Appeals advising of same and requesting direction from the Court in how to proceed and meet the filing requirements pursuant to the rules.

Portions of the transcript which are not available to be produced consist of the Respondent/Appellant's (Ms. Gresham's) testimony, the testimony of rebuttal witnesses, the testimony of Appellant/Respondent's witnesses in regards to Respondent/Appellant's counterclaim, jury charges and various motions made by the parties at the conclusion of the testimony. All of these omitted portions are absolutely essential to the issues which Appellant/Respondent wishes to raise on appeal.

Based upon the facts set forth herein, Appellant/Respondent moves that the case be remanded to the Trial Court for reconstruction of the record in order for the appeal to proceed or, in the alternative, granting a new trial in the event the record cannot be reconstructed.

Respectfully submitted,

Larry C. Brandt, P.A.  
P.O. Box 738  
3691 Blue Ridge Boulevard  
Walhalla, SC 29691  
864/638-5406

By:   
Larry C. Brandt  
Attorney for Appellant

October 5<sup>th</sup>, 2010

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

COURT OF COMMON PLEAS

Blue Ridge Electric )  
Cooperative, Inc., )

FILED-CLERK OF COURT  
GREENVILLE, S.C.  
JAN 14 2010

Plaintiff, )  
vs. )

**MOTION FOR A JUDGMENT NOV  
OR, IN THE ALTERNATIVE, FOR  
A NEW TRIAL ABSOLUTE**

Kathleen J. Gresham, )  
Defendant. )

**CASE #2008-CP-23-5245**

Pursuant to *Rule 50(b), SCRPC*, the undersigned, as attorney for the Plaintiff, Blue Ridge Electric Cooperative, Inc., hereby moves for the judgment of the jury on Defendant's trespass claim, in the amount of **ONE CENT (\$.01)** actual damages on August 28, 2009, be set aside and judgment entered for the Plaintiff in accordance with Plaintiff's Motion for Directed Verdict made at the close of all evidence. As submitted by Plaintiff at trial as grounds for its Motion for Directed Verdict on the trespass cause of action, there is no evidence, much less any credible evidence, upon which a trespass could or can be found. The only evidence is that the pole and guy wire anchor is well within the South Carolina highway right-of-way of fifty (50') feet from center line of South Carolina Highway 11. The encroachment permit entered into evidence shows the pole well within the right-of-way and the testimony of all witnesses with credible knowledge of the width of the right-of-way testified that

it was fifty (50') feet from center line of South Carolina Highway 11. The encroachment permit drawing also establishes the fifty (50') feet right-of-way by scale drawing and the only credible testimony of the location(s) of the pole and guy wire anchor was/is that the pole was/is twenty-seven (27') feet from center line of Highway 11 and the guy wire anchor was/is seventeen (17') feet from the pole or forty-four (44') feet from the center line of Highway 11, well within the highway right-of-way. These being the facts, there is absolutely no basis for the jury's verdict that a trespass has occurred and should not be permitted to stand.

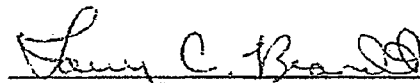
Further, in the alternative, in the event that the Court does not grant the above Motion for a Judgment Notwithstanding the Verdict on the trespass claim, Plaintiff also moves for a New Trial Absolute on the trespass claim. This motion is not only based on the reasons set forth to support the Motion for Judgment Notwithstanding the Verdict, which are again restated by reference, but, additionally, that it is clear that the jury was confused and was so moved by caprice, passion and prejudice against Plaintiff that it ignored the evidence and denied the Plaintiff its right to due process and/or a fair trial. One cannot tell from the jury verdict exactly what the jury found that constituted the trespass, the pole, the guy wire anchor, or both. This, of course, is most problematic because it opens the door for future claims for trespass or even an inverse condemnation to be brought based upon the finding of the jury for which there is no support. The fact that, in actuality, no trespass has occurred, is of

little help if the verdict is allowed to stand and even more confusion is invoked because of the way that the jury verdict was rendered in view of the jury charges. One cannot tell whether the jury found that the pole was outside the highway right-of-way or the guy wire anchor or both. On an issue that is as important as this, any finding should only be entered as a final judgment of the Court upon clear, concise and accurate credible evidence. All credible evidence produced at the trial clearly established that the pole and guy wire anchor were well within the fifty (50') feet public right-of-way for Highway 11 and located in a place in which the Plaintiff, Blue Ridge Electric Cooperative, Inc., had the right to be.

Plaintiff also moves for a New Trial Absolute on both of Defendant's claims because the Court erred in refusing to replace a juror who failed to disclose his relationship with Senator David Thomas, a witness in the case, prior to jury selection. After Senator Thomas testified, the juror notified the Court that he knew Senator Thomas and went to church with him but also stated that the relationship would not affect his decision in any way; that he could still be fair and impartial; and that he would not give any more credibility and/or weight to Senator Thomas' testimony than he would any other witness. This, however, is insufficient as Plaintiff was prejudiced and was deprived of due process by being denied the opportunity to exercise his peremptory challenges effectively and with full knowledge of all factors which could possibly affect the verdict. In this case, Plaintiff would have peremptorily struck the juror and that juror would not have participated as a juror.

For the reasons set forth above, Plaintiff respectfully submits that the verdict of the jury rendered on August 28, 2009, on the trespass claim, be set aside or, in the alternative, that a new trial absolute be granted to Plaintiff on this issue. Additionally, Plaintiff also submits that a new trial absolute should be granted as to all verdicts because of the juror issue set forth above.

**AND I SO MOVE!**



Larry C. Brandt  
Larry C. Brandt, P.A.  
P.O. Box 738  
3691 Blue Ridge Boulevard  
Walhalla, SC 29691  
864/638-5406  
***Attorney for Plaintiff***

September 4<sup>th</sup>, 2009  
Walhalla, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

COURT OF COMMON PLEAS

Blue Ridge Electric Cooperative, )  
Inc., )

Plaintiff, )

vs. )

Kathleen J. Gresham and )  
Steve Gresham, )

Defendants. )  
\_\_\_\_\_ )

"NON-JURY"

COMPLAINT

CASE #2008-CP-23-00-

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5245

Plaintiff, complaining of the Defendants, jointly and severally, would respectfully show unto the Court:

1. The Plaintiff, Blue Ridge Electric Cooperative, Inc., hereinafter merely referred to as "*the Cooperative*" or "*Blue Ridge*," is an electric cooperative organized and existing pursuant to the laws of the United States and/or the State of South Carolina, serving electrical power to customers within its assigned areas of Oconee, Anderson, Pickens and Greenville Counties, South Carolina.

2. Defendants are, upon information and belief, residents of Greenville County, South Carolina, and are members/customers of Blue Ridge Electric Cooperative whom Blue Ridge is presently serving, and has for many years prior hereto served, electrical power to their property located at 1524 Highway 11, Landrum, Greenville County, South Carolina.

3. All matters hereinafter complained of occurred in Greenville County, South Carolina, and are within the appropriate venue and jurisdiction of this Court.

4. For many continuous years, the Defendants have been members of Blue Ridge having made application for membership as required and having agreed to comply with and be bound by the Articles of Incorporation and By-Laws of the Cooperative and any rules and regulations adopted by the Board of Trustees as provided in the By-Laws. Accordingly, Blue Ridge has furnished, and Defendants have received from Blue Ridge, electric service at their property located at 1524 Highway 11, Landrum, Greenville County, South Carolina, continuously since 1987 and have been and are liable for the payment of same at the rates which have been fixed from time to time by the Board of Trustees of the Cooperative.

5. As required by **Article ii, Section 3, of the By-Laws of Blue Ridge Electric Cooperative**, Defendants are and have been obligated through their membership in the Cooperative to allow all of Blue Ridge's authorized employees, agents and independent contractors to have access to their property at 1524 Highway 11, Landrum, Greenville County, South Carolina, at all reasonable times for inspection, maintenance, replacement, relocation or repair of all equipment and service to the property including, but not limited to, access to the property for the purpose of reading the electrical meters in order to allow Blue Ridge to bill for the electricity consumed on the premises; however, throughout Defendants' membership, they have failed and refused to allow access and have done numerous things to

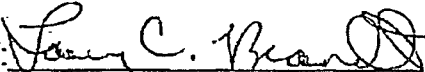
thwart and even prevent Blue Ridge from coming onto the property for any purpose when needed by Blue Ridge and, particularly, for the reading of electric meters so that Blue Ridge could accurately bill Defendants for the electricity used and/or consumed thereon.

6. During the period of June 25, 2003 through May 16, 2007, Defendants absolutely refused and made it impossible for Blue Ridge to enter upon the premises at 1524 Highway 11, Landrum, Greenville County, South Carolina, to read the meters and, as a result, Blue Ridge was forced to estimate the electricity consumed and bill Defendants based upon the estimates rather than upon the actual metered usage. Finally, on or about May 16, 2007, Blue Ridge gained access to the meters and found that it had underestimated the electricity consumption and that Defendants had not paid for all of the electricity used. Blue Ridge then billed Defendants for the unpaid service and/or electricity that had been consumed by them during that period in the amount of **EIGHT THOUSAND FIVE HUNDRED EIGHTY FIVE AND 73/100 (\$8,585.73) DOLLARS**; however, Defendants failed and refused, and have continued to fail and refuse, without just cause or excuse, to pay for the service to present day and the account has incurred additional charges for late penalties in the amount of **EIGHTY ONE AND 91/100 (\$81.91) DOLLARS**, making the total sum due to Blue Ridge, as of present date, the amount of **EIGHT THOUSAND SIX HUNDRED SIXTY SEVEN AND 64/100 (\$8,667.64) DOLLARS**. As a result, Blue Ridge is informed and believes that it is entitled to an Order of this Court granting to it judgment against

Defendants, jointly and severally, in the amount of ***EIGHT THOUSAND SIX HUNDRED SIXTY SEVEN AND 64/100 (\$8,667.64) DOLLARS***, together with all costs and attorney fees incurred in the bringing and prosecution of this action.

WHEREFORE, Blue Ridge prays for an Order of this Court requiring Defendants to immediately pay to Blue Ridge the sum of ***EIGHT THOUSAND SIX HUNDRED SIXTY SEVEN AND 64/100 (\$8,667.64) DOLLARS***, plus all costs and attorney fees incurred in the bringing and prosecution of this action and, in the event Defendants fail or refuse to do so, that judgment be rendered against them accordingly, together with such other and further relief as to this Court seems just and proper.

Respectfully submitted,  
LARRY C. BRANDT, P.A.  
P.O. BOX 738  
3691 BLUE RIDGE BOULEVARD  
WALHALLA, S.C. 29691  
864/638-5406

BY:   
Larry C. Brandt  
Attorney for Plaintiff

July 11, 2008  
Walhalla, South Carolina

2008 SEP 16 4:41:29  
 STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) 2008-CP-23-5245  
 COUNTY OF GREENVILLE. ) JURY TRIAL DEMANDED  
 Blue Ridge Electric Cooperative, Inc. )  
 Plaintiffs. )  
 ) ANSWER AND COUNTERCLAIM  
 Versus ) (\*SUBJECT TO COURT'S RULING  
 ) ON MOTIONS-RESERVE MADE)  
 Kathleen J. Gresham, Steve Gresham, )  
 Defendants. )

TO: The Plaintiffs above named and subject to motions herein made with leave to amend

The Defendant, Steve Gresham, as Answer and as Counterclaim to the Complaint of Plaintiffs, would respectfully show unto this Honorable Court:

#### FOR A FIRST DEFENSE

1. That all matters not herein admitted or denied or qualified or explained, are herein denied and strict proof demanded thereof.
2. That Defendant admits that to the best of his knowledge, Plaintiff, Blue Ridge Electrical Cooperative, Inc. is an electrical coop. which should exist at all times in accordance with the laws of this State, this nation and this county.
3. That as to paragraph number 2, Defendant Steve Gresham denies that he is a member of said coop. as is known to Plaintiff and demands strict proof thereof.
4. That as to paragraph number 3, Defendant herein denies same.
5. That as to paragraph number 4; Defendant has no specific knowledge and demands strict proof thereof.
6. That as to paragraph number 5; Defendant denies same, has knowledge of great cooperation with Blue Ridge by Defendants and thus, demands strict proof thereof.
7. That as to paragraph number 6; Defendant denies same and demands strict proof thereof.

#### FOR A SECOND DEFENSE AND AS COUNTERCLAIM

1. That all matters as set forth in the First Defense are incorporated and merged herein as if fully repeated here.
2. That Plaintiffs Blue Ridge Electric Coop. is a membership organization doing business in this county, state and nation in accordance with specific laws, duties and responsibilities to the public and to the membership which duties and responsibilities should be carefully adhered to and proper business practices also followed at all times.

3. That Defendant Steve Gresham is the husband of Defendant Kathleen Gresham and lives in the property owned by wife who had power supplied by Blue Ridge long prior to Defendant's marriage to co-Defendant. That Defendant Steve Gresham has never executed or contracted a business relationship with Plaintiffs and in fact, has been refused communication about wife's account by Plaintiffs, all known to Plaintiffs and its agents. That Defendant is improperly before this Court and improperly named as Defendant by Plaintiffs and should be dismissed immediately, with prejudice, with sanctions against Plaintiffs, with costs assessed against Plaintiffs and with all reference to this Defendant(s) removed entirely from this Court's and all other records, which Defendant seeks.
4. That Defendant seeks punitive and actual damages from Plaintiffs for bringing this action especially in that Plaintiffs were aware and/or should have been aware of their membership and contractual records and that Defendant, further, made Plaintiffs aware of same prior to any Court filing of any action in a bona fide attempt to amiably resolve Plaintiff's concerns and that further, Plaintiffs were allowed to inspect the power lines, were furnished information in this regard and that cooperation was extended in every way whereupon, this matter should have been ended which Defendant now seeks, with prejudice, costs and sanctions.
5. That Plaintiffs knew that Defendants lived elsewhere during periods of this time alleged and have been provided information to supplement such knowledge prior to this action's filing.
6. That Plaintiffs billed Defendant monthly for power bills which were always paid promptly, fully and responsibly by Defendant according to the statements provided by Plaintiffs.
7. That Defendant's bill(s) is and has/have been monthly paid in full, each and every year of service to said property.
8. That Plaintiffs did not notify Defendant in writing at any time during the time period complained of, from June 25, 2003 through May 16, 2007, that there was a problem with their account.
9. That Plaintiffs cashed the full and multiple payments of Defendant for all these years in accordance with their billings with said payments marked "payment in full."
10. That Plaintiffs had more than forty-five (45) opportunities in monthly billings at a minimum to notify Defendant of any problem with their billing which Plaintiffs failed to do.
11. That Plaintiffs have sought monthly to terminate the power service of Defendant without justification thus caused distress and embarrassment to Defendant as Plaintiffs had been fully paid in accordance with their billings, promptly, each and every month and paid in full.
12. That Plaintiffs have known at all times how to contact Defendant and failed to do so until a disconnect notice was included on Defendant's bill for alleged (and inaccurate) failure to pay, which prompted contact by Defendant to Plaintiffs on multiple occasions.
13. That Plaintiffs have wrongfully marked Defendant as "debtors" and "owing money" and subjected Defendant to debt collection.
14. That efforts by Plaintiffs classifying Defendant as a "debtor," are wrong as Defendant paid in full each month by Plaintiff in accordance with their bills and that Defendant deserves and requests a written apology with inclusion of same in their file and any and all credit records/reports, together with all costs associated therewith.

15. That Defendants seek that Plaintiff improve their billing system immediately and publish same in their monthly newsletters so that if other Defendant(s) in the same or similar position are affected, their concerns can be immediately addressed by the Coop.
16. That Plaintiffs should pay to Defendant monetary damages and all costs associated with this action including missed time from work and all Court costs and costs of any discovery and/or use of experts for this matter which Defendant seeks.
17. That Plaintiffs should be prohibited from any disruption of power service to Defendant immediately and ongoing and for Defendant's account with Plaintiff to be cleared which Defendant seeks.

#### FOR A THIRD DEFENSE

1. That all matters as set forth in the above defenses are reiterated, incorporated, merged and referenced herein as if fully repeated.
2. That Plaintiffs are estopped from claiming past monies due from Defendant as Plaintiffs monthly billed Defendant which bills Defendant paid promptly in full, each and every month without fail.
3. That it was Plaintiffs who selected and installed the monitoring and usage meter and all equipment and declared to Defendant through the top leadership, Charles Dalton, head of Blue Ridge Power, that the equipment was "state of the art," and that Defendant was not to call in any information which had been the habit of Defendant from approximately 1987 continuing for multiple years until said courtesy by Defendant was halted by direction of Plaintiffs.
4. That Plaintiffs never told Defendant that such meter/equipment was faulty or could not be trusted or that Defendant's billings were "estimates."
5. That Defendant relied upon Plaintiff for proper, correct service and billing and paid for same each and every month for many years promptly and fully becoming an excellent customer of Blue Ridge Power.
6. That Blue Ridge Power charged Defendant for buried power and for special equipment for which Defendant now seeks reimbursement and repayment from Blue Ridge.

#### FOR A FOURTH DEFENSE

1. That all matters as set forth in the above defenses are reiterated, incorporated, merged and referenced herein as if fully repeated.
2. That Plaintiffs have committed an act of trespass upon the property of Defendant Kathleen Jennings labeled as Kathleen Gresham in the complaint as Plaintiffs have installed support or other such pole upon the land of Defendant without written permission or rental from said property owner and that said property owner is entitled to damages and costs associated with same and/or for the immediate removal of said item(s) with all repairs made to owner's land along with monetary damages and costs for this and any other such necessary actions associated therewith.

#### FOR A FIFTH DEFENSE

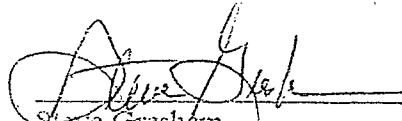
1. That all matters as set forth in the above defenses are reiterated, incorporated, merged and referenced herein as if full repeated.
2. That Plaintiffs and their agent quoted to Defendant property owner a monthly price for power to be run to Defendant's run-in stall/barn area of not more than \$10.00 (ten dollars) per month if little to no power was used which was and continues to be the plan of landowner. That Defendant property owner paid the required fee, up front, to Plaintiffs for such power as demanded by Plaintiffs prior to any work being commenced. That such power meter to the stall area was installed and virtually no power usage occurred for the months said meter was active as there is no well, no running plumbed water, no lights used, no security lights, no electrical uses but rather, the power was run as a future use as explained to and understood by the Plaintiffs and their installers. That, however, the monthly power bills often tripled the amount quoted to Defendant property owner by Plaintiffs which Defendant now believes was retaliatory by Plaintiffs in light of the wrongful action/ lawsuit brought by Plaintiffs and in an attempt to extract monies from Defendant property owner for services not used. That this lawsuit was brought by Plaintiffs immediately on the heels of the barn/shed power cancellation made by Defendant property owner when reasonable attempts to examine the bill, billing practices, the representation made to property owner by Plaintiff's agent and Plaintiffs' failure to extract more monies wrongfully from Defendant, justly failed. Defendant, thus, seeks that the power service to the barn/shed be reestablished, without cost to Defendant property owner and that the monthly bill be in accordance with that told to property owner and relied upon by said property owner in paying for such electrical installation. Defendant also seeks the costs of such electrical installation from Plaintiffs.
3. That when Plaintiffs disconnected the power service to the barn/shed area, Plaintiffs agent(s) wrongfully entered Defendant's property, failed to allow Defendant to give them access in a reasonable time, did damage to fencing of Defendant and alarmed Defendant concerned for the safety of the premises and horses maintained therein, for which Defendant seeks damages, all costs or repair and replacement and costs of this action from Plaintiffs.
4. That Defendant seeks that Plaintiff cease from any and all current and future harassment of Defendant and from uttering, printing, declaring or publishing in any form or manner, bad or derogatory things about Defendant at any time and for submitted proof thereof to Defendant.

NOW, THEREFORE, HAVING FULLY ANSWERED THE COMPLAINT OF PLAINTIFFS AND FOR SETTING FORTH THE WITHIN COUNTERCLAIMS, Defendant seeks as follows from Plaintiffs:

1. That Plaintiff's Complaint be dismissed immediately, with prejudice and for all costs associated therewith be awarded to Defendant;
2. That the Counterclaims of Defendant be granted as specifically set forth above;
3. That Plaintiffs cease all harassment of Defendant;
4. For all costs of this action be awarded to Defendant
5. For sanctions against Plaintiffs as set forth above;

6. For such other and further relief as determined just by this Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steve Gresham", written over a horizontal line.

Steve Gresham

Pro se, Defendant, subject to motions pending

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Kathleen J. Gresham (Kathleen Jennings)  
Pro se, Defendant (not yet personally served)

1524 Highway 11, Landrum, SC 29356  
(Greenville County) 864-895-4222

September 15, 2008

STATE OF SOUTH CAROLINA 30 P 3: 35  
 COUNTY OF GREENVILLE ) IN THE COURT OF COMMON PLEAS  
 ) 2008-CP-23-5245  
 Blue Ridge Electric Cooperative, Inc. )  
 )  
 Plaintiffs, ) ANSWER AND COUNTERCLAIM  
 )  
 -VS- ) JURY TRIAL DEMANDED  
 )  
 Kathleen J. Gresham and Steve Gresham )  
 )  
 Defendants. )

To: Larry C. Brandt, Attorney for Plaintiffs and to Plaintiffs herein:  
 (P. O. Box 738, 3691 Blue Ridge Blvd., Walhalla, SC 29691)

The Defendant, K. J. Gresham, as Answer and Counterclaim to the  
 Complaint of Plaintiffs, would respectfully show until this Honorable Court:

#### FOR A FIRST DEFENSE

1. That all matters not herein admitted or denied or qualified or explained, are herein denied and strict proof demanded thereof.
2. That Defendant admits that to the best of her knowledge, Plaintiff, Blue Ridge Electrical Cooperative, Inc. is an electrical coop. which should exist at all times in accordance with the laws of this State, this county of operation and of this country.
3. That as to paragraph number 2, Defendant admits that she is a lifelong resident of Greenville County, SC and has been an excellent customer of Blue Ridge Electrical Cooperative since the 1980's at her property listed therein.
4. That as to paragraph number 3; Defendant admits that her property is located in Greenville County, SC.
5. That as to paragraph number 4, Defendant admits that she has used and paid for the services of Blue Ridge Electrical Coop, which is the only power company serving the upper part of Greenville County, since the 1980's. Defendant denies that her husband, the co-defendant listed by Plaintiffs, has

ever been a member of the Blue Ridge Cooperative as the power was established in Defendant's name alone, she being unmarried at the time, and has so continued in Defendant's name alone, all well known to Plaintiff which has refused to provide any information previously about payments, credits and outage occurrences and repair time tables, to co-Defendant Steve Gresham. That Defendant has no specific knowledge of membership application or signature for Articles of Incorporation or By-Laws and requests proof of same, while admitting that she has diligently paid monthly power bills to Blue Ridge in a timely, prompt, responsible manner since the 1980's. The remainder thereof is denied and proof demanded.

6. That as to paragraph 5, Defendant has no knowledge of said Articles, nor has copies of same, nor have any such executed copies ever been provided to Defendant by Plaintiffs. Defendant has not knowingly granted any right-of-way or easement to Plaintiffs and in fact, Plaintiff has required this Defendant to provide tree limb removal, limb maintenance and storm damage tree limb removal from Plaintiff's power poles at her own expense during the period of Blue Ridge electrical power purchase to Defendant's property without reimbursement or participation by Blue Ridge. Defendant would show that for many years, at Plaintiffs' request, she reported in the monthly power usage to Blue Ridge employee(s) as requested by Plaintiffs without fail, only ceasing such reporting at the direct instruction of the head of Blue Ridge and his agent(s) as Blue Ridge established equipment declared by Plaintiff as "state of the art," which no longer required this Defendant to report the meter reading and was insisted upon by Plaintiffs as able to be read without access and as accurate and state of the art, removing any responsibility from Defendant. The remainder thereof is strongly denied and strict proof demanded.

7. That as to paragraph number 6; Defendant denies same and demands strict proof thereof.

#### FOR A SECOND DEFENSE AND AS COUNTERCLAIM

1. That all matters as set forth above in the First Defense are incorporated and merged herein by reference as if fully repeated herein verbatim.

2. That Plaintiffs Blue Ridge Electrical Cooperative is a membership organization doing business in this county, state and nation in accordance with specific laws, duties and responsibilities to the public and to the membership and users of its electrical services which services are a virtual monopoly in the area of service and that consequently, Blue Ridge Electrical Coop. should carefully, diligently and properly follow good business practices and good customer relations at all times.

3. That co-Defendant Steve Gresham is the husband of Defendant herein, and that co-Defendant has never been in a contractual or membership relationship with Plaintiffs and owns no property upon which Blue Ridge supplies electrical power for its monthly billings. That, in fact, co-Defendant has been repeatedly refused communication about wife's account by Plaintiffs requiring this Defendant wife to make any necessary calls to Plaintiff or communications about power outages, disruptions in service and other account-related matters. That the inclusion of co-Defendant in this suit was a poorly-considered, improper action by Plaintiffs as their records would reveal that co-Defendant had no written contract with Plaintiffs and that he should be dismissed with prejudice and with all costs and sanctions from this Court to be assessed against Plaintiff.
4. That all references to co-Defendant should be stricken by this Court and all references to him be removed by Plaintiff and by this Court with written apology and all costs be made to co-Defendant by Plaintiffs.
5. That Plaintiffs were made aware that Defendant would not be residing in the Highway 11 house for an extended period of time due to the grave illness due to cancer of her stepson who lived with her and her husband full time and his necessary medical care.
6. That Plaintiffs had called upon Defendant for many years from the 1980's continuously until into 2000's to report her power usage which Defendant diligently did until she was instructed by Plaintiffs to cease this reporting as Plaintiffs were installing a state-of-the-art meter which allowed Plaintiffs to read from elsewhere. That Defendant never was informed that any of her power bills were estimates or that the bills which she diligently paid, monthly, were in error.
7. That Defendant promptly paid each and every monthly power bill sent via regular mail to her without fail and that each and every bill was paid on time and in full.
8. That Defendant cooperated with Plaintiffs in every way in a professional and friendly manner and allowed access to her property whenever coordinated by Plaintiffs with her.
9. That Defendant paid a substantial premium fee for Plaintiffs to establish underground power to her residence at her own expense with Plaintiffs.
10. That Defendant maintained the few power poles to her property in good shape, keeping tree limbs trimmed, at her own expense which should have been

provided by Plaintiffs. That as part of the Blue Ridge cooperative services, Plaintiffs should have scheduled tree trimming and removal of any possible tree obstruction from Defendant's property and that Plaintiffs should have paid for same. That, Defendant seeks full and complete reimbursement of all tree trimming, maintenance and upkeep from Plaintiffs for the amounts she has paid which should have been the responsibility of Plaintiffs, plus interest and a reasonable fee for her time.

11. That Defendant seeks that Plaintiffs cease from terminating her power as her bills have been paid responsibly, fully and in accordance with Plaintiff's own billings on a monthly basis without fail from the time of which Plaintiffs complain, that is from June 25, 2003 until May 16, 2007 which is a minimum of forty-five (45) monthly billings payments to Plaintiffs.

12. That Plaintiffs have cashed each and every check of Defendant at a minimum of forty-five (45) times in accordance with the period in question and continuing, without complaint and without any notification to Defendant of any problem.

13. That each and every check of Defendant to Plaintiffs, cashed by Plaintiffs, has been marked "paid in full," as to Defendant's account.

14. That Plaintiffs have repeatedly sought to terminate the power service to Defendant's residence causing hardship, embarrassment and distress to Defendant and to her family for which Defendant now seeks damages and monetary judgment from Plaintiffs and seeks punitive damages.

15. That Plaintiffs have known at all times how to contact Defendant and that no messages have been sent via mail or to the same phone number listed publicly to Defendant since the 1980's. That additionally, employees of Plaintiff have had Defendant's cell phone number for many years in case any emergency should arise.

16. That Plaintiffs have wrongly marked Defendant and her husband as "debtors" and "owing money" and subjected Defendants to debt collection when their account with Plaintiffs was paid fully as billed, each and every month. Defendant thus seeks damages, recovery of all costs, payment for time spent by Defendants and punishment damages from Plaintiffs in addition to a written apology.

17. That Defendant seeks that her electrical account be cleared immediately without continued reference to "past due" amounts by Plaintiffs.

18. That Defendant seeks that all internal notifications or notations on her account or records be cleared and totally expunged of all reference to this "past due" amount wrongfully sought by Plaintiffs and her account be marked in good standing.

19. That Plaintiffs be required to notify all credit agencies to which they have reported that Defendants are in and have always been, in good standing with no outstanding balances, ever, and proof thereof provided to Defendant.

20. That Plaintiff reimburse Defendant for any and all costs of the buried power to her property which Defendant seeks from Plaintiffs to be paid immediately.

21. That Defendant seeks that Plaintiffs pay for damage to her property from the process server chosen by Plaintiffs including, but not limited to, damage to fencing, damage to gate, damage to mailbox, damage to dog and for the time of Defendant in coordinating repairs to same and for punitive and special damages.

22. That Defendant seeks that Plaintiffs improve their billing system immediately and publish the results in their monthly newsletter so that if other Defendants are in the same or similar position as Defendant, such concerns can be immediately known and addressed.

23. That Plaintiffs have prevented Defendant's own elected Blue Ridge coop. Board member from following through with Defendant on this matter and have worked against Defendant in her attempts to resolve this matter with Plaintiffs. That Defendant allowed a Blue Ridge Power company employee, designated by Plaintiffs, to view the power source and how Defendant had turned off the power when the family closed up the house for an extended period of time while living elsewhere due to the cancer treatment of their son and necessity of closer proximity to medical care. That Defendant communicated with Plaintiffs and counsel on several occasions to resolve the matter including using others to make additional communications. That Plaintiffs pursued this matter despite such, thus Defendant seeks monetary damages and special damages from Plaintiffs together with payment for all costs associated with this action including court costs, costs of discovery and costs of all court preparation and for any expert and other witness fees.

24. That Defendant seeks that Plaintiffs be prohibited from any disruption of power service to her home; that her account be cleared without blemish and that proof of same be provided to Defendant.

#### FOR A THIRD DEFENSE

1. That all matters as set forth in the above defenses are incorporated, reiterated and merged herein as if fully repeated verbatim.
2. That Defendant raises and pleads the equitable remedy of estoppel as to Plaintiffs as Plaintiffs alone controlled their billings and as it was Plaintiffs who selected and installed their equipment and declared same to be "state-of-the-art," and upon which Defendant could rely.
3. That Plaintiffs never told Defendant that such meter/equipment was faulty or could not be trusted or that Defendant's billings were "estimates."
4. That Defendant relied on such billings by Plaintiff for their accuracy and paid same in full each and every month for many, many years and was an excellent customer of Blue Ridge Power.

#### FOR A FOURTH DEFENSE

1. That all matters as set forth in the above defenses are incorporated, reiterated and merged herein as if fully repeated verbatim.
2. That Defendant raises the equitable defense of laches as Plaintiffs knew or should have known of any problems with the account of Defendant long prior to bringing any action against Defendant and were in the position to correct same if any problem had occurred. That Defendant relied upon the expertise of Plaintiffs.

#### FOR A FIFTH DEFENSE

1. That all matters as set forth in the above defenses are incorporated, reiterated and merged herein as if fully repeated verbatim.
2. That Defendant raises the defense of the statute of limitations as to complaint of Plaintiffs and seeks that all allegations outside the statute of limitations be dismissed with prejudice by this honorable Court.
3. Defendant seeks all costs of this matter plus sanctions from the Court from Plaintiffs.

#### FOR A SIXTH DEFENSE

1. That all matters as set forth in the above defenses are incorporated, reiterated and merged herein as if fully repeated verbatim.
2. That Plaintiffs have committed the act of TRESPASS upon her land in establishing a power pole(s) for power service across the street (i.e. Highway 11) which provides power primarily to other customers of Plaintiffs and that Plaintiffs have trespassed upon Defendant's property for a support pole and guy-wires and lines to shore up said pole(s) as a convenience to themselves and their service; and without the express, written authorization for same from Defendant, thus trespassing upon Defendant's land. That said power pole does NOT provide service to Defendant's property per se but was erected by Plaintiffs due to their own design, crossing the street/highway, onto Defendant's property, trespassing upon her land.
3. Defendant seeks full and complete damages and fees from Plaintiffs for same, retroactive from the time of installation and continuing, or in the alternative, for damages and fees for its installation and fully, until its complete removal and clean-up and costs by Plaintiffs.

#### FOR A SEVENTH DEFENSE

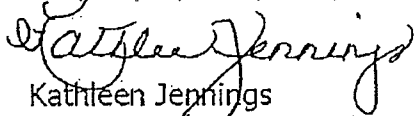
1. That all matters as set forth in the above defenses are incorporated, reiterated and merged herein as if fully repeated verbatim.
2. That Defendant seeks that Plaintiffs cease from any and all current and future harassment of Defendant and from uttering, printing, declaring or publishing in any form or manner, bad or derogatory things about Defendant at any time for proof of same from Plaintiff or from taking any retaliatory action against Defendant.

NOW, THEREFORE, HAVING FULLY ANSWERED THE COMPLAINT OF PLAINTIFFS AND HAVING SET FORTH COUNTERCLAIMS AGAINST PLAINTIFFS HEREIN, DEFENDANT SEEKS AS FOLLOWS FROM PLAINTIFFS:

1. That the Complaint of Plaintiffs be dismissed with prejudice immediately and for all costs associated therewith to be awarded to Defendant;
2. That the Counterclaims of Defendant be granted as set forth for all costs, damages and monetary matters to be awarded to Defendant;

3. That Plaintiffs cease all harassment of Defendant and clear her account, with written apology, immediately and that her electrical power not be disrupted;
4. That Plaintiffs cease their act of trespass upon Defendant's land and for all damages and costs associated therewith be awarded to Defendant;
5. For all costs of this action to be awarded to Defendant;
6. For sanctions from this Court against Plaintiff;
7. For such other relief as determined by this Court.

Respectfully submitted,



Kathleen Jennings

(listed by Plaintiffs as K.J. Gresham)

Pro se

1524 Highway 11, Landrum, SC 29356

864-895-4222

This 29<sup>th</sup> day of September, 2008

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE ) OCT 28 2008 COURT OF COMMON PLEAS

Blue Ridge Electric Cooperative Inc., )  
Plaintiff, )  
vs. ) **PLAINTIFF'S REPLY TO**  
) **COUNTERCLAIM OF**  
) **DEFENDANT, KATHLEEN J. GRESHAM**  
) **Case #2008-CP-23-5245**  
Kathleen J. Gresham and )  
Steve Gresham, )  
Defendants. )

Plaintiff, replying to the Answer and Counterclaim of the Defendant, Kathleen J. Gresham, would respectfully show unto this Court:

**REPLY TO ALL DEFENSES AND COUNTERCLAIMS  
PLED BY DEFENDANT IN HER ANSWER**

1. All matters set forth in the original Complaint are again restated and incorporated herein by reference as if set forth verbatim.
2. All matters set forth in Answers and Counterclaims of the Defendant, Kathleen J. Gresham, that are not refuted by the allegations of the original Complaint and/or specifically admitted, modified or otherwise explained herein, are emphatically denied.

**REPLY TO FIRST DEFENSE**

3. Plaintiff emphatically denies the allegations of Paragraph 3 alleging that Defendant has been an excellent customer of Blue Ridge Electrical Cooperative since the 1980's at her property listed therein.

4. Plaintiff specifically denies those allegations of Paragraph 5 alleging that Defendant, Kathleen J. Gresham, has diligently paid monthly power bills to Blue Ridge Electrical Cooperative in a timely and responsible manner since the 1980's.

5. The allegations of Paragraph 6, as stated, are emphatically denied.

**REPLY TO SECOND DEFENSE AND COUNTERCLAIM**

6. Answering Paragraph 2 of the Second Defense and Counterclaim, it is admitted that Blue Ridge Electric Cooperative, Inc. is a membership organization doing business in this county, state and nation in accordance with specific laws, duties and responsibilities to the public and to the membership, and that it endeavors to adhere to its duties and responsibilities and to conduct its business in a proper manner at all times. Any and all other allegations of said paragraph that are inconsistent herewith are denied.

7. Answering Paragraph 3 of the Second Defense and Counterclaim, it is admitted that, upon information and belief, Steve Gresham is the husband of Defendant, Kathleen Gresham, and that he lives in and/or on property with his wife whereupon the subject electrical utility service was consumed; however, Plaintiff is also informed and believes that Defendant, Steve Gresham, has an equitable interest in said real estate whether his name is on the title or not; that he has benefitted from the consumption of electrical power for which Defendants have refused to pay; that he has, on numerous occasions, personally paid the charges for electrical service consumed on the property; and that, although Steve Gresham has not executed any contractual documents with the Plaintiff, he has, directly and indirectly, exercised and enjoyed a business relationship with Plaintiff, particularly in regards to the consumption of electrical service on the subject

property. Based upon this information, Plaintiff is informed and believes that he is properly named as a Defendant, and that he has joint and several liability with his wife for the payment of the debt to the Plaintiff. All other allegations of Paragraph 3, inconsistent herewith, are emphatically denied.

8. The allegations of Paragraphs 4, 5 and 6 are denied.

9. Answering Paragraph 7 of the Second Defense and Counterclaim, Plaintiff admits that Defendant paid each and every monthly power bill sent by way of regular mail to her during the period of time in question; however, the remaining allegations of Paragraph 7 are emphatically denied. Plaintiff would further show that, at all times, the Defendant, Kathleen J. Gresham, knew that the power bill was an estimated bill as same was marked thereon and that, at some point in time, the actual meter reading would have to be reconciled with the estimated usage of electrical service and payments adjusted to reconcile to same.

10. The allegations of Paragraphs 8, 9 and 10 are emphatically denied.

11. Answering Paragraph 11, Plaintiff would show that, due to the difficulties that it has had in dealing with the Defendants, it desires to terminate the power service to Defendant because of Defendant's extreme and unreasonable actions in dealing with Plaintiff and its employees; however, Plaintiff has not terminated any power service to the premises and has attempted in every way to work out all problems without interrupting the power service to the Defendant. Plaintiff admits that the estimated monthly bills that were sent during the period of June 25, 2003 until May 16, 2007, were paid but, again, reiterates that those were billings based on estimated consumption of power on the premises which was known to the Defendant.

12. Answering Paragraph 12 of the Second Defense and Counterclaim, it is admitted that Plaintiff has cashed each and every check of Defendant for the period in question but denies that it was without complaint and without any notification or, at least, an attempt to notify the Defendant of problems and its desire to enter the property to obtain an actual reading of the meter.

13. The allegation of Paragraph 13 is denied inasmuch as it infers or intimates that the Plaintiff marked the checks as paid in full, but that the checks were accepted and were marked in such manner as to constitute full payment for the electrical power actually consumed on the premises; however, Defendant knew full well that the bills were estimated and that there would need to be a reconciliation at some point in time when the actual meter readings could be obtained.

14. As aforesaid, replying to Paragraph 14, the Plaintiff would love to terminate the power service to Defendant's residence; however, it has not done so and it is not now asking this Court to allow it to do so and, therefore, denies all allegations of Paragraph 14.

15. The allegations of Paragraph 15 are denied as stated. Further answering, Plaintiff would show that it has attempted to call the Defendant on her business phone and residence phone that has been publicly listed since the 1980's. Plaintiff does not recall ever having a cell phone number for the Defendants; however, the Defendants have always, for the most part, failed and refused to return its calls. It is admitted that the Defendant has had the same residence, mailing address and the same home phone number since the 1980's.

16. The allegations of Paragraph 16 are emphatically denied as stated, as the Plaintiff has only sought to collect money owing to it, has not turned the Defendants' accounts over to any debt collection service, and has not publicly nor privately marked them as debtors or owing money on any records but its own. All other allegations of Paragraph 16 are emphatically denied.

17. The allegations of Paragraphs 17 and 18 are denied.

18. Answering Paragraph 19, the Plaintiff would show that it has not notified any credit agencies of any information concerning the Defendants and/or reported them as delinquent debtors to anyone; therefore, any allegations and/or requests for the relief contained in Paragraph 19 are denied.

19. Answering Paragraph 20, Plaintiff would show that the power to Defendants' property was done pursuant to an agreement with the Defendant, Kathleen Gresham; that Defendant, Kathleen Gresham, agreed to pay for having same placed under ground; and that it was done at Defendant's insistence; therefore, Defendant would not be entitled to any reimbursement for the cost of the buried power to her property. Consequently, the allegations of Paragraph 20 are denied.

20. The allegations of Paragraphs 21, 22, 23 and 24 are denied.

#### **REPLY TO THIRD DEFENSE**

21. The allegations of Paragraph 2 of the Third Defense are denied.

22. The allegations of Paragraph 3 are admitted inasmuch as Plaintiff has never told Defendant that such meter equipment was faulty or could not be trusted as the equipment was not, in fact, faulty and was not untrustworthy; however, the road where Plaintiff was forced to place the equipment because Defendants would not provide access

to their property was too far away for the meter equipment to read the meter. Plaintiff also fully advised Defendant that the billings were estimates and Defendant, in fact, knew they were estimates; therefore, any allegation to the contrary is emphatically denied.

23. The allegations of Paragraph 4 that allege that the Defendants paid each monthly power bill as billed is admitted; however, all other allegations of Paragraph 4 are denied.

#### **REPLY TO FOURTH DEFENSE**

24. Plaintiff denies Paragraph 2 of the Fourth Defense inasmuch as the defense of laches does not apply and further that, due to the Defendants' conduct, it was impossible for Plaintiff to send an actual reading to the Defendants and/or to correct any problems occurring.

#### **REPLY TO FIFTH DEFENSE**

25. The allegations of Paragraphs 2 and 3 of the Fifth Defense are denied.

#### **REPLY TO SIXTH DEFENSE**

26. The allegations of Paragraphs 2 and 3 of the Sixth Defense are denied.

#### **REPLY TO SEVENTH DEFENSE**

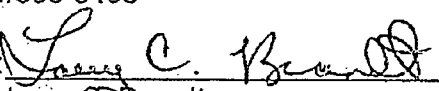
27. The allegations of Paragraph 2 are denied.

**WHEREFORE**, Plaintiff, having fully responded to the defenses and counterclaims of the Defendant, would respectfully pray that the Court issue its Order granting judgment

as set forth in the Complaint, and that all Counterclaims of Defendant be dismissed with costs.

Respectfully submitted,

LARRY C. BRANDT, P.A.  
P.O. BOX 738  
3691 BLUE RIDGE BOULEVARD  
WALHALLA, S.C. 29691  
864/638-5406

BY:   
Larry C. Brandt  
Attorney for Plaintiff

October 13, 2008  
Walhalla, South Carolina

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

COURT OF COMMON PLEAS

2008 OCT -9 A 9 28

Blue Ridge Electric Cooperative, )  
Inc., )

FILED-CLERK OF COURT  
GREENVILLE CO. S.C.  
OCT 9 2008

Plaintiff, )  
vs. )

**PLAINTIFF'S REPLY TO  
COUNTERCLAIM OF  
DEFENDANT, STEVE GRESHAM**

Kathleen J. Gresham and )  
Steve Gresham, )

**Case #2008-CP-23-5245**

Defendants. )  
\_\_\_\_\_ )

Plaintiff, replying to the Counterclaim of the Defendant, Steve Gresham, would respectfully show unto this Court:

**REPLY TO ALL DEFENSES AND COUNTERCLAIMS  
PLED BY DEFENDANTS IN THE ANSWER**

1. All matters set forth in the original Complaint are again restated and incorporated herein by reference as if set forth verbatim.

**REPLY TO SECOND DEFENSE & COUNTERCLAIM**

2. All matters set forth in the Second Defense and Counterclaim, not hereinafter specifically admitted, modified or otherwise explained, are emphatically denied.

3. Answering Paragraph 2 of the Second Defense and Counterclaim, it is admitted that Blue Ridge Electric Cooperative, Inc. is a membership organization doing business in this county, state and nation in accordance with specific laws, duties and responsibilities to the public and to the membership, and that it endeavors to adhere to its

duties and responsibilities and to conduct its business in a proper manner at all times. Any and all other allegations of said paragraph that are inconsistent herewith are denied.

4. Answering Paragraph 3 of the Second Defense and Counterclaim, it is admitted that, upon information and belief, Steve Gresham is the husband of Defendant, Kathleen Gresham, and that he lives in and/or on property with his wife whereupon the subject electrical utility service was consumed; however, Plaintiff is also informed and believes that Defendant, Steve Gresham, has an equitable interest in said real estate whether his name is on the title or not; that he has benefitted from the consumption of electrical power for which Defendants have refused to pay; that he has, on numerous occasions, personally paid the charges for a portion of the electrical service consumed on the property; and that, although Steve Gresham has not executed any contractual documents with the Plaintiff, he has, directly and indirectly, exercised and enjoyed a business relationship with Plaintiff, particularly in regards to the consumption of electrical service consumed on the subject property. Based upon this information, Plaintiff is informed and believes that he is properly named as a Defendant, and that he has joint and several liability with his wife for the payment of the debt to the Plaintiff. All other allegations of Paragraph 3, inconsistent herewith, are emphatically denied.

5. Answering Paragraph 4 of the Second Defense and Counterclaim, it is obvious from the reading of the pleadings that Defendant is seeking punitive and actual damages from Plaintiff for bringing this action; however, Plaintiff is informed and believes that he has not been damaged in any manner or form whatsoever and that such claim is without merit and should be denied. Further answering said paragraph, it is emphatically denied that Defendants allowed Plaintiff to inspect the power lines and/or to read the

meters during the period of time when the electricity was being consumed upon the premises as the Defendants, have, in fact, conspired together to shut Plaintiff out of the property and have knowingly and intentionally prevented it to go upon same for the purpose of reading the meters and preparing an accurate bill based upon the actual electrical consumption as it was consumed. It is further emphatically denied that Defendants have cooperated in any way with the Plaintiff in attempting to resolve this matter as information was requested of Defendants and same was not furnished. All other allegations of Paragraph 4, inconsistent herewith, are emphatically denied.

6. Answering Paragraph 5 of the Second Defense and Counterclaim, it is admitted that Defendants have claimed they have lived elsewhere during periods of the time that electrical utility service was consumed which is the subject of this action; however, Plaintiff has no actual knowledge of same and, in fact, has requested that Defendants furnish to it proof of living elsewhere but Defendants have failed and refused to present the information requested. All other allegations of Paragraph 5, inconsistent herewith, are emphatically denied.

7. Answering Paragraphs 6 and 7 of the Second Defense and Counterclaim, it is admitted that the Plaintiff billed Defendants monthly for power bills and that those power bills were paid by Defendants; however, said bills were merely estimates of power consumption and not bills of actual meter readings or the actual electrical utility service consumed on the premises because the Defendants, jointly and severally, locked Plaintiff out of the property and refused to allow reasonable access for the reading of meters so that a bill based on actual consumption of electrical utility service could be prepared. All other allegations of Paragraphs 6 and 7, inconsistent herewith, are emphatically denied.

8. Answering Paragraph 8 of the Second Defense and Counterclaim, Plaintiff emphatically denies same and would show that, on numerous occasions, it attempted to contact the Defendants to gain access to the property for the reading of the meters, but Defendants intentionally avoided the Plaintiff and would not respond to or cooperate with Plaintiff in resolving the issues giving rise to this Complaint and/or allowing it access to the property for an accurate reading of the electrical meters thereon and preparing a bill on actual electrical utility service consumption.

9. Answering Paragraph 9 of the Second Defense and Counterclaim, it is admitted that the Plaintiff accepted payments for those amounts that were billed based on estimated billings, but, again, reiterates that those billings were merely estimates of electrical utility service consumption on the premises rather than the actual consumption of electrical utility service. Plaintiff will further show that billing customers based on estimated power consumption when access to the property cannot be obtained by Blue Ridge is a common practice for Blue Ridge, as well as all other electrical utility services, coops and power companies, and that it is common business practice that when an actual meter reading is finally obtained, that the difference between the amounts already paid and the charges for electrical utility service consumed is billed. All other allegations of Paragraph 9, inconsistent herewith, are emphatically denied.

10. Answering Paragraph 10 of the Second Defense and Counterclaim, Plaintiff denies the allegations contained therein and, again, reiterates that on numerous instances it has attempted to contact Defendants and obtain access to the property for the purpose of reading the meters and preparing an accurate bill based upon the actual electrical utility service consumed on the premises, but Defendants have failed and refused to return

messages, calls, etc. and have taken all actions they could to avoid the Plaintiff and/or refuse to even respond to Plaintiff to inquire of what problems were being encountered and how they could rectify same.

11. Answering Paragraph 11 of the Second Defense and Counterclaim, Plaintiff would show that because of the difficulties that it has had in dealing with the Defendants that it desires to terminate the power service of Defendants because of Defendants' extreme and unreasonable actions in dealing with Plaintiff; however, Plaintiff has not terminated any power service to the premises, and has attempted in every way to work out the problem without interrupting the power service to the Defendants. Plaintiff would further show unto the Court that the numerous allegations contained in this Second Defense and Counterclaim are inconsistent with each other. Defendant, Steve Gresham, alleges in some parts that he has no contractual or business relationship with the Coop, but then alleges that he has the right to have power supplied to him by the Plaintiff and that the termination of power service to him has violated some duty thereby causing distress and embarrassment to him for which he seeks damages.

12. The allegations of Paragraph 12 of the Second Defense and Counterclaim are emphatically denied inasmuch as the Plaintiff has attempted to contact Defendants on numerous occasions but Defendants have failed and refused to respond to any notices, return phone calls, etc. and/or to deal with the Plaintiff in any manner or form in an effort to resolve the issues.

13. The allegations of Paragraphs 13 and 14 of the Second Defense and Counterclaim are denied.

14. Answering Paragraph 15 of the Second Defense and Counterclaim, Plaintiff submits that same has already been done to its Cooperative members, information has been sent to them and that each and every Cooperative member understands the method and manner in which they are being billed and that the statement and/or allegation of Paragraph 15 is without reason or basis.

15. The allegations of Paragraphs 16 and 17 of the Second Defense and Counterclaim are denied.

### **REPLY TO THIRD DEFENSE**

16. Replying to the Third Defense, as set forth in Defendants' pleading, Plaintiff, again, incorporates all prior averments set forth in the Complaint and this Answer by reference as if fully restated.

17. The allegations of Paragraph 2 of the Third Defense are denied.

18. Answering Paragraph 3 of the Third Defense, Plaintiff admits that it was the party who selected and installed the electrical utility service equipment, including any meters, etc., and, at the time the equipment was installed, it was the state of the art; however, all other allegations of Paragraph 3 are denied.

19. The allegations of Paragraph 4 of the Third Defense are denied.

20. Answering Paragraph 5 of the Third Defense, Plaintiff would show that it did provide proper and correct service and billing pursuant to good business practices of cooperatives and other utility companies under the attendant facts and circumstances of this matter, but denies that Defendants have ever been excellent customers of Blue Ridge Power, although it is admitted that the estimated bills were paid by Defendants.

21. The allegations of Paragraph 6 of the Third Defense, are denied.

### REPLY TO FOURTH DEFENSE

22. Replying to the Fourth Defense, as set forth in Defendants' pleading, Plaintiff, again, realleges and reincorporates all allegations of the Complaint and prior averments of this pleading as if restated verbatim.

23. The allegations of Paragraph 2 of the Fourth Defense are emphatically denied.

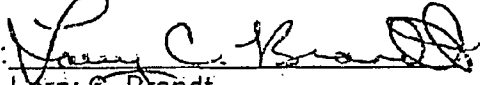
### REPLY TO FIFTH DEFENSE

24. Replying to the Fifth Defense, as set forth in Defendants' pleading, Plaintiff, again, realleges and reincorporates all allegations of the Complaint and prior averments of this pleading as if restated verbatim.

25. The allegations of Paragraphs 2, 3 and 4 are denied.

**WHEREFORE**, Plaintiff, having fully responded to the defenses and counterclaims of the Defendants, would respectfully pray that the Court issue its Order granting judgment as set forth in the Complaint.

Respectfully submitted,  
LARRY C. BRANDT, P.A.  
P.O. BOX 738  
3691 BLUE RIDGE BOULEVARD  
WALHALLA, S.C. 29691  
864/638-5406

BY:   
Larry C. Brandt  
Attorney for Plaintiff

October 7<sup>th</sup>, 2008  
Walhalla, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

2008 SEP 16

) IN THE COURT OF COMMON

) PLEAS

) 2008 CP-23-5245

Blue Ridge Electric Cooperative, Inc.,

Plaintiffs,

-vs-

Kathleen J. Gresham and Steve Gresham,

Defendants.

) NOTICE OF MOTION AND  
) MOTION TO DISMISS AND  
) FOR COSTS AND SANCTIONS

To: Larry C. Brandt, P.A., Attorney for Plaintiffs and to Plaintiffs herein named:  
(P. O. Box 738, 3691 Blue Ridge Blvd., Walhalla, SC 29691)

You are hereby noticed that the named Defendant, Steve Gresham, herein named, will move before this Honorable Court for dismissal of this action against him and for all costs associated therewith and incurred by him and for sanctions as set out below. Defendant's Answer and Counterclaim is attached hereto with reserve to amend and/or supplement same, depending on the result of said motion hearing.

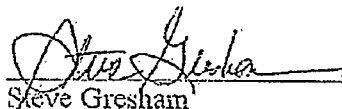
Defendant moves for dismissal with prejudice as to this matter for the following reasons:

1. That Defendant Steve Gresham has never had a contractual or other such business relationship with Plaintiffs and has never been a "member" of the said Cooperative nor ever agreed or had knowledge of any By-laws of said Coop.;
2. That the Defendant herein owns no property as set forth herein and does not agree to the jurisdiction of this Court as to this matter and challenges same;
3. That it was an elementary matter for Plaintiffs to have determined that said Defendant was not a Coop. member and that joining this Defendant in such matter was designed to harass, embarrass and punish this Defendant and to abuse the Court process for which Plaintiffs should be sanctioned and should pay all costs, including time off from work, for this Defendant in having to respond and answer same;
4. That Plaintiffs knew fully well that this Defendant was not a Blue Ridge Coop. member and has so known for several years and has repeatedly refused to discuss this or any other electrical power matter with this Defendant, citing that he was not a member and had no input as to this account or any other account within their control.
5. That the actions of Plaintiffs were retaliatory and poorly considered as well as punitive and designed to harass and embarrass this Defendant(s) to extort monies for an account which were paid in full each and every month in a timely and responsible manner, without any delay for many years, paid without fail in accordance with the billings of Plaintiff themselves and received by them.

6. That this matter should be stricken in full and Defendant(s) name(s) removed completely from the rolls of this Court.

7. That, as a result of Plaintiff's false, misleading, wrongful and vindictive filing, this Defendant has suffered loss time from work, loss of income and vacation hours, embarrassment, distress, financial costs and further, that his attempts to amiably resolve the matter in assistance to Plaintiffs, prior to their filing, were ignored by Plaintiffs. Thus, this Defendant believes that Plaintiffs have not acted in good faith and, in fact, proceeded with this action in a frivolous manner especially in light of this Defendant and should be subject to sanctions pursuant to SCRPC, Rule 11 and the South Carolina Frivolous Civil Proceedings Sanctions Act, and that this matter be immediately dismissed with prejudice fully, and for costs associated with this matter and for such other relief as this Court determines just and proper and in accordance with other procedures and rules of the Court.

I so move.



Steve Gresham

Defendant set forth herein

1524 Highway 11, Landrum, SC 29356

864-895-4222

This 15<sup>th</sup> day of September, 2008

STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
COUNTY OF GREENVILLE )  
2008 OCT -9 A 9 28

Blue Ridge Electric Cooperative, )  
Inc., )  
Plaintiff, )  
vs. )  
Kathleen J. Gresham and )  
Steve Gresham, )  
Defendants. )  
\_\_\_\_\_ )

FILED - CLERK OF COURT  
GREENVILLE, SC  
2008 OCT -9 A 9 28

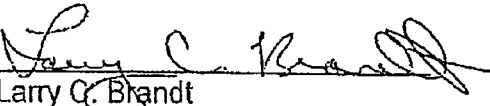
**PLAINTIFF'S REPLY TO  
MOTION TO DISMISS AND  
FOR COSTS AND SANCTIONS**

**Case #2008-CP-23-5245**

**TO: DEFENDANTS, KATHLEEN J. GRESHAM AND STEVE GRESHAM**

**YOU ARE HEREBY NOTICED** that Plaintiff, responding to the Motion of the Defendants, denies that the Defendants are entitled to the relief as requested in that the allegations of the Motion are false, misleading and certainly premature at the present time. It is, therefore, submitted that the Motion should be dismissed and that the trial should proceed forward on the merits of the claim.

Respectfully submitted,  
LARRY C. BRANDT, P.A.  
P.O. BOX 738  
3691 BLUE RIDGE BOULEVARD  
WALHALLA, S.C. 29691  
864/638-5406

BY:   
Larry C. Brandt  
Attorney for Plaintiff

OCTOBER  
~~September~~ 7TH, 2008  
Walhalla, South Carolina

|    | <u>EXHIBITS</u>        | <u>MARKED</u> | <u>FILED</u> |
|----|------------------------|---------------|--------------|
| 1  |                        |               |              |
| 2  | P1 - History Report    | 45            | 46           |
| 3  | P2 - History Report    | 55            | 56           |
| 4  | P3 - Lab Test Report   | 108           | 108          |
| 5  | P4 - Letter            | 159           | 180          |
| 6  | P5 - Letter            | 162           | 168          |
| 7  | P6 - Letter            | 163           | 168          |
| 8  | P7 - Letter            | 168           |              |
| 9  | P8 - Letter            |               |              |
| 10 | P9 - Tax Info.         |               |              |
| 11 | P10- Tax Records       |               |              |
| 12 | P11- Tax Records       |               |              |
| 13 | P12- Permit            |               |              |
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| 17 | D1 - Brochure, By-laws | 5             | 75           |
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| 9  | C1 - Voir Dire      |               |              |
| 10 | C2 - Question       |               |              |
| 11 | C3 - Jury Charge    |               |              |
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1 the information and companies can be make mistakes. That  
2 company, good employees, they made a mistake. And now  
3 they're not wanting to go back, and they have sent us  
4 over 26 or so disconnect notices. So for two years every  
5 month we have been living with another cancer, that is is  
6 our power going to be disconnected. We hope we don't  
7 wake up one morning and don't have any power or  
8 something. And that's the stress that has been in this  
9 family.

10 Then contrary to what Mr. Brandt said you will hear  
11 testimony that approximately two years ago they erected a  
12 pole on our property without permission. It wasn't  
13 anything that served us. Didn't provide service to our  
14 property or for us. And it had not -- had not been there  
15 even before. It wasn't an old pole that was replaced.  
16 It was a pole they could have put on the other side of  
17 the metal guy wires, along the road. Y'all have them  
18 seen go up on Highway 11. They're everywhere. But they  
19 metal guy line wires to help over to that side, across  
20 our own property with the guy line wires on our property.  
21 It was put there without asking, without compensation,  
22 and without anything, other than where are they going to  
23 put this. And that's what we have brought the trespass  
24 action for.

25 You're going to hear that for a year or so we tried

1 Q Did you not tell him the meter was missing?

2 A No.

3 Q What did you tell him?

4 A I don't think the meter even came up.

5 Q Now, you said you put the meter in in 2001?

6 A Um-hm.

7 THE COURT: Hold you. Stop. No, this has been  
8 asked and answered. We're going to move on. That's  
9 not responsive to his redirect. I'm going to stop you  
10 there.

11 MS. JENNINGS: In 2003 ---

12 THE COURT: Stop. I'm going to stop you there.

13 MS. JENNINGS: Stopping me altogether? I'm sorry,  
14 it wasn't clear.

15 THE COURT: You may step down, sir.

16 THE WITNESS: Thank you.

17 MR. BRANDT: Plaintiff rests their case.

18 THE COURT: Ms. Jennings? Tell you what, ladies and  
19 gentlemen of the jury, we are probably going to have some  
20 matters of law to take care of right now. So if you  
21 would retire back to your jury room. I imagine it will  
22 probably be about 15 minutes or so.

23 (The jury exited the courtroom at 2:54 p.m.)

24 MS. JENNINGS: Your Honor, I rise to make a motion  
25 for a directed verdict as to Mr. Gresham. He has no

1 business in this lawsuit. Perhaps I'm not a very good  
2 legal representative, but he's not a party to Blue Ridge.  
3 He has no contractual or other membership with Blue  
4 Ridge. He has absolutely nothing -- and their witnesses  
5 say that he does, which is amazing to me that it's been  
6 allowed to go this long. We ask that it be ---

7 THE COURT: You're asking the claim against Mr.  
8 Gresham to be dismissed?

9 MS. JENNINGS: Exactly.

10 THE COURT: She's asking for a directed verdict, Mr.  
11 Brandt.

12 MR. BRANDT: I don't think as a pro se she can  
13 represent him.

14 THE COURT: He's got to speak for himself.

15 MS. JENNINGS: Well, can I speak -- I was trying to  
16 do as Your Honor said earlier, to try -- but I can ---

17 MR. BRANDT: However ---

18 MR. GRESHAM: Same motion.

19 MR. BRANDT: To resolve any problem I'll agree to  
20 let him go.

21 THE COURT: I was going to if you didn't. Now, he  
22 still has claims back against the company you understand  
23 that.

24 MR. BRANDT: Yes, sir.

25 THE COURT: So I'll grant Mr. Gresham's motion for

1 directed verdict as to the complaint against him.

2 MR. GRESHAM: Thank you, Your Honor.

3 THE COURT: Yes, sir. Any other motions, Ms.  
4 Jennings?

5 MS. JENNINGS: Just one, Your Honor. There was a  
6 few -- reach back and remember Ms. McCormick's testimony  
7 where I paid money to Blue Ridge because of a similar  
8 problem, because of the meter irregularity trouble, so I  
9 suspect that I've got to dust off a lot to remember what  
10 was accord and satisfaction. This in fact has been  
11 litigated previously. I have paid for this previously.  
12 And here we are back on the same page once again going  
13 over the same type things when it has already been paid  
14 and the parties were on notice this was paid.

15 THE COURT: Are you referring back to them saying  
16 they gave you a refund for the over payment of your  
17 estimates, is that what you're referring to?

18 MS. JENNINGS: No, no, sir. It goes deeper than  
19 that. Some of the testimony hadn't come out, I may have  
20 to make this motion ---

21 THE COURT: Okay. I'm just trying to follow. If  
22 you'll be a little more ---

23 MS. JENNINGS: There was a time when I paid 900 some  
24 to Blue Ridge for a meter error, very similar to this  
25 where they said that meter wasn't reading right, they

1 MR. BRANDT: Nothing further.

2 (The jury entered the courtroom at 3:05 p.m.)

3 THE COURT: All right. Ladies and gentlemen, we are  
4 about to begin the defendant's side of this case. While  
5 you were out the complexity or the complexion of this  
6 case has changed just a little bit. I have dismissed the  
7 plaintiff's claim against Steve Gresham. He has a claim  
8 back against the plaintiff and that is still there, as  
9 well as Ms. Jennings' claim against -- back against Blue  
10 Ridge is still there. Blue Ridge's claim against Steve  
11 Gresham has been dismissed. You may proceed, Ms.  
12 Jennings.

13 MS. JENNINGS: Your Honor, for the convenience of  
14 two witnesses I have called, if you don't mind I was  
15 going to call them out of order ahead of me just to save  
16 time since our side wouldn't be ---

17 THE COURT: You choose the order you want this.

18 MS. JENNINGS: The defense calls Mr. Dalton.

19 THE CLERK: Place your left hand on the Bible and  
20 raise your right hand.

21 CHARLES DALTON

22 Having been first duly sworn, testified as follows:

23 THE CLERK: State your name, please.

24 THE WITNESS: Charles Dalton.

25 THE CLERK: Thank you. Please be seated.

1 lawsuit being filed to resolve this matter?

2 A On numerous occasions. Telephone calls were made.  
3 You tried to talk to Mr. Brandt but didn't have a lot of  
4 success on doing that. As well Mr. Dalton we talked  
5 about a couple times.

6 MS. JENNINGS: Now, you're -- you have been a  
7 defendant. So Your Honor, I would stop asking questions  
8 on my behalf. If he has anything he wants to say about  
9 the counterclaim I feel like I shouldn't lead him through  
10 and do all the inquiry. See what I mean? He's brought a  
11 counterclaim too. I'm going let him question himself if  
12 he wants to.

13 THE COURT: Okay.

14 MR. GRESHAM: Well, we tried to resolve this matter  
15 in every way that we could. Obviously it wasn't  
16 successful. And we had some concerns about what Blue  
17 Ridge had done to some of our property since that point  
18 in time. So we have some concerns about a power pole  
19 that was placed on our property, and some of the things  
20 related to that.

21 BY MS. JENNINGS:

22 Q Well, you have seen that property -- just point to  
23 that, that power pole. Is it -- whose property is that  
24 on?

25 A It sits on our property. It's on the Highway 11.

1 It's the interior of the highway department's guardrail  
2 that sits right on the corner along the side of our  
3 property. If the guy wires are correct, that pole --  
4 connecting that pole onto our property are actually  
5 anchored onto our property.

6 Q I'm going to show you some pictures, defendant's  
7 Exhibit Number 5 for identification. Did -- do these  
8 pictures depict that pole, the number, the guy wires,  
9 just collectively of what you have said?

10 A Yes.

11 MS. JENNINGS: I'd like to move the introduction of  
12 these.

13 MR. BRANDT: I don't have any problem with that  
14 picture.

15 THE COURT: Be without objection.

16 (Defendant's Exhibit Number 5 was filed.)

17 BY MS. JENNINGS:

18 Q Your participation in answering -- you had a motion  
19 on behalf of yourself to dismiss you as a party about a  
20 year ago?

21 A Yes, I did.

22 Q Your participation in the hearings and the motions  
23 has -- what has that caused in time from work?

24 A At least -- I have spent at least if not more than  
25 an hour a week away from work to try to resolve the issue

1 A Yes.

2 Q Okay. And that was a summary judgement motion,  
3 correct?

4 A I don't know, I guess.

5 Q But he heard the arguments and decided that at least  
6 at that point there was just cause to leave you in this  
7 lawsuit?

8 A Apparently.

9 Q Okay. Now, the property, that 1524 Highway 11,  
10 whose name is it titled in?

11 A Kathleen.

12 Q You don't have any interest in that property, do  
13 you?

14 A I do not.

15 Q So any damages would not go to you on that trespass,  
16 or property, because you don't have an ownership in the  
17 property, do you?

18 A I do not have an interest in the property.

19 Q Now, you talked about the chain being cut, or broken  
20 by Blue Ridge and their own chain and you were locked out  
21 at least twice?

22 A That I remember. There could be some -- there could  
23 have been a third time but I honestly don't remember  
24 that.

25 Q But all that occurred back prior to 2003, did it

1       there and these -- power was being consumed, you were  
2       getting of benefit whether you were a member of the Coop  
3       or were on the bill at all, weren't you?

4       A     There was electricity in the house.

5       Q     That benefitted you because you were living with  
6       her? Do you refer to it as your property?

7       A     It's Kathleen's property. We've made that very  
8       clear.

9       Q     All right. Now, would you disagree or agree that  
10      that pole is located 20 feet from the center line of  
11      highway 11?

12      A     I haven't measured it.

13      Q     Well, as a statement do you think that's correct or  
14      not?

15      A     I'll take your word for it. It that's what it is.

16      Q     The anchor is 15 feet past that pole which would be  
17      within 44 feet of the center line of Highway 11, are you  
18      aware of that?

19      A     If you say so.

20      Q     Well, just do you know?

21      A     I don't know. I have not measured it.

22      Q     Have you gone out there and measured it?

23      A     No, I have not.

24      Q     The total distance where the anchor is, the guy wire  
25      from the center line of highway 11 would be only 44 feet,

1 correct? If you have measured the highway right of way  
2 there is 50 feet within the highway right of way?

3 MS. JENNINGS: Argumentative. He's asking him stuff  
4 he says he doesn't know the answer to. So it's hard ---

5 THE COURT: Overruled.

6 BY MR. BRANDT:

7 Q Knowing we were within 50 of that, the highway right  
8 of way, then we would have a right to be there, whether  
9 you gave permission or not, we would be -- or she gave  
10 permission or not?

11 A If you say so.

12 Q Were you a part and parcel for the negotiations  
13 which were testified that was basically they ran an  
14 underground line to the barn in exchange for even  
15 permission to put a pole there, even though it was the  
16 highway right of way?

17 A I don't know anything about that agreement.

18 Q Don't know anything about that ---

19 A No.

20 Q --- that transaction? Are the utilities that's  
21 being on the property, is that all in the name of  
22 Kathleen, or do you have some in your name?

23 A They are all in the name of Kathleen.

24 Q Where did y'all buy your propane from?

25 A Freeman Gas in Landrum.

1 A Yes, ma'am, I have.

2 Q And have you had an occasion to come to the Highway  
3 11 property at my invitation?

4 A Yes, ma'am.

5 Q And we have had known each other a number of years?

6 A Yes, ma'am.

7 Q And have you had an occasion, Steve, to see this  
8 power pole in question? I passed the photos around.

9 A Yes, ma'am, I have.

10 Q You have seen those photos?

11 A Yes, ma'am.

12 Q How many feet is it approximately from the center of  
13 Highway 11 where it sits?

14 A In my estimation the pole sits five foot inside of  
15 the State fence. The guy wires would be on your  
16 property.

17 Q So are the pole guy wires on my property?

18 A Yes, ma'am, they are.

19 Q Okay. You have physically seen it?

20 A Yes, ma'am, I have.

21 Q Adjacent to my fencing?

22 A Yes, ma'am, it's behind your fencing.

23 Q Okay. And you also saw some pictures of the gate --  
24 have you seen the gate locked?

25 A Yes, ma'am, I have.

1 Q You didn't know how that was arranged for these guys  
2 to get there on a particular day, did you?

3 A I was usually pretty early.

4 Q How do you know on that date to put underground  
5 power they had been granted access to the property came  
6 about by your knowledge (sic)?

7 A Repeat that again, sir.

8 Q She wanted underground, they had to get out there  
9 and they had to put the line in, correct?

10 A I understand that, yes, sir.

11 Q Have I understood you testified that basically they  
12 had to have called her to arrange that time for entry?

13 A Right.

14 Q You don't have any personal knowledge, do you, as to  
15 who called who and arranged that meeting, or that day to  
16 get in?

17 A Well, no, sir, I don't know the particular day  
18 you're speaking of.

19 Q Okay. And have you ever seen a plat of her  
20 property?

21 A No, sir.

22 Q Have you ever seen a plat of the highway right of  
23 way coming down Highway 11?

24 A No, sir.

25 Q Do you have any knowledge of how far the right of

1 way is from the center line of Highway 11 into Ms.  
2 Jennings' property?

3 A No, sir.

4 Q Do you know how much the highway department has on  
5 any other property coming down Highway 11?

6 A It's probably the standard 20 to 25 feet.

7 Q Now, do you know that that is the standard right of  
8 way?

9 A I have property myself, sir.

10 Q Well, so do I. On highway 183, is 33 feet the  
11 center line?

12 A Yes, sir.

13 Q So each side of the center line is not 20?

14 MS. JENNINGS: Objection, it's irrelevant.

15 THE COURT: Overruled.

16 BY MR. BRANDT:

17 Q Do you know?

18 A I don't know that to be fact.

19 Q You don't. On the main highway, are you telling me  
20 all the highway department gets is 20 feet from the  
21 center line?

22 A Sir, that's a two lane road.

23 Q I understand. The center line of that highway  
24 you're telling me all the highway department gets is 20  
25 feet?

1 A I think that's correct.

2 Q You don't know, do you?

3 A I don't know that to be fact but I think that's  
4 correct.

5 Q So if we showed you that the highway department has  
6 50 feet right of way on the Jennings property from the  
7 center line, would disagree with that?

8 A No, sir, I wouldn't disagree with your measurement.

9 Q Blue Ridge had permission from the State highway  
10 department to locate that pole where it located it, do  
11 you have any knowledge of that?

12 A No, sir, I don't.

13 Q You don't even know if her fence is on the edge of  
14 the highway right of way, or in the highway right of way,  
15 or back off the highway right of way, do you?

16 A I know the fence is approximately eight to 12  
17 asphalt ---

18 Q You don't know where the highway right of way line  
19 is, do you?

20 A No, sir, because the road has been resurfaced.

21 Q Now, if you measured the distance from the center  
22 line of Highway 11 to that pole -- have you measured?

23 A Yes, sir. You're asking a question?

24 Q Yes.

25 A No, I have not.

1 Q Have you measured the center line of the highway to  
2 the guy wire anchor?

3 A I have estimated. I have not physically measured.

4 Q How much did you estimate it to be?

5 A From the center line or from the edge of the road?

6 Q From the center line of Highway 11 to that anchor  
7 for that guy wire, how long -- how much do you estimate  
8 it to be?

9 A I would say the guy wire is at least 50 feet.

10 Q If somebody goes out and measures it at 44, would  
11 you take their word for it or is ---

12 A If they measured it, and I saw them measure it and  
13 the incriminate, I wouldn't have to ---

14 Q Excuse me, I didn't mean to cut you off.

15 A I would have to concur If I saw the measurement.

16 Q Okay. Now, you have described the gate and the lock  
17 on this gate as being pretty stout and strong?

18 A That logging chain is very strong.

19 Q Okay. And there's no doubt that unless Ms. Jennings  
20 would let Blue Ridge in during this period time they  
21 couldn't get in there to read the meter, could they?

22 A They would take bolt cutters.

23 Q They would get in with bolt cutters way back then?

24 A They would cut the lock again.

25 Q Again?

1 Kathleen Jennings, that I was married to Steve Gresham.  
2 We'd been married since September of 1990. At the time  
3 of the trial, I was fifty-six years old, resided where I  
4 reside now 1524 Highway 11, Landrum, South Carolina,  
5 which is Greenville County. I've had that location and  
6 that property in my name alone since the early 1980s.  
7 It's part of northern Greenville County.

8 I testified that I was a life-long Greenville  
9 resident, that I was educated in the public schools of  
10 Greenville County and a graduate from the University of  
11 South Carolina. I testified I was active in community  
12 affairs my entire life, that I was one of the first  
13 founders of the Glassy Mountain Fire Department which was  
14 the last district in South Carolina to have fire  
15 protection. That testimony I gave about founding the  
16 fire department, composing the by-laws, helping secure  
17 the land for the main station and the two substations.

18 Was very familiar with the community, with  
19 resources, with rights-of-way, with highways, utility  
20 lines and water resources as a result of two years of  
21 active research before the fire department commenced. I  
22 testified I was one of the first Glassy Mountain Fire  
23 Commissioners and was secretary of the Commission,  
24 raising the money to build the fire department.

25 I testified we lived in a rural location which I had

1 purchased as a single woman before my marriage. I  
2 testified to various threats made to my property and torn  
3 down. And when I moved to that property, I immediately  
4 started securing the fencing along my property line  
5 including approximately one mile of road frontage on  
6 Highway 11 where my farm was situated. I built fencing  
7 around the Highway 11 for my personal protection as well  
8 as for enclosure of animals.

9 And in that regard had met with individuals from the  
10 department of highway and others to ascertain the correct  
11 right-of-way in order to erect my fencing the proper  
12 locations. The fencing had been there since the early  
13 1980s and continues there today with some add-ons that  
14 occurred some years after, but primarily since the early  
15 '80s.

16 And that was when I said I spent considerable time  
17 with the highway department officials, county road  
18 experts, side road experts, Blue Ridge Power workers,  
19 other fire departments in the area, particularly learning  
20 right-of-ways not only for Highway 11, but for others  
21 because of fire department work that we were doing.

22 I testified that a lot of the fencing was done by a  
23 professional fencing company used in the area with some  
24 personal assistance from my father and me and a few  
25 helpers who put in various fencing.

1 because at that point we had a child with cancer, and  
2 that was one less thing to worry about.

3 And that was exactly how it proceeded and that we  
4 paid our bill in full every month without fail, often  
5 within forty-eight hours of receiving it, even during the  
6 period we weren't there. And that we objected very much  
7 to being classified as debtors and having not paid our  
8 bill.

9 I testified also that I had never executed any  
10 written documents to Blue Ridge to allow them unlimited  
11 access to my property. That I had never executed any  
12 documents allowing them to place any pole or wires on my  
13 property. Most of my testimony was concerning the bill  
14 and the circumstances of the bill because that was the  
15 main thrust, the thrust of the Blue Ridge case suing me,  
16 was for -- they said it was for a debt collection.

17 I was proceeding to give more information about  
18 that, in all candidness, when Your Honor interrupted me  
19 on the stand and told me that you remembered me from  
20 domestic cases that I had done in Anderson County and  
21 that there had been some problems with me talking too  
22 much or something you were going into, quite frankly --  
23 and with all respect here today, that you were very  
24 aggravated. You stood up at the bench and you dressed me  
25 down very vehemently which almost made me cry. And it

1 was in front of the jury.

2 I turned to you -- the witness stand was on the  
3 other side of the courtroom in that proceeding. I turned  
4 to you at that point and said, Your Honor, I don't  
5 appreciate those comments to me, particularly in front of  
6 the jury. And I said, you're -- I think you're showing  
7 your bias against me. And at that point you said, okay,  
8 ladies and gentlemen, I'm going to send you out. You  
9 abruptly stopped. You sent the jury out of the room with  
10 the bailiffs. They were secured off-site out of the  
11 courtroom. Then you turned to me and let me have it  
12 pretty hard about what I needed to do.

13 The reason I was going into that testimony -- which  
14 I'm not going to anymore because I didn't say any more  
15 than that -- was to establish that I had an excellent  
16 relationship with Blue Ridge, that they had always known  
17 how to contact me because their case-in-chief had accused  
18 me of being unable to be reached. And they made it look  
19 like I was a phantom, some person that lived totally  
20 somewhere else and they couldn't get in touch with me  
21 which couldn't have been further from the case.

22 I was very vested in -- I knew those people. They  
23 would toot at me when they went by and wave their hands  
24 at me. So they knew me that well. If either one of them  
25 had a child that was sick, I sent things to them. That's

1 what I was -- but I was cut short from doing that. And I  
2 thought it severely prejudiced me in front of the jury,  
3 and it hurt my feelings a great deal. And it took a  
4 little bit for me to compose myself to go forward because  
5 I was tearful. Not in front of the jury. They had been  
6 removed. But I was tearful from myself that that had  
7 occurred.

8 The reason that struck me as particularly harmful  
9 and the reason I had made it part of my appeal, that  
10 issue, was at the beginning of the case before the case  
11 commenced, you, Your Honor, called me up to the bench and  
12 told me -- and I'm going to give you the quote that I  
13 remember that has lived with me daily since that first  
14 hearing on August 26th of 2009. You told me as you  
15 leaned over the bench and pulled me close here and said,  
16 just pay your damn bill. And that's when I said, Your  
17 Honor, if you believe that, you might not be the one to  
18 hear this because you obviously haven't read these  
19 proceedings.

20 I had paid my bill every month diligently without  
21 fail and never failed to pay my bill, as was indicated in  
22 the testimony of Ms. McCormack when she testified and Mr.  
23 Dalton when he testified. So the reason I was indignant  
24 in this and wanted to bring the circumstances out was  
25 this action was brought as a debt collection against

1 someone that never owed the debt, that had paid it fully  
2 all along and that I felt very strongly. It was a  
3 principle in proceeding with this action. And that  
4 because this action was brought to court, I then filed a  
5 counterclaim for what was truthful, and that was that the  
6 pole and the guy wire erected by Blue Ridge, without any  
7 written permission or permission from me, was on my  
8 property and was consequently in trespass on my property.  
9 Would I have brought that up had this not been initiated  
10 against me? Likely not, though I had advised Blue Ridge  
11 immediately when it was established that it was on my  
12 property and needed to be removed.

13 I testified that this was not a power pole, per say,  
14 power pole being in quotations, that this was a support  
15 pole that was used to carry power, were it to ever occur,  
16 to some unknown in the distant perhaps to-be-built  
17 houses, not any that were currently in existence. That  
18 this was projection poles, in other words, for power that  
19 was to be run past at some date in the future. And with  
20 the economy having been as we know, obviously that didn't  
21 occur. But that this pole put on my property, called a  
22 power pole for the sake of terminology, did not serve  
23 anyone, nor did it serve me. For remember, I had paid  
24 multi thousands of dollars to have my power buried and to  
25 see no power utility poles.

1           And that the right-of-way from the center of the  
2   property line, center of Highway 11, to -- for the right-  
3   of-way was twenty feet in my testimony and that I was  
4   totally convinced of it, absolutely certain of it, not  
5   only because of my vast experience working with right-a-  
6   ways and Highway 11 and Blue Ridge when I was  
7   establishing my fencing and the highway department, that  
8   this was without a doubt a twenty-foot right-of-way, and  
9   the pole was over on my right-of-way.

10           Let's see. I think it was some thirty -- it was  
11   thirty-something feet, thirty-four or something like that  
12   feet. The guy wire especially was. And it was in a  
13   position, as I testified, that I could no longer clean  
14   there. That I had kept that area clean. We were fairly  
15   picky at that age, because I'd had the property for a  
16   long time, back in my younger years. And that we kept it  
17   clean. I could no longer keep it clean because of the  
18   pole that served no power purposes and the guy wire that  
19   was located down further on my property that we could not  
20   get to anymore. And it frankly looked like a mess.

21           Let's see. We had -- I testified that we had had a  
22   lot of power outages in those early days but not due to  
23   my buried power. It was due for the above-ground power  
24   poles that serviced property further down Highway 11.

25           Let's see. I noted that the power pole located on

1 my property now was without my permission which was  
2 trespassing, along with the guy wires. As I said, never  
3 served my property, never has.

4 Excuse me. I'm looking at my summary of my  
5 testimony which I've given you. The pole went up about  
6 the same time Blue Ridge sued me. It had just not been  
7 erected too much further before then.

8 I testified about power to my barn. When I went to  
9 get power to my barn, I went to a trailer that Blue Ridge  
10 had as a substation up at 11 and 25. I paid my fees for  
11 power service there to the lady who was -- makes you fill  
12 out the application for whatever it was that you wanted,  
13 and I paid that to her there. She had my membership down  
14 as Kathleen Jennings. In fact, I remember testifying as  
15 to my husband by Blue Ridge assertion had been a member  
16 of Blue Ridge.

17 When we had power outages, which were very frequent  
18 in those early years, they would not give my husband any  
19 information about the account because they said he was  
20 not a member of the Blue Ridge Electrical Coop. So  
21 anytime we had a power outage and had to talk to anyone,  
22 I had to physically do it myself, for they would not talk  
23 to my husband as he was not a member except when the  
24 lawsuit came about.

25 Let's see. I go by Jennings as my last name. I've

1 THE COURT: All right.

2 Cross-examination?

3 CROSS-EXAMINATION

4 BY MR. BRANDT:

5 Q. Ms. Jennings, you bought this property from Champion  
6 Paper Company. That's what you testified that you said?

7 A. Part of it was from Champion and part of it was from  
8 those five guys.

9 Q. And you, I believe, have testified today that you  
10 testified to that back at the time of trial? You  
11 testified that you bought it from Champion Paper?

12 A. I don't think that was asked. I don't remember  
13 that, but it was -- I don't recall that, no, sir. It was  
14 Champion maybe not Campion (phonic).

15 Q. Champion Paper Company?

16 A. Champion. I mean, just now.

17 Q. And you didn't testify, as you submitted to the  
18 Court, at the time of trial that you walked your lines  
19 from Champion Paper and went over every right-of-way that  
20 was on that property, did you?

21 A. No, I didn't testify I walked with Champion Paper  
22 because I never walked it with Champion Paper. In fact,  
23 they didn't even know they owned it. It took me writing  
24 up to Connecticut to find out from Champion Paper that  
25 they -- they owned so much property. When I tried to buy

1 it from them, it wasn't for sale. They didn't even know.

2 But we didn't testify about this at all that ---

3 Q. At trial?

4 A. About this part.

5 Q. And you didn't testify at trial that you went over

6 the right-of-ways on the property with Champion Paper,

7 did you?

8 A. No, not with Champion Paper. I went over it with

9 the department of highway people, with Blue Ridge and

10 then with the fencing man who did his own research. It

11 was Monty somebody from J & R Fencing in Marietta who was

12 a long-time fencer up there. And we went over it. But

13 Champion Paper didn't even know they owned the property,

14 Mr. Brandt.

15 Q. And you -- the person that gave -- or the party that

16 gave the right-of-way to the highway department, who was

17 that?

18 A. (No verbal response)

19 Q. When Highway 11 came up there, did you testify at

20 the time of trial as to who the party was that owned the

21 property at that time ---

22 A. You mean the twenty-foot right-of-way? No, I don't

23 know about who gave it to -- I know that I testified that

24 even part of my property was on the other side of Highway

25 11, a little part, because my husband used to tease me

1 and tell me he was going to make me do a fruit stand when  
2 I retire on that part of Highway 11.

3 Q. Now, you testified at trial, did you not, and  
4 acknowledge that highway right-of-ways are usually  
5 anywhere from twenty-five to fifty feet each side of  
6 center line?

7 A. Oh, absolutely not. I didn't testify about that.  
8 In fact, you didn't even ask me that. In one of your  
9 positions to the Court, you said something about Highway  
10 183 or some number. And you said it was a thirty-foot  
11 right-of-way, that that's what you believed the right-of-  
12 way was. And it's in the transcript.

13 Q. And in your testimony, you didn't testify that you  
14 knew that it was a twenty-foot right-of-way there, and  
15 you merely said, I think it's a twenty-foot there, didn't  
16 you?

17 A. That's probably what I said. I think it's a twenty-  
18 foot right-of-way.

19 Q. It probably was a twenty-foot right-of-way? And  
20 that's what your testimony was at trial?

21 A. Yeah. That's what -- well, in fact, you told me you  
22 didn't have any notes. But I told you that I said I  
23 think it's a twenty-foot right-of-way. And I still think  
24 it's a twenty-foot right-of-way. I haven't varied.

25 Q. And at trial you never went back and offered any

1 kind of documentation, call any highway person in there  
2 to refute Plaintiff's Exhibit Number 12, did you?

3 A. I don't know what exhibit number 12 is at this  
4 point.

5 Q. Twelve was that application for the permit and the  
6 staking sheet. Do you remember those? You were given  
7 those at trial to look over. And I asked you if you  
8 disagreed with it, and you didn't.

9 A. Well, as I remember, you didn't furnish them to me  
10 in the pre-trial discovery part. You provided this later  
11 at trial, so I saw it for the first time at trial. I  
12 told you I had a running objection to this because -- you  
13 know, I don't know. It is what it is. It was done -- I  
14 see it's prepared on September '07 and signed by Ronnie  
15 Alexander. You put it in. It's in the evidence.

16 Q. But I'd asked you about that.

17 A. That don't necessarily mean I agree with it just  
18 because you put it in.

19 Q. But I asked you that day of the trial if you agreed  
20 or disagreed with it, and you didn't disagree with it,  
21 did you?

22 A. Well, no, of course, I disagree with it. I think  
23 the right-of-way is twenty feet. That was one of the  
24 questions the jury decided. I don't agree with it.

25 Q. Do you -- other than you saying, I think it's

1 probably twenty feet, did you offer any other evidence  
2 from the highway department or any kind of authority that  
3 said that that highway permit was wrong?

4 A. Did I put up anybody from the highway department?

5 No.

6 Q. Did you put up anything that said that staking sheet  
7 -- the pole wasn't where the staking sheet had it?

8 A I put up my testimony about what I knew my right-of-  
9 way was that I've had since the '80s as a property owner.  
10 And Mr. Austin testified about their right-of-way. Did I  
11 put up anybody from the highway department? I don't  
12 think it's anybody in the highway department's business.  
13 It was my testimony of what the right-of-way was.

14 Q. The essence of your testimony was that pole is on my  
15 property. I didn't give Blue Ridge permission to put it  
16 there. But you didn't put anything in about any kind of  
17 specifics of right-of-way. Your testimony at best was, I  
18 think it's twenty feet.

19 A. Well, are we beating me to death now for ---

20 Q. Well ---

21 A. Should I have jumped up and down and objected more?  
22 Is that what you're asking me? Maybe.

23 Q. No.

24 A. But I said all along, it's twenty feet. And I say  
25 here five years later it's twenty feet.

1 during that time. I think I was as kind and professional  
2 and polite as I am now. I did get a little loud just a  
3 minute ago but that was not heard by the jury. That  
4 conversation did not occur at all. I would have liked  
5 for it to have occurred, but it didn't.

6 Q. But you were there and heard Mr. Alexander's  
7 testimony at trial?

8 A. This Mr. Ronnie right here?

9 Q. Yes, ma'am. Ron Alexander?

10 A. Yeah. I vaguely remember he was at trial. I've got  
11 some notes about what he said.

12 Q. And I sent you this Plaintiff's Admission, Missing  
13 Testimony and Evidence and Reconstruction of the Record,  
14 back, way back in November, didn't I?

15 A. I don't remember that, Mr. Brandt.

16 Q. And we came down here even after that had been done  
17 and we wanted to try to resolve it. Let me ask you. Is  
18 there anything in what I submitted that Mr. Alexander  
19 testified about or testified to that you disagree with?

20 A. Is this something that you asked me when I testified  
21 the last time?

22 MS. JENNINGS: I understand from the Judge  
23 we're supposed to only give information about what  
24 testimony occurred on August 27th, 2009. What you're  
25 asking now is from August 27th, 2009, so I object to it.

1 Q. Well, we're trying to reconstruct the record.

2 THE COURT: Well, I'm going to rule on the  
3 objection made by the witness. The purpose of this  
4 hearing is to reconstruct actual testimony elicited  
5 during the trial.

6 MR. BRANDT: I understand. And my question is  
7 with my witness, does she admit that what I said about  
8 Mr. Alexander's testimony is true? That's helping  
9 reconstruct the record, what the witness said.

10 MS. JENNINGS: Well, one, it wasn't asked. And  
11 I don't think you can use a witness to give credibility  
12 to a reply witness which is what Mr. Brandt's trying to  
13 do. He's trying to bolster his witness who has not  
14 testified in reconstruction and using me to try to  
15 bolster him. I think that's not only proper ---

16 THE COURT: All right. Let's do this. I want  
17 you to limit your cross-examination to matters that you  
18 can recall that were asked of this witness during the  
19 trial of this matter.

20 MR. BRANDT: And therein is our problem. That  
21 was four years ago. I remember asking her some things.  
22 She had said today I asked her things and did things that  
23 I did not -- do not recall doing. And therein is my  
24 problem.

25 THE COURT: All right. And we will deal that

1 subsequent to the proposed testimony ---

2 MR. BRANDT: And if I may put something else on  
3 the record at this point.

4 THE COURT: No, sir. We're going to deal with  
5 that after we get through with Ms. Jennings testimony.  
6 Okay, sir?

7 MS. JENNINGS: Were there things I wish I had  
8 said? Yes.

9 THE COURT: No, no.

10 MS. JENNINGS: But I'm not testifying to ---

11 THE COURT: No, you can't do it either.

12 MS. JENNINGS: Well, I'm not.

13 THE COURT: We're going to go back to the  
14 cross-examination at the trial to the extend you're able.  
15 And it would seem to me from both parties, since the  
16 matter of the bill from Blue Ridge is no longer at issue,  
17 then your real germane that you're looking at is the  
18 right-of-way and questions with that regard. But I'll  
19 leave that in your discretion if you want to get into the  
20 billing aspect as well.

21 MR. BRANDT: Well, Your Honor. I'm -- you  
22 know, it's the same problem that I had at trial. It's  
23 not a question and answer with a chance to object. A lot  
24 of stuff came in that I would have objected to. The  
25 cat's out of the box because all of a sudden it was just

1 there. I think I objected, and that's when you did tell  
2 her to stay on point. And I remember that.

3 THE COURT: We're going to deal with that.

4 MR. BRANDT: And she has testified ---

5 THE COURT: Mr. Brandt. ---

6 MR. BRANDT: --- that things happened.

7 THE COURT: Mr. Brandt, Mr. Brandt, please.

8 I'm asking you again, your questions need to do with the  
9 questions that you asked during this trial. If you can't  
10 do it, that's okay. I just want you to do your best.

11 I'm going to give both parties an opportunity to state  
12 their opinion as to what's been elicited. Okay? And I'm  
13 going to put something on the record too. But as far as  
14 this part of this hearing, ask questions that were asked  
15 during the trial to the extent you can. Okay? I know  
16 that's a tough, tall order. I mean, it's just an unusual  
17 proceeding.

18 MR. BRANDT: I mean, she's done a lot of  
19 things. And I think anything goes to credibility today  
20 to whether or not she's telling the truth. But, okay. I  
21 take it that I can't ask her whether or not she agrees  
22 with Mr. Alexander's testimony. It's difficult. She's  
23 the attorney, she's the party, she's the witness. And  
24 you're restricting me to merely what she testified to at  
25 this point?

1 THE COURT: Yes, sir, I am.

2 MR. BRANDT: Okay.

3 THE COURT: And I'm going to give you an  
4 opportunity and I'm going to give Ms. Jennings an  
5 opportunity after we get through with the testimonial  
6 aspect of this hearing to place whatever they feel like  
7 would be appropriate on the record.

8 MR. BRANDT: She's intimated that she testified  
9 to certain things that I do not recall. And I can't  
10 exactly remember everything. That's why we need a  
11 record. But as far as what she didn't do at trial, can I  
12 ask her that?

13 THE COURT: (No verbal response)

14 MR. BRANDT: You're just saying that I've got  
15 to ask her what she testified to at trial. Can I ask her  
16 what she didn't testify to at trial?

17 THE COURT: Ask the question and we'll broach  
18 it. I can't -- again, I don't have a crystal ball over  
19 here to anticipate what you're going to ask. But the  
20 purpose again is to try to recreate the testimony as best  
21 we can.

22 Q. Did you put up any documentary evidence or refer to  
23 any specific documents upon which your testimony was  
24 based as to the right-of-way at time of trial?

25 A. I don't recall any.

1 Q. It's your testimony ---

2 MR. BRANDT: I don't have anything else to ask  
3 her.

4 THE COURT: All right. Thank you, ma'am. You  
5 can step down.

6 Let's take a five-minute break and we'll come back  
7 with -- you have Mr. Alexander you want to put that on  
8 the record, and then she has Mr. Austin; is that correct?

9 MR. BRANDT: Well, yes, I'll put Mr. Alexander  
10 up. He's going to say this is a fair representation of  
11 his testimony. And Mr. Austin, again, I'm objecting to  
12 him at all because his testimony is already there.

13 THE COURT: Okay. And I note your objection.  
14 And we will still cross the objections and any other  
15 exceptions that you have to these proceedings at the end  
16 of the testimony. Okay? That's what I'm trying to be  
17 clear.

18 All right. A five-minute break and we'll come back  
19 with Mr. Austin and then we'll come back with Mr.  
20 Alexander.

21 (WHEREUPON, court stood at recess for a short  
22 break.)

23 MS. JENNINGS: Call Steve Austin.

24 STEVEN AUSTIN,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 Q. It's your testimony ---

2 MR. BRANDT: I don't have anything else to ask  
3 her.

4 THE COURT: All right. Thank you, ma'am. You  
5 can step down.

6 Let's take a five-minute break and we'll come back  
7 with -- you have Mr. Alexander you want to put that on  
8 the record, and then she has Mr. Austin; is that correct?

9 MR. BRANDT: Well, yes, I'll put Mr. Alexander  
10 up. He's going to say this is a fair representation of  
11 his testimony. And Mr. Austin, again, I'm objecting to  
12 him at all because his testimony is already there.

13 THE COURT: Okay. And I note your objection.  
14 And we will still cross the objections and any other  
15 exceptions that you have to these proceedings at the end  
16 of the testimony. Okay? That's what I'm trying to be  
17 clear.

18 All right. A five-minute break and we'll come back  
19 with Mr. Austin and then we'll come back with Mr.  
20 Alexander.

21 (WHEREUPON, court stood at recess for a short  
22 break.)

23 MS. JENNINGS: Call Steve Austin.

24 STEVEN AUSTIN,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 Q. They want what has -- anything that's missing.

2 Like, for example, my testimony wasn't there at all.

3 A. Yes, ma'am.

4 Q. So I had to give it. You were present in court when  
5 I testified; is that right?

6 THE COURT: No, ma'am. You want to ask him  
7 questions about his testimony that you propose is missing  
8 from the transcript, please.

9 MS. JENNINGS: Okay.

10 Q. That's what the Court wants, testimony that's  
11 missing. So I'm just going to let you say what's  
12 missing.

13 (Pause)

14 Q. Mr. Austin, to help along, your testimony you  
15 presented regarding measurements when you took the stand  
16 that's missing from the record.

17 A. That's what I'm trying to find where the measurement  
18 is here. I don't think there's anything missing that I  
19 testified to.

20 THE COURT: I'm sorry. What did you say,  
21 please? Did you say you do not think there's anything  
22 missing?

23 THE WITNESS: That I testified to.

24 THE COURT: So you think it's all included in  
25 what you're reading there; is that what you're saying?

1 testimony right quick and let's see if there's anything

2 ---

3 MR. BRANDT: Okay. His entire testimony starts  
4 at ---

5 THE WITNESS: Page 240.

6 MR. BRANDT: 240.

7 THE WITNESS: I was sworn in.

8 THE COURT: If you would just take a minute and  
9 read through that for me, please, sir.

10 THE WITNESS: Yes, sir.

11 (Pause)

12 THE WITNESS: All right.

13 THE COURT: Have you read the entire ---

14 THE WITNESS: I've skimmed over it, yes, sir.

15 THE COURT: Okay. Do you contend there's any  
16 parts of your testimony that are missing from that  
17 transcript?

18 THE WITNESS: I don't think so.

19 THE COURT: Okay. Very good.

20 Q. Let me ask you then about ---

21 THE COURT: No. No, ma'am. Uh-uh (negative),  
22 no. He's testified twice today he doesn't think there's  
23 anything missing from his transcript.

24 MS. JENNINGS: Well, there might be ---

25 THE COURT: Can you -- no, ma'am. Just one

1 second, please.

2 Is there any obvious break in his testimony from the  
3 proceedings in the transcript -- I mean, of the  
4 proceedings in the transcript you have?

5 MS. JENNINGS: There doesn't appear to be an  
6 obvious break.

7 THE COURT: Okay. And if I understand  
8 correctly, Mr. Austin would have been called by you in  
9 your defense of this case; is that correct?

10 MS. JENNINGS: Right. I showed him the  
11 transcript.

12 THE COURT: No, ma'am. I'm not talking about  
13 at trial. Did you call Mr. Austin as your witness in the  
14 case?

15 MS. JENNINGS: Yes, sir.

16 THE COURT: Okay. And again, Mr. Austin,  
17 you've looked through the transcript of your testimony?

18 THE WITNESS: Yes, sir.

19 THE COURT: And it's your belief that your  
20 entire testimony's contained within that transcript; is  
21 that correct?

22 MR. BRANDT: I didn't hear the question.

23 THE COURT: I asked him is it, in fact, his  
24 belief that his entire testimony is contained in the  
25 transcript.

1 MR. BRANDT: Thank you.

2 THE WITNESS: Yes, sir, my testimony is. And I  
3 did have an opportunity to -- where I'd said the center  
4 line was twenty feet of the road. That that was, you  
5 know, at my house.

6 THE COURT: Sir?

7 THE WITNESS: That was at my house.

8 THE COURT: Well, now, hold on. The question I  
9 have for you -- and I want you to address this only, if  
10 you would, please, sir -- is there any aspect of your  
11 sworn testimony at that trial that you believe has been  
12 omitted from the transcript, or is your entire testimony  
13 contained within that transcript?

14 THE WITNESS: I think my entire testimony is  
15 contained. But there's some things that I don't  
16 understand about transcripts.

17 THE COURT: Okay. All right.

18 I'm -- he has told me for the third time now that he  
19 believes his entire testimony is contained in the  
20 transcript.

21 With that being said, Mr. Austin, thank you for  
22 being here. I'm going to excuse you from any further  
23 participation in this hearing unless there's a reason I  
24 should not.

25 Ms. Jennings?

1 these steps.

2 THE COURT: They will, won't they.

3 All right. Mr. Brandt, I -- just one second.

4 Ms. Jennings, my understanding that is all the other  
5 testimony you would have to submit into the record; is  
6 that correct?

7 MS. JENNINGS: Yes, sir, I think so.

8 THE COURT: Okay. Would you call your witness,  
9 Mr. Brandt?

10 MR. BRANDT: Ronnie Alexander.

11 RONNIE ALEXANDER,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. BRANDT:

15 Q. Mr. Alexander, you work for Blue Ridge Electric?

16 A. Yes.

17 Q. And at the time of trial, you testified -- did you  
18 testify that you worked for Blue Ridge Electric?

19 A. Yes, I did.

20 Q. And at the time of trial did you testify how long  
21 you'd worked for Blue Ridge Electric?

22 A. I believe I did.

23 Q. And how long had you worked for them at the time of  
24 trial in '09?

25 A. At that time probably thirty-five years.

1 Q. And did you testify that your job was the right-of-  
2 way technician at Blue Ridge Electric?

3 A. That was part of my job, yes.

4 Q. Did you testify as to Plaintiff's Exhibit Number 12  
5 that I showed you?

6 A. Yes. This is highway right-of-way permit, yes.

7 Q. And does that contain the pole in question on Ms.  
8 Jennings property?

9 A. It does, yes.

10 Q. And did you -- were you the technician -- did you  
11 testify at trial that you were the technician which  
12 worked with the highway department to obtain that permit?

13 A. Yes.

14 Q. And the drawings attached to it was part of that; is  
15 that correct?

16 A. Yes, it is correct.

17 Q. And you testified that it was -- that was part of  
18 the permit, the drawings together with the actual page  
19 where they granted the permit, did you not?

20 A. It is, yes.

21 Q. And did you testify that those drawings were to  
22 scale?

23 A. They are to scale, yes.

24 Q. And did you testify that per scale it showed the  
25 right-of-way, highway right-of-way, along Ms. Jennings'

1 property where the pole is was fifty feet from center  
2 line of Highway 11?

3 A. Yes.

4 Q. And that those staking sheets and permit would be  
5 part and parcel the same document?

6 A. The same document, yes. Go together, yes.

7 Q. And you coordinated -- did you testify at trial that  
8 you coordinated the construction of the poles and the guy  
9 wire and the power lines with the highway department on  
10 behalf of Blue Ridge at the time it was placed?

11 A. That is correct, yes.

12 Q. And did you testify that that pole as well as the  
13 guy wires ---

14 MS. JENNINGS: Your Honor, he is leading. I am  
15 tolerant of some of it. But could he just ask him what  
16 he testified to like I did, and let's just go from there  
17 instead of trying to bolster his side by putting words in  
18 his mouth?

19 THE COURT: Rephrase your question, please,  
20 sir.

21 Q. At the time of trial, what did you testify to as to  
22 the location of that power pole and guy wire in relation  
23 to the highway right-of-way?

24 MS. JENNINGS: Now I object because it's been  
25 asked and answered twice.

1 THE COURT: Overruled. Go ahead.

2 Q. What did you testify to as far as the placement of  
3 that pole and the highway right-of-away at the time of  
4 trial?

5 A. I testified that to get the permit to set this pole  
6 on the highway right-of-way that I worked with the  
7 highway department establishing the right-of-way by their  
8 drawings and making sure I was on the highway right-of-  
9 way when this pole and guy wire was set.

10 Q. And what did you testify in regards to the actual  
11 measurements from the center line of the highway right-  
12 of-way?

13 A. The center line highway to the edge of the right-of-  
14 way is fifty foot. I testified to that.

15 Q. And where was the pole from the center line of the  
16 highway?

17 A. I would have to find this pole. It's been so long  
18 since I've looked at these drawings, I don't remember  
19 which pole it was right off.

20 Q. Did you testify it was twenty-seven feet?

21 A. I believe that is what it is.

22 MS. JENNINGS: He's leading again, Your Honor.  
23 Obviously he didn't remember, and Mr. Brandt suggested an  
24 answer to him. I object to that and ask that it be  
25 stricken.

1 THE COURT: Sustained.

2 MR. BRANDT: I don't know how to ask the  
3 question. I'm trying to refresh the witness' memory from  
4 four years ago other than ask what he -- if he testified  
5 thus and so.

6 MR. HAMM: Your Honor, may I approach Counsel?

7 THE COURT: Yes, sir.

8 Q. Notwithstanding any measurements that you may have  
9 testified to, do you recall what you testified to in  
10 regards to whether or not the pole and the guy wires were  
11 within that fifty-foot right-of-way?

12 A. I did testify that the pole and guy wire was inside  
13 highway right-of-way and not on private property.

14 Q. Okay.

15 A. I do remember that.

16 Q. That it's not outside the right-of-way?

17 A. Not outside the highway right-of-way.

18 Q. And do you recall now from looking at what your  
19 actual measurements were -- you went out and measured it,  
20 didn't you?

21 A. Yes.

22 Q. And from your actual measurements -- not necessarily  
23 recalling exactly what they were, from actually what was  
24 on the ground, was that inside or outside the fifty-foot  
25 right-of-way?

1 MS. JENNINGS: Your Honor, I would ---

2 A. Inside.

3 THE COURT: Just one second.

4 MS. JENNINGS: --- because it's been asked and  
5 answered multi times and he's continuing to try to  
6 bolster his testimony and obviously more than refresh,  
7 testify for him.

8 THE COURT: Overruled. Go ahead.

9 Q. Was it inside or outside, where they're actually  
10 placed on the ground now -- at the time of trial?

11 A. It was inside highway right-of-way.

12 Q. The guy wires too?

13 A. And the guy wire.

14 MR. BRANDT: I don't have anything else to ask.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MS. JENNINGS:

18 Q. I think at the trial when I got to stand up and  
19 question you after Mr. Brandt had questioned you with  
20 reply, do you remember -- do you remember back to that?

21 A. I remember you.

22 Q. You remember that I disagreed with and I asked could  
23 be mistaken in that. We had nobody here from the highway  
24 department that provided testimony about what the right-  
25 of-way is or wasn't or could have been or thought it was,

1 did we? It was just you?

2 A. I believe I remember telling you that I got my  
3 information from the highway department.

4 Q. Right. Nobody from the highway department came, in  
5 other words?

6 A. (Shook head side to side in the negative)

7 Q. You're shaking your head no. We have to hear you  
8 say ---

9 A. No, no, no one. I seen no one from the highway  
10 department.

11 Q. Okay.

12 MS. JENNINGS: Thank you very much.

13 THE COURT: All right. Was there any ...

14 MR. BRANDT: (Nodded head side to side in the  
15 negative.)

16 THE COURT: Okay. Thank you, sir. You may  
17 step down.

18 All right. Is there any other proposed testimony  
19 from the Plaintiff's side that had been excluded or  
20 omitted from this record?

21 MR. BRANDT: Not on this issue of the right-of-  
22 way. Trespass and that other stuff is irrelevant to us.

23 THE COURT: All right. And Ms. Jennings, any  
24 other testimony you propose that has been omitted from  
25 the record?

1 MS. JENNINGS: I don't think there's any other  
2 testimony. I did present my -- I could add -- when Your  
3 Honor asked us to put together everything in a packet, I  
4 gave you my written closing argument ---

5 THE COURT: I'm going to let y'all address  
6 that. I just wanted to make sure that we conclude the  
7 testimonial aspect of this hearing. Okay?

8 Now, first, I want to address a couple of matters  
9 from the Court's perspective. And I'm going to let both  
10 Mr. Brandt and Ms. Jennings do the same.

11 My understanding -- and I've asked it several times  
12 -- is that this record is entirely complete until Ms.  
13 Jennings takes the stand; is that correct, Mr. Brandt?

14 MR. BRANDT: Yes, sir. My recollection is  
15 that's correct.

16 THE COURT: Okay. And Ms. Jennings, you  
17 indicated earlier you would agree with that?

18 MS. JENNINGS: Yes, sir.

19 THE COURT: Okay. Well, the reason I want to  
20 bring that up is that there's been an allegation by Ms.  
21 Jennings that the Court made a comment to her at the  
22 beginning of the trial to the effect of why don't you pay  
23 your damn bill. Number one, it's patently untrue. But  
24 there's been -- there was no motion in the record for the  
25 Court to recuse itself from these proceedings. If that,

1 in fact, would have occurred, I would think it would have  
2 been incumbent upon Counsel to make a motion for the  
3 Court to recuse itself based on some perceived bias.  
4 It's not in the record.

5 Further, the allegations on the cross-examination or  
6 during Ms. Jennings examination. I can recall multiple  
7 occasions when Ms. Jennings was not being responsive, I  
8 had to admonish her that the responses had to be to the  
9 question asked. You answer the question. If you want to  
10 explain it, you could as long as it was responsive to the  
11 question being asked. After four or five times of that  
12 occurring, I did send the jury out and I did chastise Ms.  
13 Jennings, not in front of the jury. I never made a  
14 comment about her practice in Anderson. I did say that  
15 you were a lawyer and you understand what the process is.

16 With that being said, is there any writings that the  
17 Plaintiff wishes to proffer for the Court of Appeals  
18 consideration in this matter?

19 MR. BRANDT: Yes, sir. There's a lot that she  
20 testified to today ---

21 THE COURT: No, no, no. Let me make sure my  
22 question's clear. I'm going to give you a chance to  
23 state your exceptions to these proceedings and to any  
24 characterizations in the record. But the question is  
25 only as to writings. Any writings that you wish to

1 proffer on behalf of the Plaintiff in this matter?

2 MR. BRANDT: The writings that I would proffer  
3 is what you asked me to submit to you back in November.

4 THE COURT: Okay. And that is?

5 MR. BRANDT: Mr. Alexander's testimony.

6 THE COURT: All right. I'm going to let you  
7 make that Court Exhibit ...

8 What's that, number 2, Renee?

9 MADAM COURT REPORTER: Yes, sir.

10 (WHEREUPON, Court's Exhibit Number 2 was marked for  
11 identification only.)

12 MR. BRANDT: And I would put that in as ---

13 THE COURT: Okay. Anything further from the  
14 Plaintiff as to writings? And again, I'm going to let  
15 you have any exceptions or objections later.

16 MR. BRANDT: That Plaintiff's Exhibit 12 is at  
17 least listed in the transcript. She hasn't furnished it  
18 to me, but I'm assuming she listed it. So it's in the  
19 court record, Your Honor. Other than that, it would be  
20 Plaintiff's Exhibit 12.

21 THE COURT: Okay. Well, the exhibits --  
22 there's been no indication that any exhibits are missing  
23 in this case.

24 MR. HAMM: No, sir. That's correct.

25 MR. BRANDT: That's correct.

1 THE COURT: That's correct?

2 MS. JENNINGS: I have no knowledge of that.

3 But you indicated, I think, to us that they were together  
4 in September. Or somebody ---

5 THE COURT: I never indicated any such thing  
6 because I don't have control of those exhibits.

7 Now, Ms. Jennings ---

8 MS. JENNINGS: I don't either.

9 THE COURT: Ms. Jennings, is there any writing  
10 that you wish to proffer for the Court of Appeals  
11 consideration?

12 MS. JENNINGS: Since he's putting in that, I  
13 would then put in -- let's see -- what I indicated was my  
14 missing testimony. Have you already sent what we sent to  
15 you? I sent something like eighty-one pages.

16 THE COURT: I have not sent anything to the  
17 Court of Appeals ...

18 MS. JENNINGS: Okay.

19 THE COURT: ... other than the scheduling  
20 matters.

21 MS. JENNINGS: Then I am going to put in my  
22 testimony, pretty much what I gave today. I also put a  
23 caption for the record, Reconstruction Offered by  
24 Defendant, a paper I filed with the Court. I think  
25 there's a letter to you. I made a motion following the

1 jury trial following the Court's jury verdict for the  
2 Defendant.

3 THE COURT: We're going to deal with the post-  
4 trial motions in just a second.

5 MS. JENNINGS: So don't put that in?

6 THE COURT: Not yet. I'm going to keep this in  
7 order. But any writings. And I'm thinking probably  
8 along the line of proposed testimony for whatever purpose  
9 it may be in there. I don't ---

10 MS. JENNINGS: Then do I hold these jury  
11 instructions that you made? I mean, just a moment later  
12 or I'll put this collectively if you already have this.

13 THE COURT: Well, go ahead and do your proposed  
14 jury instructions. And I know your objection was I would  
15 not allow you to go to the jury on the punitive damages.

16 MR. HAMM: Your Honor, that document would be  
17 Court Exhibit Number 3?

18 THE COURT: Yes, sir.

19 (WHEREUPON, Court's Exhibit Number 3 was marked for  
20 identification only.)

21 MS. JENNINGS: Then I would put in the jury  
22 charge that Judge McIntosh gave to us, that is to Mr.  
23 Brandt and myself. I received it on 8/28/09 a.m. And  
24 there's a -- I've got them numbered B-1 through B- -- it  
25 looks like B-8. So I'd add that to it. I may have to

1 get a copy of this back since I didn't make copies. And  
2 then you also did a handwritten charge that this  
3 obviously is your handwriting. Can I approach?

4 THE COURT: Yes, ma'am. That is my  
5 handwriting.

6 MS. JENNINGS: This is your handwriting.

7 This is Judge McIntosh's handwriting that he gave us  
8 in court on 8/28/2009. No one has mentioned this or  
9 seems to have it. And I don't know if you were going to  
10 make it part of the record or you even -- do you have it,  
11 Your Honor?

12 THE COURT: It's not my job to make a record.  
13 I'm allowing you the opportunity to do so and Mr. Brandt  
14 the opportunity to do so.

15 MS. JENNINGS: But this is your handwriting and  
16 you acknowledge this? This is an additional instruction  
17 that he gave on the issue of trespass, which I would  
18 offer this.

19 MR. HAMM: Your Honor, could we look at it  
20 before it's tendered?

21 MS. JENNINGS: Yeah.

22 MR. HAMM: (Reviewed proposed exhibit)

23 MS. JENNINGS: These are jury instructions that  
24 you read and gave copies. I want to make sure they're  
25 all in there. And then the extra one you did in your own

1 handwriting, but I'm going to put it in all together.  
2 You gave it to Mr. Brandt as well, but I'm giving you my  
3 only copy. And then I think that's everything if you'd  
4 allow me to ...

5 (WHEREUPON, Court's Exhibit Numbers 4, 5 and 6 were  
6 marked for identification only.)

7 THE COURT: All right. Let me ask this. Ms.  
8 Jennings, you referenced the fact that you filed some  
9 post-trial motions. In checking with my office, I don't  
10 recall and I don't have any notes that they were served  
11 on me. Did you serve those post-trial motions on me?

12 MS. JENNINGS: I mailed them.

13 THE COURT: You mailed them?

14 MS. JENNINGS: Yes, sir.

15 THE COURT: Was there an affidavit of mail with  
16 those?

17 MS. JENNINGS: I'm sure there is one if I can  
18 dig it out. I put in what was sent.

19 MR. BRANDT: She sent them to me.

20 MS. JENNINGS: Yeah.

21 THE COURT: Well, I mean, I'm not saying she  
22 didn't. I'm not even suggesting she didn't. I'm just  
23 saying I don't have a record of having received those.  
24 And it's certainly -- I don't believe there's been any  
25 ruling on the post-trial motions.

1 MR. BRANDT: I don't recall you making one on  
2 hers. I remember you making one on mine.

3 THE COURT: Do you have any indication of that?

4 MR. BRANDT: I made a motion ---

5 THE COURT: Do you have a copy of what you  
6 received from her on her motions?

7 Or Ms. Jennings, you either. I just want to see  
8 whether or not that was served on the Court.

9 MS. JENNINGS: I have the copy I just gave to  
10 the court reporter.

11 MR. BRANDT: I'll have to go through my case  
12 file. I'm limited to what I have in my notebook.

13 MS. JENNINGS: And I'll do them as well, Your  
14 Honor. I've kind of gotten discombobulated.

15 MR. BRANDT: I don't -- I can't locate them  
16 right now, Your Honor. I can certainly go through my  
17 stuff, but I've seen some at some point in time.

18 MS. JENNINGS: In the transcript, Your Honor,  
19 it said that -- I'm looking too. In the transcript, Your  
20 Honor, you said you would reserve the issue as to Mr.  
21 Gresham's dismissal for a later time.

22 THE COURT: Here's a Form 4. It says that the  
23 parties have ten days, that Mr. Gresham was dismissed,  
24 Form 4. It says Plaintiff dismissed it's claim against  
25 Steven Gresham and that Steven Gresham dismissed his

1 counterclaim. Plaintiff and remaining Defendant,  
2 Kathleen Gresham, given ten days to file post-trial  
3 motions. And that was attached to the verdict form of  
4 one cent.

5 MR. BRANDT: I don't -- I can't put my hands on  
6 what I was thinking of.

7 MS. JENNINGS: Let's see, the trial was 2008.  
8 I have a certificate of mailing from October 2nd, 2008.  
9 Does that cover the time period?

10 THE COURT: Well, the Form 4 that attaches to  
11 the jury verdict is filed August 31st, 2009, and has a  
12 handwritten date of that same date.

13 MR. HAMM: Would you state the date again, Your  
14 Honor?

15 THE COURT: August 31st, 2009.

16 MS. JENNINGS: Yeah, I have what you just read.  
17 It took me a second to find it. You're talking about you  
18 read the one where you wrote it in the courtroom or you  
19 wrote it somewhere there? And then I've got a copy of  
20 the jury verdict.

21 THE COURT: What I'm asking is ---

22 MS. JENNINGS: Right, I know.

23 THE COURT: --- did you file and serve on me  
24 any post-trial motions? If so, I need to see when those  
25 were served on the Court.

1 MS. JENNINGS: I have got a stack of documents  
2 two feet high. I would have to go through it, Your  
3 Honor, and see if I see a certificate.

4 THE COURT: Well, I'm going to ask that you do  
5 that before we leave.

6 MS. JENNINGS: Okay.

7 THE COURT: The first things I have in my file  
8 after that verdict is a letter from Ms. Gresham, and it's  
9 dated -- it looks to be November 15th, 2012.

10 MS. JENNINGS: I'm going to ask Mr. Brandt  
11 something.

12 (Off record discussion)

13 MR. BRANDT: I can't find them. I thought I  
14 made my motions on the record at trial. I made a motion  
15 for directed verdict before the jury went. You denied  
16 it. When they came back, I asked for judgement  
17 notwithstanding the verdict on the trespass issue.

18 THE COURT: All right. Just for the record,  
19 just so there's not something out there floating, to the  
20 extent they were properly and timely served and filed --  
21 and I'm speaking to Ms. Jennings' post-trial motions -- I  
22 am denying those motions. That way the record should be  
23 complete as far as post-trial motions. I'm not making  
24 any finding as to whether or not they were, in fact,  
25 timely filed or properly served because I have no

1 evidence of it in my file here.

2 Now, with that being said, I told both of you I'd  
3 give you an opportunity -- let me say this, too, before I  
4 go to your opportunity. Mr. Steven Austin's testimony is  
5 contained in the record of this matter. He testified to  
6 the same on several occasions here today. He was given a  
7 chance to look at the testimony in the record. He said  
8 he felt like that was all the things he testified to. In  
9 fact, he had been called by Ms. Jennings as her witness,  
10 and so there would not have been an opportunity to her to  
11 call him in any type of reply because the reply would  
12 have belonged to the Plaintiff in this matter. So either  
13 he was, you know, put up and excused.

14 Both parties indicated there was nothing about the  
15 record that shows an obvious break in his testimony. So  
16 according to what Mr. Austin says and what the record  
17 apparently shows, his record is entirely contained within  
18 the transcript of this matter.

19 That being said, Mr. Brandt, I'm going to allow you  
20 an opportunity to object or list any exceptions or  
21 objections to the proceedings here today or any of the  
22 proposed testimony other than Mr. Austin's that you put  
23 on the record before he testified to.

24 Ms. Jennings, I'm going to give you the same  
25 opportunity.

1                   MR. BRANDT: Okay, Your Honor. Again, my  
2   problem with this is it has been four years. And  
3   certainly as far as what she says, she now says, it's  
4   hard for me to remember everything. I did keep notes on  
5   the right-of-way, and I think we covered that okay. But  
6   at the same time, what she said today and what she said  
7   then are exact -- her words, I'm certain, do not match.  
8   None of us did. And I think that's the difficulty here  
9   in basically trying to reconstruct the record and go  
10  forward on appeal.

11               Some things, of course, that she says I disagree  
12  with that she testified to. Some of them were major, I  
13  thought important; others weren't so important. So we  
14  have them in the record now and won't be any real  
15  problem.

16               But as far as her claim, I think it would be  
17  necessary for me to be able to know exactly what she  
18  testified to at the time of trial. And I understand the  
19  Court's problem. I sympathize with the Court's problem  
20  here in trying to reconstruct the record, but we're  
21  having the same problem. And it's very difficult to do  
22  that. And I think that basically that the -- she  
23  testified today something about somebody saying something  
24  about thirty feet and thirty-four feet off the right-of-  
25  way. And I don't remember those numbers ever being

1 mentioned at trial, thirty-four feet. The thirty-three  
2 feet about a right-of-way that Mr. Austin alluded to,  
3 that's in his testimony. It's clearly what I said, and  
4 it's clearly what he answered. I have no problem with  
5 what Mr. Austin testified at trial. It's in the record.

6 Certainly, my questions -- and it was hard for me to  
7 go back to my questions to Ms. Jennings at the time of  
8 trail concerning Plaintiff's Exhibit Number 12. The  
9 permitting and the staking sheets was very important, and  
10 we can't reconstruct that. It's impossible. And Ms.  
11 Jennings, I'm sure, doesn't have an exact memory of what  
12 she said. But I think what we're getting as far as proof  
13 on the right-of-way and all of that stuff as to whether  
14 or not she sustained her case, there's no doubt that the  
15 pole is on property that she owns, the field. But it's a  
16 question of the right-of-way.

17 And I remember at trial, you know, we discussed  
18 that. And I brought the case in one evening at the end  
19 of trial. I brought it in. And you were inclined to  
20 kind of go in a different direction. I brought a case in  
21 and gave it to you. I've cited that in that submission  
22 along with that proposed testimony, what I say was the  
23 missing testimony. And then you said, yeah, you're  
24 correct. And that's why then you charged them they  
25 couldn't find trespass unless they found it was outside

1 the right-of-way. Notwithstanding that, I had made a  
2 motion for directed verdict on a reliable probative  
3 credible witness, sought testimony about right-of-way,  
4 that we had sustained our defense and that there was  
5 nothing for the jury to decide on. But you did submit it  
6 to the jury and they came back with a penny. And then  
7 afterward I made a motion for notwithstanding the verdict  
8 based on the same thing, basically for the directed  
9 verdict. And there in the courtroom, of course, you  
10 denied that.

11 I can't tell you that -- I thought I'd seen  
12 something in Ms. Jennings' file at some point in time  
13 concerning the motions or whatever. I can't locate them  
14 now. I've got this one. And I left another file, to be  
15 honest with you, with these documents. You know, when we  
16 first start to try a case with a file like this, and you  
17 end up with files -- but certainly, I'll go back through.  
18 And if I find anything concerning Ms. Jennings' motions  
19 that I've got, I'll certainly advise her that I have  
20 them. And I usually -- if I get something, I stamp a  
21 receipt on it so I'll know date it was that I got it. And  
22 I'll certainly let her know.

23 There was -- again, it's irrelevant to us and I  
24 don't think it matters so much about all that she  
25 testified to concerning Blue Ridge's relationship with

1 her, the sequence of things and the efforts to call her  
2 and how accessible she was to us. She testified to that,  
3 but I think we have that covered from our end on the  
4 record that has been produced.

5       There's nothing that Blue Ridge would submit to you  
6 on those issues even though contrary to what she says  
7 now, I don't remember that she testified exactly -- she  
8 didn't testify at trial exactly like she did today. But  
9 again, four years. And therein is my problem with trying  
10 to reconstruct the record and go forward with the appeal.  
11 And I honestly believe that the time has passed and the  
12 disputes that we've had that -- you know, we've given up  
13 the claim on the -- have given up the claim on the  
14 account; and therefore, we're only seeking a new trial on  
15 the -- because I don't think that it can be accurately  
16 reconstructed and give everybody a fair chance to argue  
17 their case on appeal. And therefore, there ought to be a  
18 new trial granted. But I understand that's up to the  
19 Court of Appeals.

20       THE COURT: I was about to say, the only issue  
21 before me is reconstruction. I have no other  
22 jurisdiction in this matter.

23       MR. HAMM: We understand that, Your Honor.

24       MR. BRANDT: We understand that.

25       THE COURT: Okay.

1 MR. BRANDT: But this is my concern.

2 THE COURT: Okay. Any other exceptions or  
3 objections to these proceedings other than as stated from  
4 the Plaintiff's perspective?

5 MR. BRANDT: No.

6 THE COURT: Okay. Ms. Jennings? Any  
7 objections or exceptions to these proceedings from the  
8 defense?

9 MS. JENNINGS: There are some things to make  
10 sure I put it on the record, Your Honor. This matter  
11 was, of course, initiated, I think, in 2008. So Mr.  
12 Brandt and the Plaintiffs have been on notice since 2008  
13 that I claimed trespass and that I claimed that Mr.  
14 Gresham was not a member of the Blue Ridge and had never  
15 been a member of the Blue Ridge.

16 There is -- contained in the court file, there was a  
17 hearing set by me on my motion that was heard in front of  
18 Judge Patterson in November of 2008, the best I remember  
19 -- sometime in that time period -- where we moved -- Mr.  
20 Gresham moved and I moved as well with him -- to have him  
21 dismissed as a party, indicating that he was not a member  
22 of Blue Ridge. No -- disputing that I needed to be there  
23 at all for the claim, but that I was a member of Blue  
24 Ridge and that he was not. Mr. Brandt didn't appear at  
25 that hearing. We waited some two to three hours for him

1 to come, and Mr. Todd Simmons came on behalf of his  
2 office for that motion hearing that had been duly set and  
3 all the parties noticed.

4 Judge Patterson sent for them, and the  
5 representation was made in court to Judge Patterson that  
6 Mr. Gresham was a member and that they were proceeding  
7 and that they were adamant about it. And so we were  
8 forced to litigate for multiple years, including taking  
9 time off from work and the mediation because Blue Ridge  
10 contended he was a member. But yet, when their first  
11 witness testified on August 26th, 2009, they readily  
12 admitted he was not a member. That was what -- then that  
13 testimony continued because I specifically asked that of  
14 every witness, and Mr. Gresham had testified he wasn't a  
15 witness [sic]. And then Your Honor granted that motion.  
16 So I wanted that to be clear.

17 Also, I had pled since 2008 a request for punitive  
18 damages, so they had been on notice for well over a year  
19 that I was seeking punitive damages as to this case  
20 because of the nature of the allegation, that it wasn't a  
21 justly brought initiated complaint in the first place,  
22 that it shouldn't have been brought in the first place.

23 And then secondly, they compounded insult to injury  
24 by adding a party who had never been a member of the Blue  
25 Ridge Electrical Coop. We proceeded. That had not been

1 challenged by Mr. Brandt until Your Honor, on his own  
2 motion, I suppose, notified us the day of the closing  
3 argument, which would have been Friday, August 28th,  
4 2009, that we were precluded from -- that I was precluded  
5 from mentioning anything or -- as to punitive damages,  
6 and you indicated in open court that you had changed your  
7 mind overnight. But on the day before you had admonished  
8 us that we were not to go over forty-five minutes, I  
9 believe, was the time that you gave us on closing  
10 argument, and that if we did that we were going to be  
11 held in contempt of court. So that is why I ---

12 THE COURT: Let me stop you. That is not true,  
13 Ms. -- I've never threatened anybody with contempt of  
14 court. I've threatened or admonished people, if you  
15 over-go the time, then I will stop you. But I've never  
16 threatened anybody with contempt of court, nor that I did  
17 you. But go ahead.

18 MS. JENNINGS: Well, with all due respect, Your  
19 Honor, I object to that. And I think Mr. Gresham and Mr.  
20 Austin can also indicate that's exactly what you said.

21 THE COURT: Okay.

22 MS. JENNINGS: If you need me to put them up.  
23 And I don't want to ---

24 THE COURT: We're not taking any other  
25 testimony. I note your -- you're noted for the record.

1                   MS. JENNINGS: That is exactly what happened.  
2   And that I had also required -- filed requests for  
3   admissions which are clocked-in in the court record where  
4   Blue Ridge indicated that Mr. Gresham was a part of this  
5   proceeding and that I was given five minutes prior to  
6   closing argument on the Friday, August 28th, to modify my  
7   closing remarks which I had written because of the  
8   admonishment to keep it within forty-five minutes. That  
9   I deleted anything about punitive damages because Your  
10   Honor directed me not to say anything about them with my  
11   running objection made on that point.

12                  The jury consequently was unable to hear the issue  
13   of punitive damages. They became, of course, the triers  
14   of fact and of law. They took all the evidence, and they  
15   saw us extensively. And they came back, even eating  
16   lunch, in a relatively short period with a unanimous  
17   verdict in favor of the Defendant on all particulars.

18                  Nobody wishes the transcript existed more than I  
19   because I think that my testimony was much better then  
20   than it was four something years ago. Nobody wishes more  
21   than I because it very clearly captured everything that I  
22   testified to without a doubt and I stand by unequivocally  
23   here today.

24                  If I had -- I know that Mr. Brandt, with all respect  
25   to him, sought to embarrass me that day. I would like to

1 proffer and state for the record that since that trial I  
2 have been made aware ---

3 THE COURT: I'm not going to allow you to  
4 proffer anything occurring past the trial because the  
5 purpose of this record is to -- of this hearing is to  
6 recreate what happened at the hearing.

7 MS. JENNINGS: And that's probably the wrong  
8 word. But I have a court transcript from the Federal  
9 Court, Fourth Circuit, United States of America versus  
10 Curtis Beasley, that pertains to me, Your Honor, about  
11 the disbarment. Which I was disbarred because of  
12 testimony of a Robin Boykin Sin Savage (phonic) that I  
13 claimed was telling a lie, known to the State, Your  
14 Honor.

15 Now I find out after I testify in trial that she has  
16 testified in court that she was a known cocaine crack  
17 addict and was during the time she made testimony about  
18 me, and that that was known to the State of South  
19 Carolina because they used her as an undercover  
20 informant. I think that that is pertinent as it goes to  
21 my credibility because what I have always said is the  
22 truth and that the disbarment as to me was based upon the  
23 testimony of a known crack addict who then testified in  
24 Federal Court that I was made aware of through testimony  
25 given to me by an attorney in Greenville, an official

1 transcript that I hold in my hand, that she was a known  
2 crack addict and a liar and was used by the court on  
3 multiple -- by the Attorney General's Office on multiple  
4 occasions making crack buys and undercover crack buys and  
5 that she was that during that time. And if I had known  
6 that at the time I testified, you'd better believe I  
7 would have brought it to the Court's attention  
8 immediately and we would have had a sidebar or whatever  
9 conference on that. And I want that to be known, and I'm  
10 happy to put this in the record.

11 THE COURT: Thank you. Anything further? Ms.  
12 Jennings?

13 MS. JENNINGS: I'm just -- just give me a  
14 minute. I think that's it.

15 THE COURT: Okay.

16 All right. Ladies and gentlemen, I'm going to  
17 report back to the Court of Appeals that a hearing was  
18 had. The transcript will speak for itself. As to  
19 whether or not that should constitute a sufficient record  
20 that's filling in the missing aspects of the record will  
21 be up to the Court of Appeals to make that determination.

22 Quite frankly, when we had both parties, from what -  
23 - you know, from Ms. Jennings saying this occurred and  
24 Mr. Brandt saying, no, this occurred, I don't know how  
25 that can happen. But with that being said, I would

1    assume that both parties are going to order the  
2    transcript of this hearing. I'm going to report back  
3    that the hearing was made, the parties could not  
4    necessarily disagree -- I mean, agree as to what  
5    occurred. And therefore, it's being submitted for their  
6    consideration for what it's worth. I don't know what  
7    else to do. This is an unusual circumstance I've never  
8    been faced with before. I've asked a number of judges,  
9    and most of them have not been faced with it before. But  
10   those who have said you really need to reconstruct the  
11   record by taking testimony.

12           That being said, if there's nothing further from the  
13   Plaintiff, we'll conclude.

14           MR. HAMM: Just for purposes of clarification,  
15   you're going to provide the Court of Appeals with a  
16   transcript of today's proceeding, correct?

17           THE COURT: No. I would assume that that would  
18   be part of the parties' burden in recreating the record  
19   for appeal. Now, if -- and I guess maybe the best thing  
20   to do is for me to report back in writing to the Court --  
21   of which both sides will receive a copy -- and say, you  
22   know, giving them what I -- basically what I just said,  
23   that we had a hearing, we took testimony, both sides  
24   disagree as to what really occurred at trial. And  
25   therefore, what may be in the record and what happened at

1 trial may not be one in the same, but it's been done.  
2 And if they think that's sufficient for the case to go  
3 forward with the appeal, then I'd assume they'd give a  
4 briefing schedule.

5 MR. HAMM: Just for purposes of protecting the  
6 record, we'd like the record to reflect that we made a  
7 motion to ask the Court, Your Honor, to submit the  
8 transcript of today's proceeding to support whatever you  
9 -- whatever letter or statement. Obviously, we've seen  
10 what you have done in your correspondence with the Court,  
11 but we think in order to move this matter along, given  
12 the delay -- and of course, that last order of the Court  
13 of Appeals was pretty strong expressing concerns about  
14 the delay. So it seems to me it may be beneficial, and  
15 we would simply make a motion, subject to your rulings,  
16 that you include the transcript from today in your  
17 submission to the Court of Appeals.

18 THE COURT: All right. Any reason ---

19 MS. JENNINGS: I have no objection to that.

20 THE COURT: Okay. I'll be glad to do that.

21 MR. HAMM: Thank you, Your Honor.

22 THE COURT: Go ahead.

23 MS. JENNINGS: Okay. Thank you. And I would  
24 note that I've written the Court of Appeals and Court  
25 Administration five times, at least, asking about the

1 transcript concern. But Your Honor, I guess I see it a  
2 little different. I didn't see a lot of disagreement  
3 about today. We agree with the testimony of Fred Smith  
4 to be submitted. We agreed that after Mr. Austin got up  
5 and seemed to be clear, we seemed to not be at cross  
6 purposes on that.

7 We seem to not be at cross purposes on the  
8 instructions that Your Honor clearly gave us because I  
9 have them, and there's no objection about that. There  
10 doesn't seem to be any disagreement. We seem to agree  
11 that the exhibits are all intact and together. The only  
12 thing we seem to disagree on is the wording of my  
13 testimony and what was in or not. Other than that, it  
14 seems to be agreed, as I see it.

15 Now, I would like to -- what I had mentioned about  
16 the federal transcript. I would like to put this in in  
17 that it bears on my credibility that I would have  
18 testified had I known at the period of time that this was  
19 in existence.

20 THE COURT: Obviously, it's something post. It  
21 wasn't submitted at trial. This is a -- the purpose is  
22 to recreate a trial transcript. If it's appropriate to  
23 put in your appellate brief if it goes forward, then that  
24 will be before the Court.

25 MS. JENNINGS: I just don't want to get my feet

1 shot out from under me that I didn't put it in the  
2 record.

3 THE COURT: Well, you certainly have tried, for  
4 the record, to do so.

5 MS. JENNINGS: Okay.

6 THE COURT: And I would note that.

7 MR. HAMM: And for purposes of the record, just  
8 so it's complete, we would object to placing post-trial  
9 hearings or other in the matter where we're trying to  
10 reconstruct a record of a hearing that took place a  
11 number of years ago. Subsequent information had no  
12 bearing on the jury or the Court or anyone else.

13 MS. JENNINGS: Well, I'm sorry. It didn't --  
14 it occurred before the trial. It's just that I didn't  
15 know about it. It occurred in 2004.

16 THE COURT: All right.

17 MS. JENNINGS: It's just I didn't know. I  
18 didn't have the federal transcript.

19 THE COURT: I understand that. And the bottom  
20 line, I think, what Mr. Hamm is saying is it wasn't  
21 submitted at the hearing in the trial of this matter, so  
22 therefore, it should be excluded when we reconstruct the  
23 trial now -- testimony now. Okay. Anything further from  
24 the Plaintiff?

25 MR. BRANDT: No, sir, Your Honor. I don't

1     suppose so. Again, I ...

2             THE COURT: Anything further, Ms. Jennings?

3             MS. JENNINGS: I don't think so.

4             THE COURT: All right. This hearing will be  
5     concluded.

6             MR. BRANDT: Thank you, Your Honor.

7             THE COURT: I will get a copy of the transcript  
8     of record submitted to the Court of Appeals along with my  
9     report and then give it to them.

10            MR. HAMM: We'll wait for the Court of Appeals  
11     ruling.

12            THE COURT: All right. Thank you for being  
13     here.

14            (WHEREUPON, the hearing ended at approximately 11:58  
15     a.m. and then reconvened a few moments later.)

16            THE COURT: Just one second, ladies and  
17     gentlemen, if I may. Let's go back on the record. My  
18     court reporter post-hearing asked me who she should bill  
19     for the transcript in this matter. The current appellant  
20     is whom in this case?

21            MR. BRANDT: Me.

22            THE COURT: You?

23            MR. BRANDT: Blue Ridge will pay for it.

24            THE COURT: Okay.

25            Would you bill Blue Ridge Electric?

1 MR. BRANDT: Send the bill to me.

2 THE COURT: Okay.

3 MR. HAMM: We'll take care of that, Your Honor.

4 THE COURT: Thank you, guys. All right. The  
5 hearing is concluded.

6 (WHEREUPON, the hearing ended at approximately 12:00  
7 p.m.)

8 (END OF REQUESTED TRANSCRIPT OF RECORD)

**FedEx Office Charleston West Ashley**

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From: Kathleen Gresham [REDACTED]  
Sent: Thursday, November 15, 2012 1:32 PM  
To: usa1572@fedex.com  
Subject: Also testifying Fred Smith

Also testifying omitted from transcript is witness Fred Smith manager of Freeman Gas in Landrum, SC. He was subpoenaed by Plaintiffs and not called at trial but put up by Defendant.

Mr Smith testified he has been manager of Freeman Gas since 1986 and is well aware of Ms Jennings as a long standing and valued customer. He testified that he knows she heats only with buried propane gas which his company delivers and has for many years when she calls them. He testified as to records kept in his possession and her bill and status. He testified that Jennings has always paid promptly, immediately and in full and is considered an excellent customer. He testified that there has never been a problem with her, her husband or her account and that the account has always been in her name for over 20 years. He testified there was never a problem reaching or communicating with her. He testified that she unlocked her gate when deliveries occurred, kept locked due to animals. He testified that she was on the regular payment plan and even had a credit to date of \$732.00 with their company.

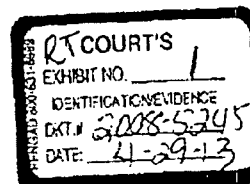
He testified that he drove from Landrum to court upon Subpoena. He identified plaintiffs pre marked exhibits numbers 13 and 14 which were then introduced by Defendant Jennings during Smiths testimony without objection. These exhibits showed Jennings gas usage and payments. Mr Smith testified he was aware that Jennings had lived away from the home for a period of time due to the illness of a child but did not know the details.

He testified he believed Jennings to be dependable, honest in business dealings over many years experience, and an excellent, valued customer.

He was, thereafter, excused following his testimony by both parties.

This testimony summary is to be included in appeal.

Kathleen Sent from my iPhone



**LARRY C. BRANDT, P.A.**

ATTORNEY AT LAW

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Waihalla, South Carolina 29691

Phone: (854) 638-5406

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lcb.brandtlawfirm@att.net

Of Counsel

John F. Prescott,

jfprescott@bellsouth

November 16, 2012

The Honorable R. Lawton McIntosh  
Tenth Judicial Circuit  
P.O. Box 8002  
Anderson, South Carolina 29622

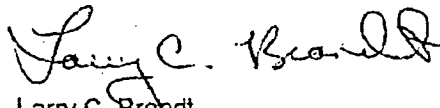
Re: Blue Ridge Electric v. Kathleen Gresham (Jennings)  
Greenville County Common Pleas #2008-CP-23-5245  
South Carolina Court of Appeals  
Case Tracking #2009141246

Dear Judge McIntosh:

Enclosed is *Plaintiff's Submission of Missing Testimony/Evidence in Reconstruction of Record*. By a copy of this letter, I am serving same upon the Defendant. I trust you will find everything in order; however, if you have questions or need additional information, please let me know.

Sincerely,

LARRY C. BRANDT, P.A.



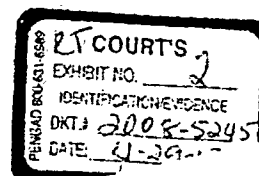
Larry C. Brandt  
Attorney

LCB/dcm  
Enclosure

cc: Ms. Kathleen Jennings Gresham  
Respondent/Appellant

Mr. Steven W. Hamm  
Co-Counsel for Blue Ridge Electric Cooperative

Ms. Jenny Abbott Kitchings, Clerk  
S.C. Court of Appeals



|                                        |   |                                           |
|----------------------------------------|---|-------------------------------------------|
| STATE OF SOUTH CAROLINA                | ) |                                           |
|                                        | ) | COURT OF COMMON PLEAS                     |
| COUNTY OF GREENVILLE                   | ) |                                           |
| Blue Ridge Electric Cooperative, Inc., | ) |                                           |
|                                        | ) |                                           |
| Plaintiff,                             | ) | <b>PLAINTIFF'S SUBMISSION OF</b>          |
| vs.                                    | ) | <b>MISSING TESTIMONY/EVIDENCE</b>         |
|                                        | ) | <b><u>IN RECONSTRUCTION OF RECORD</u></b> |
| Kathleen J. Gresham,                   | ) |                                           |
|                                        | ) | <b>Case #2008-CP-23-5245</b>              |
| Defendants.                            | ) |                                           |
| _____                                  | ) |                                           |

Blue Ridge Electric Cooperative, Inc. (BREC) is before the Court requesting reconstruction of the record or, in the alternative, a new trial on the issue of trespass only. BREC does not appeal, nor intend to appeal, the jury's verdict on its claim that money is owed for a power bill as it is willing to accept the jury verdict as finally determinative of that issue.

As for the Defendant's Counterclaim against BREC for trespass, however, BREC does appeal and the missing testimony from Ms. Jennings, as well as Ronnie Alexander, BREC's Right-of-Way Technician, is absolutely necessary for the appeal to be accomplished.

Mr. Alexander testified at trial to the actual S.C. Highway 11 right-of-way along the Jennings' property line and that the pole and guy wire were well within S.C. Highway 11 right-of-way as clearly shown on **Plaintiff's Exhibit #12**, which is the Permit Application for the construction and maintenance of a public utility line along S.C. Highway 11. He testified that **Exhibit #12** was the Permit granted by the Highway Department and was the

authority by which the subject pole and guy wires were located on Defendant's property and that the staking sheets attached to the permit were part and parcel of same. He testified that as part of his job he has to determine the actual rights-of-ways where poles are located and has to coordinate the construction of any poles and guy wires and power lines with the Highway Department on behalf of BREC in order to obtain the Permit to do the work. He testified that the right-of-way along the Defendant's property was fifty (50') feet from the center of Highway 11 and that staking sheets, which were entered as part of the Permit Application and approved by the Highway Department, were drawn to scale and that the scale showed the right-of-way to be fifty (50') feet each side of the center line. He further testified he had measured the structures and the pole was located twenty-seven (27') feet from the center line of Highway 11 and the guy wire anchor was another seven (7') feet from the pole or a total of forty-four (44') feet from the center line of Highway 11, well within the right-of-way.

Although the undersigned's trial notes were not kept in great detail and it has been awhile since trial, the notes, together with the undersigned's best recollection, are that Ms. Jennings testified that the pole is on her property but she never ever established the boundary of the highway right-of-way. In this regard, however, the property line is not an issue, but rather the highway right-of-way and whether the poles are within that highway right-of-way are the issues.

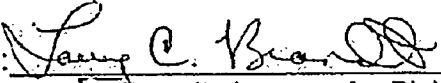
As to the right-of-way, Ms. Jennings offered no testimony or other proof that the pole and/or guy wire are outside the fifty (50') feet from the center of S.C. Highway 11 (the right-of-way as shown by the Permit Application). As best the undersigned can recall, her testimony was simply as follows:

1. The subject power pole and guy wires were within her property lines.
2. The pole and guy wire were placed on her property without permission or compensation.
3. The guy wires were, at most, forty-seven (47') feet from center line of Highway 11.
4. She did not produce any documents or records delineating the highway right-of-way to be other than as shown on **Plaintiff's Exhibit #12** and as testified to by Mr. Alexander or that the pole and guy wire are not constructed in compliance with the Permit and/or are not within the right-of-way according to the Permit issued by the Highway Department.
5. She acknowledged that highway rights-of-ways are usually anywhere from twenty-five (25') feet to fifty (50') feet each side of center line even though she thought, without any support or authority whatsoever, that the right-of-way where the pole was located is a mere twenty (20') feet from the center line of S.C. Highway 11.

The law is clear, utilities may be located within highway rights-of-ways with the permission of the Highway Department and does not require permission of the owner of the property to do so. This law is clearly set forth in **Gressett v. S.C. Electric & Gas, 370 S.C. 377, 635 S.E.2d 538 (S.Ct. 2006).**

Respectfully submitted,

Larry C. Brandt, P.A.  
P.O. Box 738  
3691 Blue Ridge Blvd.  
Walhalla, SC 29691  
864/638-5406

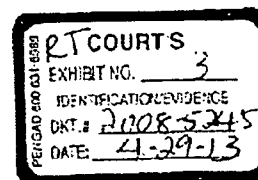
By:   
Larry C. Brandt, Attorney for Plaintiff

November 16, 2012  
Walhalla, South Carolina

Crafted Record due to partial missing transcript  
From Defendant K. Gresham

Following break, named Defendant Kathleen Jennings Gresham, appearing pro se, testified, in summary, as follows:

Kathleen Jennings Gresham  
Resides 1524 Highway 11, Landrum, SC, located in Greenville County  
Owned this location since early 1980's  
Farm/forest land on northern part of Glassy Mountain  
Life long Greenville resident  
Educated Greenville public schools and Univ. of S.C.  
Age 56 at time of trial  
Very active in community entire life  
One of first founders of the Glassy Mt. Fire/Safety District which was last district in South Carolina to have fire protection  
Founded the department, composed by-laws, organization, helped secure land for main station and two substations, thus very familiar with community, with resources, with rights-of-way, highways, utility lines, and water resources as result of two year active research before fire dept. established and continuing.  
Was one of first Glassy Mt. Fire Commissioners and was secretary of the Commission  
Raised a significant amount of money to build stations and purchase equipment through community events and activities.  
Very few people lived in such a rural location as when I purchased land as a single woman and established residence there  
Was exposed to threats as to my life; fencing torn down by lawless ones who did not want anyone on the mountain as was home to many illegal stills and marijuana patches hidden in the mountain; I spent two years trying to curb and halt such activities, with considerable success due to community, church and law enforcement help.  
As a result, I built fencing around the highway 11 road frontage, for protection personally and for my property and animals.  
I spent considerable time with the highway department officials, county road experts, state road experts, Blue Ridge power workers, other fire departments in the area, churches, citizens, community groups, to name a few.  
I learned the rights-of-way for the fire dept, and especially for my property lines  
Which was necessary for my fencing which I put into place immediately  
A lot of the fencing was done by a professional fencing company, used significantly in this area and located in this area, with assistance personally by my father, with me, and occasionally a few helpers, along with several fencing companies. The fencing area in question in this trial was erected professionally after consultation with records from the highway, meeting with highway officials, and with pertinent others regarding permanent and proper placement. This stretch of fencing is located directly on highway 11, and is immediately outside my front entrance to the left. Rights-of-way for fencing was essential in fence placement. I wanted the fence to last and endure for many, many years into the next generations and be entirely situated without question on my land, off the



highway 11 rights of way, which were obscure, and varied through various parts of this very rural road at the time, that was not very well traveled in the early 1980's.

I bought the front acreage from Champion Paper Company and rode and walked the property line with their land manager, and we noted and marked their road frontage which became my road frontage, and any rights-of-way of record.

There were no rights of way of record when I purchased the property in the early 1980's as there were no buildings, no development, no power, no water and only a rather narrow two line state road traversed this small stretch of northern Greenville County road for my approximate mile of road frontage.

My property even allowed part of Highway 11 through my property as I own a bit of land across the street from my primary land.

The right of way for the highway is twenty feet (20 ft.) from the center highway line in the middle of the highway.

I am absolutely sure of it and this was my testimony.

I did not waiver in this testimony for it is the right of way upon which I have relied for over 25 plus years.

I thus positioned my fencing as mentioned according to this right of way and with permission and position locating along with the highway dept. officials of the time and with the fencing company who was also eminently familiar with highway 11 rights of way as they had been in busy for a long, long time and did most of the fencing in this upstate area, especially rurally in this northern Greenville County area and surrounds. The fence company owner and I had ridden together for several hours over several days to see other fence jobs, rights of way, and related issues before I decided on my fencing. They positioned the fencing in question in this trial in the early 1980's. It has not moved, been altered or repositioned in any way since that time well about 25 plus years ago.

I am absolutely sure of the right of way in this location as on other stretches of highway 11, there are varying rights of way due to the old nature of the road and other issues including the many counties in which highway 11, which is a scenic highway, runs. This stretch of the highway is one of the most scenic spots and is recognized across the nation as "The Trail of Tears," for the forced movement of the Cherokee Indians by the federal government to a reservation in Tahlequah, Oklahoma, thus the name for my farm, Tahlequah.

I conducted research prior to my fencing to determine the correct and proper placement that has remained continuously.

As this appeal for Plaintiff is limited to the trespass issue, I never executed any written document with Blue Ridge to allow them to position a service or power or any other type pole or guy wires of any nature, on my property.

I have paid for all services from Blue Ridge Electrical Coop and have been a steady, consistent, and excellent customer of this coop for over 25 years.

I have never missed a bill payment, never been late, and was usually very early with my payments with monthly bills.

I lived in a trailer for five years on my property and had that account with Blue Ridge as well.

When I built a house further up the hill and built a driveway, I lived two extra years in the trailer so I could afford to pay Blue Ridge to bury my electrical power to my house, up

the driveway for primarily esthetical purposes as I am one of those people who just hate power poles. I figure if I am going to live out among nature, in the wild which was Highway 11 area, that I did not want to see or have power poles.

I was adamant about it and carried it through. I paid dearly for it to Blue Ridge as they charged me so much per foot and so much for rock when they hit it, which was often as I recall. As I recall, I paid Blue Ridge some \$8,000 which was a huge amount of money in that day and especially for a single girl who sacrificed a lot to have her power buried. Also a factor in that decision was living on the side of a mountain with worry about falling trees, ice storms, breakage, and repairs over the years about which I learned a lot of information and studied on this decision.

Blue Ridge told me they rarely buried power but hired contractors, I was told, to do what I paid them to do.

I also buried my telephone lines and allowed for 5 lines to plan for the future which was fortunate planning as many other uses arose in the 25 years which followed for such high tech lines as I had buried.

This detail goes to show the pains and details to which I go in making such decisions which was exactly the same type of detail in positioning my fencing and knowing where my rights of way are and were since the early 1980's.

They have not changed.

I did not give Blue Ridge the same type of right of way the other customers gave, just signing a general document. We, Blue Ridge and I, especially discussed this many times. I agreed to allow them entrance as needed for repairs, etc, but not without limitation and only with my approval and permission after notice, unless supreme emergency which we discussed.

As nobody else to speak of lived up there, this was fairly easily settled. I was concerned about my animals and about people having access to my land as I had spent two years running off trespassers and drug dealers from this land, which had been lawless pretty much and earned the name of "Dark Corner"

For many years, Blue Ridge asked me to call in or write on my monthly bill, my power meter reading for usage as they told me they did not have many employees to serve this end of Greenville County as they were primarily a Pickens and other county cooperative. I did this faithfully, either calling someone named Ann, her last name could be Garren, I am not positive. I would just call up Blue Ridge, ask for Ann, tell her it was Kathleen, and give her my reading from my meter.

It worked beautifully and there was never a problem.

I did the same at the trailer which was right on the highway for over five years, each and every month, and for the other house, about a half mile off the road, for about 5 more years or so.

This continued even after I married in 1990 but was time-consuming and basically, a chore.

We had a lot of power outages in those early days but not due to my buried power but because of the above ground power poles across highway 11 and much further down which fed my property and from storm damage.

I should note that the power pole located on my property now without my permission which is trespassing along with the guy wires, does not serve my property and never has. My power is buried- do not forget.

This is a power pole erected by Blue Ridge as a support pole I later learned from the Blue Ridge workers, to balance power poles they erected across the street on highway 11 from my farm, which were destined to serve a subdivision type development that was contemplated but never built and was highly questionable in the first place.

It had weak to no funding, no significant backers and was mostly conjecture and speculation because I knew because of my activity in the area and community knowledge.

The pole went up about the time Blue Ridge sued me. I complained immediately and asked them to move the pole. They refused. Then they sued me despite me showing them I had paid each and every month without fail.

They even sued my husband who had never been a member of Blue Ridge. I was the only member. You had to sign to be a member in this early days. Remember, I had been a member since the early 1980's and I did not marry Steve Gresham until September 8 of 1990.

Steve never joined Blue Ridge and the membership was always and only in my name, Kathleen Jennings, alone and without change as it is today.

I go by Jennings as my last name. Blue Ridge knows that but insisted on bringing this lawsuit using Steve's last name. I asked to reception but was refused.

I worked with Blue Ridge for over a year when they threatened to sue me if I did not pay them about \$10,000 more but they said they were going to sue me.

I told them we had not lived full time in the house for over 13 years after my stepson, David, got leukemia, as we felt forced to move nearer to the hospital. We closed down this house but kept the power on for only the refrigerator and the burglar/fire alarm. We have a well but we drained the water and did not use that.

I buried propane when I built the house and we only heat with propane as I told Blue Ridge and even for them a statement from Freeman Gas in Landrum, who has supplied me with propane since the 1980's attesting and confirming this. Blue Ridge told me they did not believe me and that I must have used someone else and they didn't believe I heated with propane. I showed one of their employees which David Thomas lined up and came up to our house one day by appointment when Steve took off from work to be with me, and we showed him the buried 1,000 gallon tank and he confirmed I was telling the truth and said he was surprised. He said that was good planning but I am a planner.

Blue Ridge sued me and sued my non-member husband anyway

I think it was to embarrass me and to put pressure on me to pay this outrageous amount.

Blue Ridge had done this to me before,

When David was sick and in the hospital getting chemotherapy and could not be moved, Blue Ridge said I owed them around \$1,000 for meter readings they said they had read wrong. They threatened to sue then. We were in a dither then about David who was very ill at the time. They threatened to serve me right away so I just paid \$900 which they accepted to end the issue. This was when I insisted on better equipment they could not screw up on and lead to me talking to Charles Dalton, the CEO of Blue Ridge, going over my concerns and anger.

He assured me he was putting a state of the art, his words meter on my house which I would never have to worry about again as he could read it from the road with no trouble. I said great and we coordinated a time to install that and I thought that was done. I never heard anything about an estimated bill until after this law suit commenced. It was their invention. I think I paid before and they thought I would again. I am sorry I paid before but it was a matter of priorities and we were fighting for our son's life, and a law suit was something we did not need.

I do not have the money to pay over and over and do not think it is fair.

When is a power bill ever over? Our checks for over 25 years have read at the bottom, paid in full, as I standardly write on all my checks from since I was very young, to this day if the bill is paid in full. It is habit.

Blue Ridge tried to embarrass me as they still are.

I will not for I have paid religiously as you hear Mr. Dalton testify and Mrs. Denise McCormack.

I sought help from the Blue Ridge board member before Mr. Kenneth Sutherlin whom I believe has passed away now, when Blue Ridge on three occasions cut my lock and locked me out of my property and home. They cut my lock and relocked my front entrance gate, the only way in, with their own lock, forcing me to stand at the highway 11 street usually in the dark because that is when I would get home, and be unable to get in my own property.

Once or twice they activated my burglar alarm system, which cost me sheriff's calls and embarrassment and inconvenience.

It was and still is a nightmare.

I have never received any coop checks from Blue Ridge.

I called Mr. Sutherlin house several times and left messages to help me as he was my district area representative. I saw Mr. southerlin at the Travelers Rest Feed and Seed store one day and approached him again in person with this problem and he said he would try to do what he could. I told him Blue Ridge was threatening to sue me and that would be a terrible waste of the coop's money as I had paid my bill each and every month, on time, never late, and in full for over 25 years and that my husband was never a member of Blue Ridge. As Mr. Southerlin was then on the board, I knew he should know and do something. He said he was aware of the problem as they had discussed me at the board meeting. That shocked me and made me suspicious of what they said and I wanted to see the minutes, I decided, when the law suit really did happen due to Blue Ridge filing suit.

Mr. Southerlin testified.

Mr. Dalton testified.

Neither planned to be here though they had pertinent information. They would not have appeared with my subpoena and I was forced to go to a great deal of trouble to serve them.

I tried to communicate with others with Blue Ridge to stem off what I thought was a ridiculous and frivolous lawsuit. I talked with Mr. Dalton and with Mr. Brandt to whom Mr. Dalton referred me, without progress as they went forward with the suit and against my husband, the never member, too.

I went to see David Thomas, with appointment, as my legislator, to see if he could add some reason to the mix especially with his senate committee work as I know he is smart, knows and trusts me, and would take the time to listen and understand. He did just that. He listened. He got it. He did research. He made me bring him documents, which I did. He asked a lot of questions and we met several times. He called me quite a few times too to ask something new he had thought of. He then went to see Charles Dalton with an appointment to hash things over trying to clear things up for me. He was never my lawyer. He was going as a friend and because he could get their attention and honestly resolve the thing. I just knew he would get through to me as I was unable to and the thing would be cleared up.

I was wrong.

I had been told as he was told when he was there, that the meter was stolen or missing which was the latest meter which had been removed from my house.

I think I had 4 or 5 meters and had never ever been told the meter was estimated or there were problems.

They always knew how to get in touch with me. They had my current address always and when we lived in Greenville on Ridgeland Drive for about 13-14 years, they had that address for they sent me the power bill for highway 11, to that address.

When my family had a cottage at Flat Rock on Greenville Highway in North Carolina, I even got Blue Ridge to do the security for it as they were starting a security company or had such a company and I kept the business in the coop.

They had my Greenville home address too for we got no mail in N. C. and their monthly security bill went to Greenville and also got paid each and every month. They also had my phone number, which was also in the phone book for 25 plus years and never changed and they had my cell phone number when cell phones came into widespread usage for the burglar alarm calls, if needed.

They had me start to finish so this testimony they did not know how to reach me or such as that is just not true.

My testimony was clear and strong that Steve Gresham had never been a member of Blue Ridge Electrical cooperative and that he should never been sued.

It was clear that this bill had been paid in full each and every month just as they billed me, and without fail, even when our son was desperately ill with cancer for over 8 years. Even when I did not live at this house for over 13 years and no body lived there. It was virtually shut down and on bare minimum power usage. In fact, I testified that I think they owed me a refund for we did not think we had near used the amount of power they claimed which was why I complained about it several times.

I testified that they acted maliciously, unjudiciously, unwisely, improvidently, and without justification, when they filed suit and wrongly, when they named my husband. They had plenty of changes to not name him or to release him. They embarrassed him, a retired air force colonel and administrator of the Greenville Memorial Hospital, which I think was their goal.

My husband was forced to take personal time off of over 7 days in this matter at least for which he should be compensated and for the money we were forced to spend on mediation.

I was also forced to spend monies as I could not afford the high lawyers fees a lawyer wanted to handle such a case. I was forced to proceed pro se.

I even, with my husband, made an immediate motion to have Steve Gresham removed as a party and scheduled a hearing to which Mr. Brandt did not even appear though properly noticed. After waiting over three hours, Judge called him and he sent another lawyer, a young fellow, who opposed my husband being released and they stated that they would show my husband was a member and stuck by their pleadings. As a result, my husband was left on the lawsuit by Judge Patterson with his resulting order based on what the plaintiffs urged.

Then, in their testimony, they absolutely failed with each and every witness, to provide proof that Steve Gresham was ever a member of Blue Ridge coop and in fact, admitted near the beginning of their own case, that he was not.

There was a lot of pain and trouble and costs to get to that point.

This is why I sought sanctions from the very beginning of this matter. I told Mr. Brandt I would seek them if he persisted in this wrong path.

I also seek punitive damages and gave testimony about that.

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

) IN THE COURT OF APPEALS  
) REF: 2008-CP-23-5245  
)

Blue Ridge Electric Cooperative,  
Plaintiffs,

-vs-

Kathleen Gresham and  
Steve Gresham,  
Defendants.

)  
) FOR RECORD  
) RECONSTRUCTION  
) OFFERED BY DEFENDANT,  
) PRO SE  
)

Now comes the Defendant, captioned as Kathleen Gresham, while reserving all motions, including Motion to Dismiss, and challenge of this matter, who sets forth her initial information for reconstruction of the missing/destroyed record, as notified this party by the official trial court reporter, long after the trial's completion. Having no experience in the reconstruction of a destroyed record and finding no suggestions from long-standing members of the Bar, I set forth, as best as possible, clear facts of remembrance from this trial, which was deeply imbedded in memory, along with applicable attachments, including the jury charge copy from the trial court.

Of great significance in this matter and to be noted, the Plaintiffs, through legal counsel of record, Larry Brandt, announced in open court, while meeting with the trial judge in Anderson, SC, on Tuesday, September 25, 2012, with court reporter present as Defendant requested, that Plaintiffs were withdrawing, ending, and ceasing to ask or seek any monetary award for any alleged past due bills or any other monetary or other costs from Defendant(s), as disallowed by the jury in this matter. Written confirmation of this withdrawal of claim as to any alleged money or award and costs, has also been received via email from counsel Brandt and from attorney Steve Hamm, apparently associated in this matter by Plaintiffs. Therefore, this issue that initially was the issue that brought this action in this first place, has been abandoned as of October of 2012, and only after the jury trial, with ruling against the Plaintiff, in all particulars, which occurred in August of 2009.

Plaintiffs commenced this lawsuit against Defendants on July 15, 2008 as a non-jury action in Greenville County, the home county of Defendants. Defendants are husband and wife. Defendant Steve Gresham was served with Complaint on September 2, 2008. Defendant Kathleen Gresham, as named in lawsuit, was served on September 19, 2008.

Defendant Steve Gresham filed his Answer and Counterclaim, with right to amend, motion to dismiss motion to make more definite, and seeking sanctions from Plaintiff and the Court, on September 16, 2008, demanding trial by jury. Defendant Kathleen Gresham filed her Answer and Counterclaim, with demand for jury trial, and with motion to dismiss and for sanctions, on September 30, 2008. Proper service was made on Plaintiffs.

Plaintiffs made Reply on October 7, 2008. Defendant Steve Gresham's motion to dismiss this action as to him was scheduled, with fee paid by him, on November 5, 2008, with affidavit duly filed, attesting that he had never been a member nor was a member, of

the Blue Ridge Electrical Cooperative, captioned as Plaintiff, and should not be a party to this proceeding. He sought costs and sanctions in this regard from Plaintiff.

This motion was opposed by Plaintiffs, who did not appear at the scheduled motion hearing, and who asserted that Defendant Steve Gresham was a member of the electrical coop. The Court through Judge Patterson, based on such assurance and refusing to hear evidence to the contrary, denied Defendant Steve Gresham's motion, which was also concurred in by Defendant Kathleen Gresham, and required Defendant Steve Gresham to remain a party Defendant.

Mandatory mediation occurred with Attorney Wallace Culp, with Defendants paying required fees to him. Mediation with the parties and employees from Blue Ridge, occurred on May 21, 2009. Defendants again sought dismissal of Defendant Steve Gresham from this lawsuit but were opposed by Plaintiffs. No resolution of the matter occurred.

Discovery continued in this matter. Jury selection occurred during the trial week in August of 2009. The matter proceeded to full jury trial in the Court of Common Pleas, Greenville County, with Judge Lawton McIntosh of Anderson County, on Wednesday, August 26<sup>th</sup>, Thursday, August 27<sup>th</sup>, and Friday, August 28<sup>th</sup>, 2009.

At the conclusion of Plaintiff's case in chief, at trial, Defendants both renewed their motions, especially Defendant Steve Gresham, for dismissal of Defendant Steve Gresham as a party Defendant. Plaintiffs had presented no testimony and no exhibits that Steve Gresham was, or had ever been a member of Plaintiff Electrical Cooperative; and that Steve Gresham should never have been named a party to this proceeding. Renewal was made for costs and sanctions against Plaintiffs.

Plaintiffs inserted in open court that they agreed to this dismissal at this time upon Defendant's request for directed verdict. Steve Gresham was dismissed as a party with reservations made as to claims against Plaintiffs. Other motions from Defendants were denied by the Court and reservations made.

Appeal was undertaken by Plaintiffs as to all Plaintiffs' issues including debt, costs, and trespass. Defendant(s) appeal as to punitive damages, long pled, which were disallowed by the trial court on the last trial date, August 28<sup>th</sup>, just prior to closing argument. Previously, the issue of punitive damages had been allowed and on the table, known to all.

The transcript was duly ordered of the Court reporter, Mary DiGirolamo. After considerable correspondence and delays of over a year, the official court reporter, notified the parties that a significant part of the transcript was missing or destroyed.

As a result, there were considerable delays, resulting in a conference meeting with the parties and the trial judge on September 25, 2012, in Anderson County, and over the objection and special appearance by Defendant K. Gresham, as not in the county of her residence, requiring her to travel to another county, and after Defendant had prevailed on all issues in this jury trial.

The purpose of this conference, which Defendant asked in advance to be attended by a court reporter and to have the original court reporter present to report on the record what had occurred as to the transcript. A court reporter, Ms. Rice, was present from Abbeville, but the original court reporter, Ms. DiGirolamo, was not present.

The trial judge set a deadline for the parties to submit their suggestions to him for November 2, 2012. It was at this conference ending, that Plaintiffs through Mr. Brandt,

counsel, announced that Plaintiffs were now abandoning their claim for any and all back bills which they had claimed were not paid, and for any fees or costs, such position previously unknown to Defendant(s).

Therefore, the only issue remaining for Plaintiff on appeal is that of trespass, found by jury in favor of Defendant. As for Defendant, the issues are failure of the judge to charge punitive damages through properly pled and noticed, failure to impose sanctions on Plaintiffs, and costs to Defendant Steve Gresham for inclusion in this action and sanctions, and damages and costs of Defendant(s).

This is a summary of this matter to date.

Kathleen Gresham (as captioned)  
Pro se Defendant  
October 29, 2012

Judge Lawton McIntosh  
Circuit Court  
P. O. Box 8002  
Anderson, South Carolina 29622

RE: Blue Ridge Electrical Coop vs. Kathleen Gresham (and Steve Gresham)  
2008-CP-23-05245

Tracking number 2009141246  
*To be made a part of the Court record*

Dear Judge McIntosh,

Pursuant to your order and subject to my running objections about this matter previously raised and preserved, I enclose my initial stipulations and attachments in the above matter. I have not included the partial transcript due to costs but, of course, would insist that such be made part of the overall record along with trial exhibits, and pre-trial motions and discovery requests.

Blue Ridge has, as of the session mandated in your court in September 25, 2012, verbally announced to me, as the Defendant/appellant, and to you, that they have now abandoned their claim for all monies, fees, and costs related to this matter which, of course, was the initiating crux of their lawsuit.

I, of course, repeatedly sought to have this matter dismissed, as I owed no money to Blue Ridge and that the bill had been paid in full, on time, each month, as billed by Blue Ridge. Blue Ridge was equally adamant that my husband, Steve Gresham, was a member of Blue Ridge Electrical Coop, which we strenuously and consistently disputed. The Defendants sought from the beginning of the matter to have Steve Gresham removed as a party Defendant, but Blue Ridge insisted he was a member and represented so to the motion judge, Judge Patterson in November of 2008, despite our affidavits to the contrary. Blue Ridge continued their assertion that Steve Gresham was a Blue Ridge member for the following years, until under oath at the three-day jury trial, in August of 2009, when witnesses admitted that Steve Gresham had never been a member of the Blue Ridge Electrical Coop and that they had no record or membership of any sort that he had ever been a member, which was what Defendants had asserted from the beginning.

Blue Ridge, following their case in chief at trial in August of 2009, withdrew Steve Gresham as a party Defendant, but all Defendants' objections and rights in this matter, were preserved, which you noted and I again stressed in Court in September, 2012.

I was mailed the transcript existing several weeks after the September date with you, in October 2012. It shows most of the case presentation including ALL the Plaintiff's case and most of the Defendant's case.

Plaintiffs now only appeal the TRESPASS issue as to their pole/guy wires located on my property, upon which the jury has spoken after a three-day trial. I appeal the last minute refusal of the trial judge to allow me to seek and argue punitive damages from Blue Ridge and other damages, which he ordered I could not seek on the last of the three-day jury trial just before I was scheduled to give closing arguments. The trial judge had specifically limited on the day before, our time for closing arguments and admonished us that if we went over his allotted time in such closing arguments, he would hold stop us and hold us in contempt.

I had meticulously, given that order that I objected to on the record, but honored with preservation of the matter, prepared written comments for my closing argument so as to keep within the judge's ordered time limit and had timed myself outside court to insure I stayed within his prescribed time limitation. I have that written closing statement that I have not included in this record, which shows I had to mark out statements about the punitive and other damages as disallowed by the trial judge. I stated out of the presence of the jury to the court while under oath that I believed that the trial judge showed prejudice against me and against this case. Prior to the trial, the Judge called me up to him and he told me to "just pay your damn bill." I told him that if he felt that way so strongly before he had heard any of the facts, he should recuse himself. He refused. He appeared disgusted with me. This did not appear on the record. I was quite upset and fearful of the rest of the treatment I would receive in this matter and in this court based on the experiences prior and on this date. I was worried as I was a pro se litigant and my husband was dragged from any days off work when he was never a member of Blue Ridge as I suspect as punishment to me and to force me to pay a bill I did not owe. I objected to the unfairness of the entire matter and to the unlimited use of power by Blue Ridge and retaliatory actions against me such as cutting my gate locks, threatening me for months with power turnoff, and stating repeatedly that the meter in question was stolen and/or lost, as I had asked repeatedly to see the meter and know its chain of custody.

During the course of my testimony, the Judge interrupted me obviously frustrated with me in presenting testimony, and told me he remembered problems with me from Anderson Family Court in divorces. This was when I turned to him on the witness stand and directly told him I objected to his comments such as those in front of the jury, which was when he ordered the jury to be removed and he continued to dress me down. It was this unprofessional trial conduct from the bench that I found problematic, not in keeping with the court decorum and professional responsibilities, and highly prejudicial to my case and me.

It was the following morning, on August 28, 2009, that the trial judge without prior notice or explanation, ordered me to NOT include anything in my closing statement about punitive damages or other damages or I would be stopped and held in contempt of court. He said, on the record, he had thought about the matter overnight and changed his mind. I reminded him that I had properly pled these matters years prior from the very commencement of the lawsuit and that the

Plaintiffs had fully been on notice of each and every element of my complaint including the TRESPASS, the damages, the punitive damages, the dismissal of Steve Gresham as never having been a member of the Blue Ridge Electrical Coop, and others.

I was, nevertheless, so ordered, to which I took noted exceptions on the record, now missing.

The jury returned their verdict finding for me in every regard on the afternoon of August 28, 2009 after hearing all the facts, observing all the witnesses, and exhibits, with the exception of not being allowed to hear my request for punitive damages and related costs. I believe that Blue Ridge owes me money for a meter they claimed at trial they speculated rolled over and charged me accordingly. This rollover was disputed and challenged and was a fact in play considered by the jury.

Two jurors contacted me several days after the trial expressing disgust with Blue Ridge and their tactics with one juror stating they would have awarded me money from Blue Ridge for the harassment but did not know how to do it.

I stand by this letter in its entirety. I have repeatedly and immediately requested a review of what happened to the portion of the transcript missing of which I was not notified about for approximately a year, maybe longer. It would seem that if such a portion were missing, the court reporter and the trial judge would be aware early on.

I have written the court administration about this matter and the trial judge on several occasions. The court administration has provided no investigation or concern.

Thank you.

Sincerely,

Kathleen Jennings (captioned Gresham)  
1524 Highway 11, Landrum, SC 29356

Enclosures for inclusion in Court record and distribution

## CLAIM

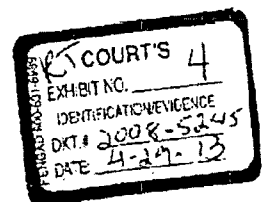
IN THIS CASE, THE PLAINTIFF CLAIMS THAT THE DEFENDANT BREACHED A CONTRACT THAT EXISTED BETWEEN THE PARTIES. IN ORDER TO RECOVER FOR A BREACH OF CONTRACT, THE PLAINTIFF MUST PROVE THE CLAIM BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE.

## BREACH

THE PLAINTIFF MUST SHOW BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE DEFENDANT UNJUSTIFIABLY BREACHED THE CONTRACT. THE WORD BREACH MEANS THE FAILURE, WITHOUT LEGAL EXCUSE, TO PERFORM ANY PROMISE THAT FORMS THE WHOLE OR A PART OF THE CONTRACT. THIS INCLUDES THE REFUSAL OF A PARTY TO RECOGNIZE THE EXISTENCE OF THE CONTRACT OR THE DOING OF SOMETHING INCONSISTENT WITH THE EXISTENCE OF THE CONTRACT. A PARTY BREACHES A CONTRACT WHEN THAT PARTY DOES NOT PERFORM AS AGREED UNDER THE CONTRACT BY FAILING TO CARRY OUT A TERM, PROMISE, OR CONDITION OF THE CONTRACT.

## DAMAGES

*Read in jury charge  
8-28-09 am  
by J. McIntosh*



*153  
Rec at end of case from Judge McIntosh 101*

## DAMAGES

THE PLAINTIFF MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE PLAINTIFF SUFFERED DAMAGES WHICH WERE CAUSED BY THE DEFENDANT'S BREACH OF THE CONTRACT. THE PLAINTIFF MUST PROVE DAMAGES BY THE PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE. THIS DOES NOT MEAN THAT THE PLAINTIFF MUST PROVE DAMAGES TO A MATHEMATICAL CERTAINTY<sup>1</sup> OR PRODUCE EVIDENCE OF THE EXACT AMOUNT OF DAMAGES SUFFERED.<sup>2</sup> HOWEVER, THE AMOUNT OF DAMAGES CANNOT BE LEFT TO GUESSWORK OR SPECULATION.<sup>3</sup> INSTEAD, THE EVIDENCE PRESENTED BY THE PLAINTIFF MUST BE ENOUGH TO ALLOW YOU TO DETERMINE THE AMOUNT OF DAMAGES WITH REASONABLE CERTAINTY AND ACCURACY.

*Blue Ridge had no damages*

DAMAGES FOR BREACH OF CONTRACT ARE THOSE THAT MAY FAIRLY AND REASONABLY BE CONSIDERED TO ARISE NATURALLY FROM THE BREACH OF CONTRACT ITSELF, OR THOSE THAT MAY BE REASONABLY SUPPOSED TO HAVE BEEN IN THE MINDS OF THE PARTIES AT THE TIME THE CONTRACT WAS MADE.

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<sup>1</sup> Whisenant v. James Island Corp., 277 S.C. 10, 281 S.E.2d 794 (1981).

<sup>2</sup> Jones v. Thomas & Hill, Inc., 265 S.C. 66, 216 S.E.2d 871 (1975).

<sup>3</sup> Whisenant v. James Island Corp., 277 S.C. 10, 281 S.E.2d 794 (1981).

THE PLAINTIFF MAY NOT RECOVER DAMAGES FOR BREACH OF CONTRACT UNLESS THE PLAINTIFF SHOWS THAT HE [SHE] HAS PERFORMED HIS [HER] PART OF THE CONTRACT, OR AT LEAST WAS ABLE, READY, AND WILLING TO PERFORM AT THE APPROPRIATE TIME.<sup>4</sup>

It didn't perform wasn't my fault neither I was relying on them

## ACTUAL DAMAGES

ACTUAL DAMAGES ARE DAMAGES TO COMPENSATE THE PLAINTIFF AND PUT HIM [HER], AS CLOSELY AS POSSIBLE, IN THE SAME POSITION HE [SHE] WAS IN BEFORE THE BREACH OF CONTRACT.<sup>5</sup> IN OTHER WORDS, ACTUAL DAMAGES ARE THE ACTUAL LOSSES AND EXPENSES WHICH THE PLAINTIFF HAS SUFFERED BECAUSE THE DEFENDANT BREACHED THE CONTRACT.<sup>6</sup> GENERALLY, ACTUAL DAMAGES ARE THE OUT-OF-POCKET COSTS ACTUALLY PAID BY THE PLAINTIFF AS A RESULT OF THE BREACH OF CONTRACT AND THE GAIN ABOVE THE COSTS THAT WOULD HAVE BEEN REALIZED IF THE CONTRACT HAD BEEN PERFORMED.<sup>7</sup>

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<sup>4</sup> Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 514 S.E.2d 126 (1999).

<sup>5</sup> Jones v. Bates, 241 S.C. 189, 127 S.E.2d 618 (1962).

<sup>6</sup> Holmes v. Nationwide Life Ins. Co., 273 S.C. 711, 258 S.E.2d 924 (1977).

<sup>7</sup> Collins Holding Corp. v. Landrum, 360 S.C. 346, 601 S.E.2d 332 (2004); South Carolina Fed. Sav. Bank v. Thornton-Crosby Dev. Co., 303 S.C. 74, 399 S.E.2d 8 (Ct. App. 1990).

## COUNTERCLAIM

### TRESPASS

THE DEFENDANT CLAIMS THAT THE PLAINTIFF TRESPASSED ON THE DEFENDANT'S PROPERTY. IN ORDER TO RECOVER FOR TRESPASS, THE PLAINTIFF MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE PLAINTIFF WAS IN

- ① LEGAL POSSESSION OF THE PROPERTY; THAT THE
- II ~~DEFENDANT~~ OR THE PLAINTIFF'S AGENT VOLUNTARILY
- ③ ENTERED THE DEFENDANT'S PROPERTY ~~OR~~ COMMITTED AN INTENTIONAL PHYSICAL INTERFERENCE WITH THE DEFENDANT'S PRESENT RIGHT TO POSSESS THE PROPERTY; ~~AND~~ THAT THE ENTRY OR INTERFERENCE
- ③ WAS MADE WITHOUT THE DEFENDANT'S PERMISSION.<sup>8</sup>

THE ENTRY OR INTERFERENCE BY THE PLAINTIFF MUST BE INTENTIONAL. INTENT IS PROVED BY SHOWING THAT THE PLAINTIFF ACTED VOLUNTARILY AND KNEW OR SHOULD HAVE KNOWN THAT THE RESULT WOULD FOLLOW THE ACT. MOTIVE OR MALICE ON THE PART OF THE PLAINTIFF IS NOT REQUIRED.<sup>9</sup> THE PLAINTIFF DOES NOT

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<sup>8</sup> Ravan v. Greenville County, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993).

<sup>9</sup> Snow v. City of Columbia, 305 S.C. 544, 409 S.E.2d 797 (Ct. App. 1991).

HAVE TO INTEND DAMAGING CONSEQUENCES, BUT ONLY MUST INTEND THE ACT WHICH CONSTITUTED THE UNWARRANTED ENTRY ON THE DEFENDANT'S PROPERTY OR THE INTERFERENCE WITH THE DEFENDANT'S RIGHT OF POSSESSION.<sup>10</sup>

THE ENTRY OR INTERFERENCE MAY BE THE RESULT OF NEGLIGENCE OR A WILLFUL, DELIBERATE, OR WANTON ACT. A NEGLIGENT ACT IS ONE WHICH LACKS THE CARE WHICH A PERSON OF ORDINARY REASON AND PRUDENCE WOULD USE UNDER THE SAME OR SIMILAR CIRCUMSTANCES.<sup>11</sup>

A WILLFUL ACT IS ONE THAT IS DONE THROUGH CONSCIOUS CHOICE OR WRONGFUL CONDUCT WHICH IS CONSCIOUSLY DONE WITHOUT REGARD TO THE POSSIBLE CONSEQUENCES. A RECKLESS ACT IS ONE OF CONSCIOUS LACK OF CONCERN FOR THE RIGHTS AND SAFETY OF OTHERS.

IF YOU FIND THAT THE PLAINTIFF COMMITTED AN UNAUTHORIZED ENTRY ONTO THE DEFENDANT'S PROPERTY OR AN INTENTIONAL INTERFERENCE WITH THE DEFENDANT'S RIGHT OF POSSESSION OF THE PROPERTY,

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<sup>10</sup> Mack v. Edens, 320 S.C. 236, 464 S.E.2d 124 (Cl. App. 1995).

<sup>11</sup> Hinson v. A.T. Sistare Contr. Co., 236 S.C. 125, 113 S.E.2d 341 (1960), overruled on other grounds, McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985).

YOU MUST DETERMINE THE DAMAGES THE DEFENDANT SUFFERED AS A DIRECT AND PROXIMATE RESULT OF THE PLAINTIFF'S ACTS. THE DEFENDANT IS ENTITLED TO AT LEAST NOMINAL DAMAGES.<sup>12</sup> NOMINAL DAMAGES MAY BE A TOKEN SUM SUCH AS ONE CENT OR ONE DOLLAR.

HOWEVER, YOU MAY ALSO FIND THAT THE DEFENDANT SUFFERED ACTUAL DAMAGES. THESE WOULD INCLUDE DEPRECIATION, INJURY OR DAMAGE TO THE PROPERTY, OR LOSS OF USE OR ENJOYMENT OF THE PROPERTY. DAMAGES MAY ALSO INCLUDE MENTAL PAIN AND SUFFERING, DISCOMFORT, OR ANNOYANCE WHICH ARE REASONABLE AND NATURAL CONSEQUENCES OF THE TRESPASS.

THE AMOUNT OF DAMAGES FOR INJURY OR DAMAGE TO THE PROPERTY WOULD BE THE DIFFERENCE BETWEEN THE FAIR MARKET VALUE OF THE PROPERTY IMMEDIATELY BEFORE THE TRESPASS AND THE VALUE OF THE PROPERTY IMMEDIATELY AFTER THE TRESPASS. FAIR MARKET VALUE IS THE PRICE A WILLING BUYER WOULD PAY AND A WILLING SELLER WOULD TAKE IN THE ORDINARY COURSE OF BUSINESS IF A SALE WERE NOT REQUIRED.<sup>13</sup>

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<sup>12</sup> Snow v. City of Columbia, 305 S.C. 544, 409 S.E.2d 797 (Ct. App. 1995).

<sup>13</sup> Ravan v. Greenville County, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993).

THE DAMAGES FOR LOSS OF USE OR ENJOYMENT OF PROPERTY MAY INCLUDE RECOVERY FOR THE LOSS OF VALUE OF THE USE AND ENJOYMENT OF THE PROPERTY DURING THE TIME THAT THE INJURY TO THE PROPERTY EXISTS. THIS SHOULD BE MEASURED BY THE LOSS OF USE OR ENJOYMENT AN ORDINARY PERSON ACTING REASONABLY UNDER THE SAME OR SIMILAR CIRCUMSTANCES WOULD SUFFER.

## PUNITIVE DAMAGES - TRESPASS

*to charge this*

IF YOU FIND THAT THE TRESPASS WAS THE RESULT OF A WILLFUL, WANTON, RECKLESS, OR DELIBERATE ACT, YOU MAY AWARD THE PLAINTIFF PUNITIVE DAMAGES.

RECKLESS, WILLFUL, WANTON, OR DELIBERATE CONDUCT SHOWS THE CONSCIOUS, KNOWING DOING OF A WRONGFUL ACT WITHOUT JUST CAUSE OR EXCUSE.

PUNITIVE DAMAGES ARE GIVEN TO PUNISH THE DEFENDANT AND TO DISCOURAGE THE DEFENDANT AND OTHERS FROM COMMITTING THE SAME OR SIMILAR ACTS.<sup>1</sup>

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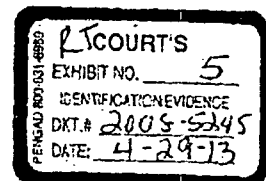
<sup>1</sup> Hinson v. A.T. Sistare Contr.Co., 236 S.C. 125, 113 S.E.2d 341 (1960), overruled on other grounds. McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985).

## CIVIL—GENERAL CHARGE

### JURY INSTRUCTIONS

MEMBERS OF THE JURY...NOW THAT YOU HAVE HEARD ALL THE EVIDENCE AND ARGUMENTS OF THE LAWYERS, IT IS MY DUTY TO INSTRUCT YOU ON THE LAW WHICH APPLIES TO THIS CASE. THESE INSTRUCTIONS WILL BE IN THREE PARTS:

1. THE INSTRUCTIONS ON GENERAL RULES THAT DEFINE AND CONTROL THE JURY'S DUTIES
2. THE INSTRUCTIONS THAT STATE THE RULES OF LAW YOU MUST APPLY, I.E. WHAT THE PLAINTIFF MUST PROVE TO MAKE HIS/HER CASE; AND
3. SOME RULES FOR YOUR DELIBERATIONS



IT IS YOUR DUTY TO FIND THE FACTS FROM ALL THE EVIDENCE IN THE CASE. TO THOSE FACTS YOU MUST APPLY THE LAW AS I GIVE IT TO YOU. YOU MUST FOLLOW THE LAW AS I GIVE IT TO YOU. YOU SHALL NOT BE CONCERNED WITH WHAT THE LAW SHOULD BE, BUT WHAT IT IS. AND YOU MUST NOT BE INFLUENCED BY ANY PERSONAL DISLIKES, OPINIONS, PREJUDICES, OR UNDUE SYMPATHY. THAT MEANS THAT YOU MUST DECIDE THE CASE SOLELY ON THE EVIDENCE BEFORE YOU ACCORDING TO THE LAW. YOU WILL RECALL THAT YOU TOOK AN OATH PROMISING TO DO JUST THAT AT THE BEGINNING OF TRIAL.

IN FOLLOWING MY INSTRUCTIONS, YOU MUST FOLLOW ALL OF THEM AND NOT SINGLE OUT SOME AND IGNORE OTHERS: THEY ARE ALL EQUALLY IMPORTANT. AND YOU MUST NOT READ ANYTHING INTO THESE INSTRUCTIONS OR INTO ANYTHING I HAVE SAID OR DONE, AS ANY SUGGESTION AS TO WHAT VERDICT YOU SHOULD RETURN-THAT IS A MATTER ENTIRELY FOR YOU TO DECIDE, BECAUSE UNDER OUR CONSTITUTION, I AM NOT ALLOWED TO HAVE AN OPINION AS TO THE FACTS OF THIS

CASE. YOU, AND YOU ALONE, ARE THE JUDGES OF WHAT THE FACTS ARE.

YOU DECIDE WHAT THE FACTS ARE BY EVALUATING BY WEIGHING THE EVIDENCE YOU HAVE HEARD DURING THIS TRIAL

## DUTIES OF JURY AND JUDGE

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU THINK YOU HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I TELL YOU THE LAW IS,

YOU MUST FORGET THAT IDEA BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS.<sup>1</sup> A TRIAL JUDGE CANNOT COMMENT ON OR MAKE ANY STATEMENT ABOUT THE FACTS IN A CASE. SINCE YOU ARE THE SOLE JUDGES OF THE FACTS, DO NOT THINK BY ANYTHING I HAVE SAID DURING THE TRIAL THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS.

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<sup>1</sup> Day v. Kilgore, 314 S.C. 365, 444 S.E.2d 515 (1994).

## PREPONDERANCE OF THE EVIDENCE

THE BURDEN OF PROOF IN THIS CASE IS BY A PREPONDERANCE OF THE EVIDENCE. A PREPONDERANCE OF THE EVIDENCE SIMPLY MEANS THE GREATER WEIGHT OF THE EVIDENCE. IT IS EVIDENCE WHICH, AS A WHOLE, SHOWS THAT THE FACT SOUGHT TO BE PROVED IS MORE LIKELY TRUE THAN NOT TRUE.<sup>2</sup>

THIS CAN BE ILLUSTRATED BY IMAGINING A SET OF SCALES. WHEN THE CASE BEGINS, THE SCALES ARE EVEN. AFTER ALL OF THE EVIDENCE HAS BEEN PRESENTED, IF THE SCALES REMAIN EVEN OR IF THEY TIP EVEN SLIGHTLY IN FAVOR OF THE DEFENDANT, THEN THE PLAINTIFF HAS FAILED TO MEET THE BURDEN OF PROOF AND WOULD NOT BE ENTITLED TO RECOVER IN THIS CASE. IF, ON THE OTHER HAND, THE SCALES TIP EVEN SLIGHTLY IN FAVOR OF THE PLAINTIFF, THE PLAINTIFF WILL HAVE MET THE BURDEN OF PROOF AND YOU SHOULD RETURN A VERDICT FOR THE PLAINTIFF.

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<sup>2</sup> Metropolitan Stevedore Co. v. Rambo, 521 U.S. 121, 117 S. Ct. 1953, 138 L. Ed. 2d 327 (1997).

THE PREPONDERANCE OF THE EVIDENCE IS NOT DETERMINED BY THE NUMBER OF WITNESSES. INSTEAD, IT MUST BE DETERMINED BY THE GREATER WEIGHT OF ALL OF THE EVIDENCE.

## EVIDENCE

THE EVIDENCE FROM WHICH YOU ARE TO DECIDE  
WHAT THE FACTS ARE CONSISTS OF:

1. THE SWORN TESTIMONY OF WITNESSES,  
BOTH ON DIRECT AND CROSS-EXAMINATION,  
REGARDLESS OF WHO CALLED THE  
WITNESS;
2. THE EXHIBITS THAT HAVE BEEN RECEIVED  
INTO EVIDENCE; AND
3. ANY FACTS TO WHICH ALL THE LAWYERS  
HAVE AGREED OR STIPULATED OR THAT I  
INSTRUCT YOU TO FIND.

## WHAT IS NOT EVIDENCE

CERTAIN THINGS ARE NOT EVIDENCE AND YOU MAY  
NOT CONSIDER THEM IN DECIDING WHAT THE FACTS ARE.  
I WILL LIST THEM FOR YOU:

1. ARGUMENTS AND STATEMENTS BY LAWYERS ARE NOT EVIDENCE. THE LAWYERS ARE NOT WITNESSES. WHAT THEY HAVE SAID IN THEIR OPENING STATEMENTS, CLOSING ARGUMENTS AND AT OTHER TIMES IS INTENDED TO HELP YOU INTERPRET THE EVIDENCE, BUT IT IS NOT EVIDENCE. IF THE FACTS AS YOU REMEMBER THEM DIFFER FROM THE WAY THE LAWYERS HAVE STATED THEM, YOUR MEMORY OF THEM CONTROLS
  
2. QUESTIONS AND OBJECTIONS BY LAWYERS ARE NOT EVIDENCE. ATTORNEYS HAVE A DUTY TO THEIR CLIENTS TO OBJECT WHEN THEY BELIEVE A QUESTION IS IMPROPER UNDER THE RULES OF EVIDENCE. YOU SHOULD NOT BE INFLUENCED BY THE OBJECTION OR BY THE COURT'S RULING.
  
3. TESTIMONY THAT HAS BEEN EXCLUDED OR STRICKEN, OR THAT YOU HAVE BEEN INSTRUCTED TO DISREGARD, IS NOT EVIDENCE AND MUST NOT BE CONSIDERED. IN ADDITION, IF

TESTIMONY OR EXHIBITS HAVE BEEN RECEIVED ONLY FOR A LIMITED PURPOSE, YOU MUST FOLLOW THE LIMITING INSTRUCTIONS I HAVE GIVEN.

4. ANYTHING YOU MAY HAVE SEEN OR HEARD WHEN THE COURT WAS NOT IN SESSION IS NOT EVIDENCE. YOU ARE TO DECIDE THE CASE SOLELY ON THE EVIDENCE RECEIVED AT TRIAL.

## DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.<sup>3</sup>

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL

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<sup>3</sup> State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001); Moriarty v. Garden Sanctuary Church of God, 341 S.C. 320, 534 S.E.2d 672 (2000).

KNOWLEDGE OR OBSERVATION.<sup>4</sup> IT IS PROOF THAT DOES NOT ACTUALLY ESTABLISH THE FACT IN QUESTION, BUT THAT ASSERTS OR DESCRIBES SOMETHING ELSE FROM WHICH YOU MAY EITHER REASONABLY INFER THE TRUTH OF THE FACT OR AT LEAST REASONABLY INFER AN INCREASE IN THE PROBABILITY THAT THE FACT IS TRUE.<sup>5</sup> FOR CIRCUMSTANTIAL EVIDENCE TO BE SUFFICIENT TO WARRANT THE FINDING OF A FACT, THE CIRCUMSTANCES MUST LEAD TO THAT FACT WITH REASONABLE CERTAINTY. THE FACTS AND CIRCUMSTANCES SHOULD BE CONSIDERED IN LIGHT OF ORDINARY EXPERIENCE AND COMMON SENSE. THE EXISTENCE OF A FACT CANNOT BE BASED ON SPECULATION, SURMISE, OR CONJECTURE.<sup>6</sup>

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A

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<sup>4</sup> State v. Salisbury, 343 S.C. 520, 541 S.E.2d 247 (2001).

<sup>5</sup> Gastineau v. Murphy, 323 S.C. 168, 473 S.E.2d 819 (Ct. App. 1996), rev'd on other grounds, 331 S.C. 565, 503 S.E.2d 712 (1998).

<sup>6</sup> Holland v. Georgia Hardwood Lumber Co., 214 S.C. 195, 51 S.E.2d 744 (1949).

GREATER DEGREE OF CERTAINTY REQUIRED OF  
CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE.

### **CREDIBILITY OF WITNESSES**

IN DECIDING WHAT THE FACTS ARE, YOU MUST  
CONSIDER ALL THE EVIDENCE. IN DOING THIS, YOU MUST  
DECIDE WHICH TESTIMONY TO BELIEVE AND WHICH  
TESTIMONY NOT TO BELIEVE. YOU MAY DISBELEIVE ALL  
OR PART OF ANY WITNESS'S TESTMONY. YOU MAY  
BELIEVE ALL OF IT. IN MAKING THAT DECIISON, YOU MAY  
TAKE INTO ACCOUNT A NUMBER OF FACTORS INCLUDING  
THE FOLLOWING:

1. WAS THE WITNESS ABLE TO SEE, OR HEAR, OR  
KNOW THE THINGS ABOUT WHICH THE WITNESS  
TESTIFIED?
2. HOW WELL WAS THE WITNESS ABLE TO RECALL  
AND DESCRIBE THOSE THINGS?

3. WHAT WAS THE WITNESS'S MANNER WHILE TESTIFYING?
4. IS THERE SOME REASON A WITNESS WOULD WANT TO GIVE TESTIMONY THAT WOULD HELP—OR HURT—ONE SIDE OR THE OTHER? DID THE WITNESS HAVE AN INTEREST IN THE OUTCOME OF THIS CASE OR ANY BIAS OR PREJUDICE CONCERNING ANY PARTY OR ANY MATTER INVOLVED IN THE CASE?
5. HOW REASONABLE WAS THE WITNESS'S TESTIMONY CONSIDERED IN LIGHT OF ALL OF THE EVIDENCE IN THE CASE?
6. WAS THE WITNESS'S TESTIMONY CONTRADICTED BY WHAT THAT WITNESS HAS SAID OR DONE AT ANOTHER TIME, OR BY THE TESTIMONY OF OTHER WITNESSES, OR BY OTHER EVIDENCE?

THESE ARE SOME OF THE FACTORS YOU MAY CONSIDER IN DECIDING WHETHER TO BELIEVE

TESTIMONY. AND OF COURSE, YOU DID NOT CHECK YOUR COMMON SENSE AT THE DOOR WHEN YOU REPORTED FOR JURY DUTY, SO YOU CAN AND SHOULD ALSO TAKE INTO ACCOUNT THE THINGS THAT IN YOUR DAY-TO-DAY EXPERIENCES YOU FIND INDICATIVE OF TRUTHFULNESS.

IN DEDICING CREDIBILITY OR BELEIEVABILITY, YOU MAY BELIEVE AS MUCH OR AS LITTLE OF EACH WITNESS'S TESTIMONY AS YOU THING PROPER: YOU MAY BELIEVE ALL OR PARTY OR NONE OF A WITNESSES' TESTIMONY, OR YOU MAY BELEIEVE ONE WITNESS OVER SEVERAL, OR SEVERAL OVER ONE. MOST CERTAINLY, THOUGH, YOU DO NOT DETERMINE THIS MATETR OF CREDIBILITY BY COUNTING UP THE NUMBER OF WITNESSES WHO MAY HAVE TESTIFIED ON BEHALF OF THE PARTIES IN THIS CASE BECAUSE YOUR SOLE OBJECTIVE IS TO FIND THE TRUTH. AND IT DOES NOT MATTER TO YOU WHETHER THAT TRUTH COMES FROM A WITNESS FOR THE PLAINTIFF OR A WITNESS FOR THE DEFENDANT.

## CLAIM

IN THIS CASE, THE PLAINTIFF CLAIMS THAT THE DEFENDANT BREACHED A CONTRACT THAT EXISTED BETWEEN THE PARTIES. IN ORDER TO RECOVER FOR A BREACH OF CONTRACT, THE PLAINTIFF MUST PROVE THE CLAIM BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE.

## BREACH

THE PLAINTIFF MUST SHOW BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE DEFENDANT UNJUSTIFIABLY BREACHED THE CONTRACT. THE WORD BREACH MEANS THE FAILURE, WITHOUT LEGAL EXCUSE, TO PERFORM ANY PROMISE THAT FORMS THE WHOLE OR A PART OF THE CONTRACT. THIS INCLUDES THE REFUSAL OF A PARTY TO RECOGNIZE THE EXISTENCE OF THE CONTRACT OR THE DOING OF SOMETHING INCONSISTENT WITH THE EXISTENCE OF THE CONTRACT. A PARTY BREACHES A CONTRACT WHEN THAT PARTY DOES NOT PERFORM AS AGREED UNDER THE CONTRACT BY FAILING TO CARRY OUT A TERM, PROMISE, OR CONDITION OF THE CONTRACT.

## DAMAGES

THE PLAINTIFF MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE PLAINTIFF SUFFERED DAMAGES WHICH WERE CAUSED BY THE DEFENDANT'S BREACH OF THE CONTRACT. THE PLAINTIFF MUST PROVE DAMAGES BY THE PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE. THIS DOES NOT MEAN THAT THE PLAINTIFF MUST PROVE DAMAGES TO A MATHEMATICAL CERTAINTY<sup>7</sup> OR PRODUCE EVIDENCE OF THE EXACT AMOUNT OF DAMAGES SUFFERED.<sup>8</sup> HOWEVER, THE AMOUNT OF DAMAGES CANNOT BE LEFT TO GUESSWORK OR SPECULATION.<sup>9</sup> INSTEAD, THE EVIDENCE PRESENTED BY THE PLAINTIFF MUST BE ENOUGH TO ALLOW YOU TO DETERMINE THE AMOUNT OF DAMAGES WITH REASONABLE CERTAINTY AND ACCURACY.

DAMAGES FOR BREACH OF CONTRACT ARE THOSE THAT MAY FAIRLY AND REASONABLY BE CONSIDERED TO ARISE NATURALLY FROM THE BREACH OF CONTRACT ITSELF, OR

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<sup>7</sup> Whisenant v. James Island Corp., 277 S.C. 10, 281 S.E.2d 794 (1981).

<sup>8</sup> Jones v. Thomas & Hill, Inc., 265 S.C. 66, 216 S.E.2d 871 (1975).

<sup>9</sup> Whisenant v. James Island Corp., 277 S.C. 10, 281 S.E.2d 794 (1981).

THOSE THAT MAY BE REASONABLY SUPPOSED TO HAVE BEEN IN THE MINDS OF THE PARTIES AT THE TIME THE CONTRACT WAS MADE.

THE PLAINTIFF MAY NOT RECOVER DAMAGES FOR BREACH OF CONTRACT UNLESS THE PLAINTIFF SHOWS THAT HE [SHE] HAS PERFORMED HIS [HER] PART OF THE CONTRACT, OR AT LEAST WAS ABLE, READY, AND WILLING TO PERFORM AT THE APPROPRIATE TIME.<sup>10</sup>

## ACTUAL DAMAGES

ACTUAL DAMAGES ARE DAMAGES TO COMPENSATE THE PLAINTIFF AND PUT HIM [HER], AS CLOSELY AS POSSIBLE, IN THE SAME POSITION HE [SHE] WAS IN BEFORE THE BREACH OF CONTRACT.<sup>11</sup> IN OTHER WORDS, ACTUAL DAMAGES ARE THE ACTUAL LOSSES AND EXPENSES WHICH THE PLAINTIFF HAS SUFFERED BECAUSE THE DEFENDANT BREACHED THE CONTRACT.<sup>12</sup> GENERALLY, ACTUAL DAMAGES ARE THE OUT-OF-POCKET COSTS ACTUALLY PAID BY THE PLAINTIFF AS A RESULT OF THE BREACH OF CONTRACT AND THE GAIN ABOVE THE COSTS

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<sup>10</sup> Swinton Creek Nursery v. Edisto Farm Credit, 334 S.C. 469, 514 S.E.2d 126 (1999).

<sup>11</sup> Jones v. Bates, 241 S.C. 189, 127 S.E.2d 618 (1962).

<sup>12</sup> Holmes v. Nationwide Life Ins. Co., 273 S.C. 711, 258 S.E.2d 924 (1977).

THAT WOULD HAVE BEEN REALIZED IF THE CONTRACT HAD BEEN PERFORMED.<sup>13</sup>

## COUNTERCLAIM

### TRESPASS

THE DEFENDANT CLAIMS THAT THE PLAINTIFF TRESPASSED ON THE DEFENDANT'S PROPERTY. IN ORDER TO RECOVER FOR TRESPASS, THE PLAINTIFF MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE PLAINTIFF WAS IN LEGAL POSSESSION OF THE PROPERTY; THAT THE PLAINTIFF OR THE PLAINTIFF'S AGENT VOLUNTARILY ENTERED THE DEFENDANT'S PROPERTY OR COMMITTED AN INTENTIONAL PHYSICAL INTERFERENCE WITH THE DEFENDANT'S PRESENT RIGHT TO POSSESS THE PROPERTY; AND THAT THE ENTRY OR INTERFERENCE WAS MADE WITHOUT THE DEFENDANT'S PERMISSION.<sup>14</sup>

THE ENTRY OR INTERFERENCE BY THE PLAINTIFF MUST BE INTENTIONAL. INTENT IS PROVED BY SHOWING THAT

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<sup>13</sup> Collins Holding Corp. v. Landrum, 360 S.C. 346, 601 S.E.2d 332 (2004); South Carolina Fed. Sav. Bank v. Thornton-Crosby Dev. Co., 303 S.C. 74, 399 S.E.2d 8 (Ct. App. 1990).

<sup>14</sup> Ravan v. Greenville County, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993).

THE PLAINTIFF ACTED VOLUNTARILY AND KNEW OR SHOULD HAVE KNOWN THAT THE RESULT WOULD FOLLOW THE ACT. MOTIVE OR MALICE ON THE PART OF THE PLAINTIFF IS NOT REQUIRED.<sup>15</sup> THE PLAINTIFF DOES NOT HAVE TO INTEND DAMAGING CONSEQUENCES, BUT ONLY MUST INTEND THE ACT WHICH CONSTITUTED THE UNWARRANTED ENTRY ON THE DEFENDANT'S PROPERTY OR THE INTERFERENCE WITH THE DEFENDANT'S RIGHT OF POSSESSION.<sup>16</sup>

THE ENTRY OR INTERFERENCE MAY BE THE RESULT OF NEGLIGENCE OR A WILLFUL, DELIBERATE, OR WANTON ACT. A NEGLIGENT ACT IS ONE WHICH LACKS THE CARE WHICH A PERSON OF ORDINARY REASON AND PRUDENCE WOULD USE UNDER THE SAME OR SIMILAR CIRCUMSTANCES.<sup>17</sup>

A WILLFUL ACT IS ONE THAT IS DONE THROUGH CONSCIOUS CHOICE OR WRONGFUL CONDUCT WHICH IS CONSCIOUSLY DONE WITHOUT REGARD TO THE POSSIBLE CONSEQUENCES. A RECKLESS ACT IS ONE OF CONSCIOUS LACK OF CONCERN FOR THE RIGHTS AND SAFETY OF OTHERS.

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<sup>15</sup> Snow v. City of Columbia, 305 S.C. 544, 409 S.E.2d 797 (Ct. App. 1991).

<sup>16</sup> Mack v. Edens, 320 S.C. 236, 464 S.E.2d 124 (Ct. App. 1995).

<sup>17</sup> Hinson v. A.T. Sistare Contr. Co., 236 S.C. 125, 113 S.E.2d 341 (1960), overruled on other grounds, McCall by Andrews v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985).

IF YOU FIND THAT THE PLAINTIFF COMMITTED AN UNAUTHORIZED ENTRY ONTO THE DEFENDANT'S PROPERTY OR AN INTENTIONAL INTERFERENCE WITH THE DEFENDANT'S RIGHT OF POSSESSION OF THE PROPERTY, YOU MUST DETERMINE THE DAMAGES THE DEFENDANT SUFFERED AS A DIRECT AND PROXIMATE RESULT OF THE PLAINTIFF'S ACTS. THE DEFENDANT IS ENTITLED TO AT LEAST NOMINAL DAMAGES.<sup>18</sup> NOMINAL DAMAGES MAY BE A TOKEN SUM SUCH AS ONE CENT OR ONE DOLLAR.

HOWEVER, YOU MAY ALSO FIND THAT THE DEFENDANT SUFFERED ACTUAL DAMAGES. THESE WOULD INCLUDE DEPRECIATION, INJURY OR DAMAGE TO THE PROPERTY, OR LOSS OF USE OR ENJOYMENT OF THE PROPERTY. DAMAGES MAY ALSO INCLUDE MENTAL PAIN AND SUFFERING, DISCOMFORT, OR ANNOYANCE WHICH ARE REASONABLE AND NATURAL CONSEQUENCES OF THE TRESPASS.

THE AMOUNT OF DAMAGES FOR INJURY OR DAMAGE TO THE PROPERTY WOULD BE THE DIFFERENCE BETWEEN THE FAIR MARKET VALUE OF THE PROPERTY IMMEDIATELY BEFORE THE TRESPASS AND THE VALUE OF THE PROPERTY IMMEDIATELY AFTER THE TRESPASS. FAIR MARKET VALUE IS THE PRICE A WILLING BUYER

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<sup>18</sup> Snow v. City of Columbia, 305 S.C. 544, 409 S.E.2d 797 (Ct. App. 1995).

WOULD PAY AND A WILLING SELLER WOULD TAKE IN THE ORDINARY COURSE OF BUSINESS IF A SALE WERE NOT REQUIRED.<sup>19</sup>

THE DAMAGES FOR LOSS OF USE OR ENJOYMENT OF PROPERTY MAY INCLUDE RECOVERY FOR THE LOSS OF VALUE OF THE USE AND ENJOYMENT OF THE PROPERTY DURING THE TIME THAT THE INJURY TO THE PROPERTY EXISTS. THIS SHOULD BE MEASURED BY THE LOSS OF USE OR ENJOYMENT AN ORDINARY PERSON ACTING REASONABLY UNDER THE SAME OR SIMILAR CIRCUMSTANCES WOULD SUFFER.

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<sup>19</sup> Ravan v. Greenville County, 315 S.C. 447, 434 S.E.2d 296 (Ct. App. 1993).

I INSTRUCT YOU LADIES NAD GENTLEMEN OF THE JURY THAT IN THIS CASE YOU MAY ONLY FIND PLAINTIFF COMMITTED TRESPASS ON DEFENDANT'S PROPERTY IF YOU FIND THAT PLAINTIFF'S POLE ON GUY WIRE WAS ERECTED ON DEFENDANT'S PROPERTY OUTSIDE OF THE STATE HIGHWAY'S RIGHT OF WAY.

IF, ON THE OTHERHAND, YOU FIND THAT PLAINTIFF ERECTED ITS POLE AND GUY WIRE ENTIRELY WITHIN THE STATE HIGHWAY RIGHT OF WAY, I INSTRUCT YOU THAT A TRESPASS HAS NOT OCCURRED AND YOU MUST FIND FOR THE PLAINTIFF ON THE DEFENDANT'S CLAIM OF TRESPASS.

#### RIGHT-OF-WAY

A RIGHT-OF-WAY IS A PRIVILEGE TO USE THE LAND. IT DOES NOT INVOLVE THE TRANSFER OF OWNERSHIP OF THE LAND. THE LANDOWNER STILL HAS TITLE TO THE PROPERTY WHICH IS SUBJECT TO THE RIGHT-OF-WAY AND MAY CONTINUE TO USE THE PROPERTY FOR ANY PURPOSE THAT DOES NOT INTERFERE WITH THE PURPOSE OF THE RIGHT OF WAY.

A RIGHT OF WAY IS A SERVITUDE IPOSED BY LAW OR BY CONVENTION AND BY VIRTUE OF WHICH ONE HAS A RIGHT TO PASS ON AND USE THE PROPERTY OF ANOTHER. IT IS AN EASEMENT ON THE LANDS OF OTHERS.

## FINAL FEW POINTS

You don't serve as jurors to be partisans or advocates for either side — you were chosen because both side believed you could be fair and impartial and decide the case solely on the evidence, and without bias or prejudice. That means you are to use:

- (1) your experiences in life,
- (2) your good common sense, and
- (3) your sense of logic and reason.

You bring those things to bear on what you have heard in the courtroom. And once you do that, you will be able to determine the truth of this case. Once you have decided the truth, you take it and apply the law I have just given you to it; and when you have done that, you will be able to reach a verdict that will speak the truth of this case.

## Duty To Deliberate

Let me say something about your deliberations. Deliberation is defined as “careful consideration, weighing up with a view to decision.”

The genius of our jury system is that it allows 12 good men and women, from 12 different backgrounds, life experiences, and perspectives to consider the evidence, talk about it, and ultimately, reach a verdict.

We call them deliberations for a reason — you are to consider the evidence in this case carefully and deliberately — and discuss it in a calm, thorough, and courteous manner.

Remember — you are not partisans or advocates for either side, favoring one side over the other. You are judges — JUDGES OF THE FACTS. Your sole interest is to find the truth from the evidence you have heard in this courtroom.

Listen to the views of all of your fellow jurors; consider other people's points and points of view, and talk through and discuss the evidence. And remember, if you are doing something deliberately, you are not in a big hurry, and you should not be in a hurry here. This case is very important to both sides, and this is their only day in court.

When you retire to the jury room, you should discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have impartially considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own decision. Do not change an honest belief about the

weight and effect of the evidence simply to reach a verdict. In other words, do not change your opinion solely for the sake of reaching a unanimous verdict.

### **Return of Verdict**

After you have reached unanimous agreement on a verdict, your foreperson is then authorized to fill in the verdict form that has been given to you, sign and date it and advise the bailiff outside your door that you are ready to return to the courtroom.

### **Communicating with the Court**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by your foreperson or by one or more members of the jury. No member of the jury should ever attempt to communicate with me except by a signed writing; and I will communicate with any members of the jury on anything concerning the case only in writing, or only here in open court. [Remember that you are not to tell anyone — including me — how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict or have been discharged.]

### Final Instruction

- \_\_\_(1) [Go over verdict form].
- \_\_\_(2) The order of the verdict form is of no significance. You must consider each defendant separately.
- \_\_\_(3) Your verdict on each item must be unanimous.
- \_\_\_(4) Please retire now to your jury room, but do not begin your deliberations until I take up one additional matter with the attorneys. We will send you word when you begin your deliberations
- \_\_\_(5) You are bound by the Record; you have heard all of the evidence.

\_\_\_Alternate\_\_\_

## COUNTERCLAIM

### TRESPASS

THE DEFENDANT CLAIMS THAT THE PLAINTIFF TRESPASSED ON THE DEFENDANT'S PROPERTY. IN ORDER TO RECOVER FOR TRESPASS, THE PLAINTIFF MUST PROVE BY A PREPONDERANCE, OR GREATER WEIGHT, OF THE EVIDENCE THAT THE PLAINTIFF WAS IN LEGAL POSSESSION OF THE PROPERTY; THAT THE DEFENDANT OR THE PLAINTIFF'S AGENT VOLUNTARILY ENTERED THE DEFENDANT'S PROPERTY OR COMMITTED AN INTENTIONAL PHYSICAL INTERFERENCE WITH THE DEFENDANT'S PRESENT RIGHT TO POSSESS THE PROPERTY; AND THAT THE ENTRY OR INTERFERENCE WAS MADE WITHOUT THE DEFENDANT'S PERMISSION.<sup>8</sup> ←

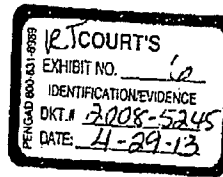
THE ENTRY OR INTERFERENCE BY THE PLAINTIFF MUST BE INTENTIONAL. INTENT IS PROVED BY SHOWING THAT THE PLAINTIFF ACTED VOLUNTARILY AND KNEW OR SHOULD HAVE KNOWN THAT THE RESULT WOULD FOLLOW THE ACT. MOTIVE OR MALICE ON THE PART OF THE PLAINTIFF IS NOT REQUIRED.<sup>9</sup> THE PLAINTIFF DOES NOT

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<sup>8</sup> Ravan v. Greenville County, 315 S.C. 447, 434 S.E.2d 296 (Cl. App. 1993).

<sup>9</sup> Snow v. City of Columbia, 305 S.C. 544, 409 S.E.2d 797 (Cl. App. 1991).

In Judge McIntosh's  
handwriting  
issued in trial/court  
8-28-2009



read this

I instruct you Ladies & Gentlemen of  
The Jury that in this case you  
may only find Plaintiff committed  
Trespass on Defendant's property if  
you find that Plaintiff's pole or  
guide wire was erected on Defendant  
property outside of the state's highway's  
right of way.

If, on the other hand, you find  
that Plaintiff erected its pole  
and guide wire entirely within the  
state highway right of way, I instruct  
you that a trespass has No Occurred

~~you~~ and you must Find for the  
Plaintiff on Defendant's Claim of  
Trespass.

**Permit Application for Construction and Maintenance  
Public Service Utility Line Along State Highway**

No. 23-01-5074

APPLICANT: Blue Ridge Electric Coop  
AND P O Box 277  
Pickens SC 29671  
ADDRESS:

TELEPHONE NUMBER: 864-878-6326

COUNTY: Greenville  
ROAD/ROUTE: S.C. 11

ROAD NAME: foothills Scenic Hwy

1. Pursuant to provisions of Statutes of the Code of Laws of South Carolina, 1976, the undersigned applicant hereby notifies THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION (SCDOT) of the said applicant's purpose to construct and maintain a public service utility line, as described herein, within the limits of a highway right of way, along or over the State highway or highways, described herein.
2. Type of Public Service Line: 7.2 KV overhead powerline-wood pole construction
3. Description of location: From the intersection of Hwy 11 & N. Glassy Mtn Road is the beginning of the job. The line will travel North to the intersection of Hwy 11 and Oak Grove Road. Poles to be permitted: #5, 10, 10A, 11, 12, 13, 14, 15, 16, 17, & 17.5, 11 poles total to be permitted.

(Attach sketch indicating roadway features such as: pavement width, shoulder width, sidewalk and curb and gutter location, significant drainage structure, north arrow, right of way width, and location of the proposed utility with respect to the roadway centerline and the nearest intersecting road on the State system.)

4. The undersigned applicant hereby requests the SCDOT to formally waive objections to construction and maintenance of the line described herein. It is expressly understood that the line, if and when constructed, shall be installed in accordance with the sketch attached hereto and made a part hereof. The applicant agrees to comply with and be bound by the Department's "A Policy for Accommodating Utilities on Highways Rights of Way" and "Standard Specifications for Highway Construction" (made a part hereof by reference on file in the Utility Office of the Department, and all general provisions on the reverse hereof and special provisions below or attached hereto during the installation, operation and maintenance of said utility facilities within the Department Right of Way. The applicant hereby further agrees, and binds his heirs, successors, assigns, to assume any and all liability this Department might otherwise have in connection with accidents or injuries to persons, or damage to property, including the highway, that may be caused by the construction, maintenance, use, moving or removing, of the physical appurtenances contemplated herein and agrees to indemnify this Department for any liability incurred or injury or damage sustained by reason of the past, present, or future existence of said appurtenances.

APPLICANT NAME: Blue Ridge Electric  
(PLEASE PRINT OR TYPE)

DATE: 9-28-07

APPLICANT SIGNATURE: Ronnie Alexander

TITLE: Staking Supervisor

In compliance with your request and subject to all the provisions, terms, conditions and restrictions stated in the application, general provisions on the reverse hereof, and special provisions below or attached hereto, the Department approves the request. This permit shall become null and void unless the work contemplated herein shall have been completed prior to 7/16/08.

SPECIAL PROVISIONS:

All poles to be BEHIND TOWNSHIP



|                                        |                |                                                                                                                                                                                                                                                                                               |                         |
|----------------------------------------|----------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------|
| DATE RECEIVED BY<br>RES. MAINT. ENGR.  | DATE FORWARDED | SCDOT APPROVAL<br><u>[Signature]</u><br><input checked="" type="checkbox"/> RESIDENT MAINTENANCE ENGINEER<br><input type="checkbox"/> STATE HIGHWAY ENGINEER<br><input type="checkbox"/> DISTRICT ENGINEERING ADMINISTRATOR<br><input type="checkbox"/> DISTRICT MAINT./CONSTRUCTION ENGINEER | DATE<br><u>10/16/07</u> |
| DATE RECEIVED BY<br>DIST. ENGR. ADMIN. | DATE FORWARDED |                                                                                                                                                                                                                                                                                               |                         |

Permit Application for Construction and Maintenance  
Public Service Utility Line Along State Highway

No. 23-01-301

APPLICANT: Blue Ridge Electric Coop  
AND P O Box 277  
Pickens SC 29671  
ADDRESS:

TELEPHONE NUMBER: 864-878-6326

COUNTY: Greenville  
ROAD/ROUTE: S.C. 11

ROAD NAME: foothills Scenic Hwy

1. Pursuant to provisions of Statutes of the Code of Laws of South Carolina, 1976, the undersigned applicant hereby notifies THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION (SCDOT) of the said applicant's purpose to construct and maintain a public service utility line, as described herein, within the limits of a highway right of way, along or over the State highway or highways, described herein.
2. Type of Public Service Line: 7.2 KV overhead powerline-wood pole construction.
3. Description of location: From the intersection of Hwy 11 & N. Glassy Mtn Road is the beginning of the job. The line will travel North to the intersection of Hwy 11 and Oak Grove Road. Poles to be permitted: #5, 10, 10A, 11, 12, 13, 14, 15, 16, 17, & 17.5, 11 poles total to be permitted.

(Attach sketch indicating roadway features such as: pavement width, shoulder width, sidewalk and curb and gutter location, significant drainage structure north arrow, right of way width, and location of the proposed utility with respect to the roadway centerline and the nearest intersecting road on the State system.)

4. The undersigned applicant hereby requests the SCDOT to formally waive objections to construction and maintenance of the line described herein. It is expressly understood that the line, if and when constructed, shall be installed in accordance with the sketch attached hereto and made a part hereof. The applicant agrees to comply with and be bound by the Department's "A Policy for Accommodating Utilities on Highways Rights of Way" and "Standard Specifications for Highway Construction" (made a part hereof by reference on file in the Utility Office of the Department, and all general provisions on the reverse hereof and special provisions below or attached hereto during the installation, operation and maintenance of said utility facilities within the Department Right of Way. The applicant hereby further agrees, and binds his heirs, successors, assigns, to assume any and all liability this Department might otherwise have connection with accidents or injuries to persons, or damage to property, including the highway, that may be caused by the construction, maintenance, use, moving or removing, of the physical appurtenances contemplated herein and agrees to indemnify this Department for any liability incurred or injury or damage sustained by reason of the past, present, or future existence of said appurtenances.

APPLICANT NAME: Blue Ridge Electric  
(PLEASE PRINT OR TYPE)

DATE: 9-28-07

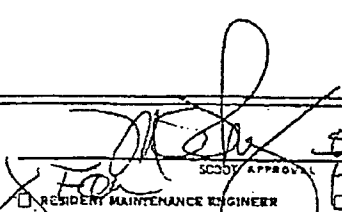
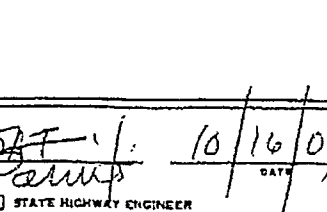
APPLICANT SIGNATURE: Ronnie Alexander

TITLE: Staking Supervisor

In compliance with your request and subject to all the provisions, terms, conditions and restrictions stated in this application, general provisions on the reverse hereof, and special provisions below or attached hereto, the Department approves the request. This permit shall become null and void unless the work contemplated herein shall have been completed prior to 7/16/08.

SPECIAL PROVISIONS:

All poles to be behind ditch

|                                                                                      |                |                                                                                       |                |
|--------------------------------------------------------------------------------------|----------------|---------------------------------------------------------------------------------------|----------------|
| DATE RECEIVED BY<br>RES. MAINT. ENGR.                                                | DATE FORWARDED | DATE RECEIVED BY<br>DIST. ENGR. ADMIN.                                                | DATE FORWARDED |
|  |                |  |                |
| <input checked="" type="checkbox"/> RESIDENT MAINTENANCE ENGINEER                    |                | <input type="checkbox"/> STATE HIGHWAY ENGINEER                                       |                |
| <input checked="" type="checkbox"/> DISTRICT ENGINEERING ADMINISTRATOR               |                | <input type="checkbox"/> DISTRICT MAINT./CONSTRUCTION ENGINEER                        |                |

193

HIGHWAY MAINTENANCE MANAGEMENT SYSTEM  
Encroachment Permit

Permit No: 50749  
Permit Decision Date: October 16, 2007  
Expiration Date: April 16, 2008

pe Permit  
ELECTRIC

ocation

| <u>District</u> | <u>Work County</u> | <u>Type</u> | <u>Route</u> | <u>Aux</u> | <u>Begin MP</u> | <u>End MP</u> |
|-----------------|--------------------|-------------|--------------|------------|-----------------|---------------|
| 3               | GREENVILLE         | SC          | 11           | 00         | 18.67           | 18.67         |

ntact Information

Applicant: BLUE RIDGE ELECTRIC COOP  
Contact: RONNIE ALEXANDER  
Address: PO BOX 277

Phone:  
Phone: (864) 878-6326

City: PICKENS

State: SC

Zip: 29671

mmments

SC 11 (FOOTHILLS SCENIC HWY)- INSTALL 7.2 KV OVERHEAD POWERLINE-WOOD POLE- FROM THE INT. OF SC 11 & N. GLASSY MTN. RD., THE LINE WILL TRAVEL NORTH TO THE INT. OF HWY 11 & OAK GROVE RD.

ecial Provisions

- 112 - ALL WATER METERS, AIR VALVES, ELECTRIC TRANSFORMERS, CATV CONNECTION BOXES, TELEPHONE PEDESTALS, AND/OR OTHER UTILITY/SPLICE BOXES SHALL BE PLACED AT THE RIGHT-OF-WAY LINE.
- 122 - NO GUYS OR STUBS SHALL BE CLOSER THAN MAIN POLE FROM THE CENTER-LINE OF ROADWAY.
- 123 - ALL WORK PERFORMED IN CONNECTION WITH THIS PERMIT SHALL CONFORM TO THE SCDHPT "A POLICY FOR ACCOMODATING UTILITIES ON HIGHWAY RIGHT-OF-WAY", DATED JUNE 1989.
- 306 - TRAFFIC CONTROL, LIGHTS, SIGNS AND FLAG-MEN WILL BE FURNISHED BY APPLICANT AND WILL CONFORM TO PART VI OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.
- 318 - THE APPLICANT SHALL BE RESPONSIBLE FOR IMMEDIATE REMOVAL OF SUCH TRAFFIC HAZARDS AS MUD, DEBRIS, LOOSE STONE, AND TRASH AS MAY BE WASHED OR SPILLED ON THE TRAVELED ROADWAY AS A RESULT OF THE PROPOSED WORK.
- 4 - SCDOT SHALL BE NOTIFIED WHEN WORK DEFINED IN THE PERMIT STARTS AS WELL AS WHEN THE WORK IS COMPLETED. REFERENCE SHALL BE MADE BY PERMIT NUMBER.

# Application for Encroachment Permit

## General Provisions

Permit Nbr 23-01-58744

1. **DEFINITIONS** The word "Permittee" used herein shall mean the name of the person, firm, or corporation to whom this permit is addressed, his, her, its, heirs, personal representatives, successors and assigns. The word "DEPARTMENT" shall mean the South Carolina Department of Transportation.
2. **NOTICE PRIOR TO STARTING WORK** Before starting the work contemplated herein within the limits of the highway right of way, the Department's Resident Maintenance Engineer in the county in which the proposed work is located shall be notified 24 hours in advance so that he may be present while the work is under way.
3. **PERMIT SUBJECT TO INSPECTION** This permit shall be kept at the site of the work at all times while said work is under way and must be shown to any representative of the Department or law enforcement officer on demand.
4. **PROTECTION OF HIGHWAY TRAFFIC** The applicant shall be responsible for the protection of the highway traffic at all times during the construction, maintenance, removing or moving of the encroachment permitted herein. Outposts, barricades, warning signs and flagmen, as necessary, shall be provided by and at the expense of the Permittee and shall be in accordance with the "Manual on Uniform Traffic Control Devices," (MUTCD). The work shall be planned and carried out so that there will be the least possible inconvenience to the motoring public. The Permittee agrees to observe all rules and regulations of the Department while carrying on the work contemplated herein and take all other precautions that circumstances warrant.
5. **STANDARDS OF CONSTRUCTION** All work shall conform to the Department's standards of construction and shall be performed in a workman-like manner. The applicant shall make adequate provisions for maintaining the proper drainage of the highway as it may be affected by the encroachment permitted herein. All work shall be subject to the supervision and satisfaction of the Department.
6. **FUTURE MOVING OF PHYSICAL APPURTENANCES** If, in the opinion of the State Highway Engineer, it should ever become necessary to move or remove the physical appurtenances, or any part thereof contemplated herein, on account of change in location of the highway, widening of the highway, or for any other sufficient reason, such moving shall be done on demand of the Department at the expense of the Permittee.
7. **RESTORATION OF HIGHWAY FACILITIES UPON MOVING OR REMOVING OF PHYSICAL APPURTENANCES** If, and when, the physical appurtenances contemplated herein shall be moved or removed, either on the demand of the Department or at the option of the Permittee, the highway and facilities shall immediately be restored to their original condition at the expense of the Permittee.
8. **COSTS** All work in connection with the construction, maintenance, moving or removing of the physical appurtenances contemplated herein shall be done by and at the expense of the Permittee.
9. **ADDITIONAL PERMISSIONS**
- a) It is distinctly understood that this permit does not in any way grant or release any rights lawfully possessed by the abutting property owners. The Permittee shall secure any such rights, as necessary, from said abutting property owners.
  - b) The Permittee shall be responsible for obtaining all other approvals or permits necessary for installation of the encroachment from other government entities.
  - c) There shall be no excavation of soil nearer than two feet to any public utility line or appurtenant facility except with the consent of the owner thereof, or except upon special permission of this Department after an opportunity to be heard is given the owner of such line or appurtenant facility.
10. **ADDITIONAL WORK PERFORMANCE**
- a) All crossings over the highway shall be constructed in accordance with "Specifications for Overhead Crossings of Light and Power Transmission Lines and Telegraph Lines, over each other and over Highway Rights of Way in South Carolina," as approved by the Public Service Commission of South Carolina and effective as of date of this permit.
  - b) All tunneling, boring, or jacking shall be done in such a way as not to disturb the highway surfacing.
  - c) No pavement shall be cut unless specifically authorized herein.
  - d) No excavation shall be nearer than three feet to the edge of pavement unless specifically authorized herein.
  - e) Underground facilities will be located at minimum depths as defined in the "Utility Accommodations Manual" for the Transmittant, generally as follows: 4 feet minimum for hazardous or dangerous transmittant, 3 feet minimum for other lines. The Department may approve shallower depths if adequate protection is provided. Such approval must be obtained in writing.
  - f) Service and other small diameter pipes shall be jacked, driven, or otherwise forced underneath the pavements on any surfaced road without disturbing the pavement. The section under the highway pavement and within a distance of three (3) feet on either side shall be continuous without joints.
11. **ACCESS**
- a) Permittee is responsible for maintaining reasonable access to private driveways during construction.
  - b) It is expressly provided that, with respect to any limited access highway, the Permittee shall not have or gain access from the main traveled way of the highway, or the on or off ramps to such facility, except upon approval by the Department.
12. **DRIVEWAYS**
- a) The existing crown of the highway shall be continued to the outside shoulder line of the highway.
  - b) If the driveway or approach is concrete pavement, the pavement shall be constructed at least 6 inches thick and with a minimum of class 2500 concrete. There shall be a bituminous expansion joint, not less than 3/4 inches in thickness, placed between the highway paving and the paving of the approach for the full width of the approach.
13. **SEALIFICATION**
- a) All trees, plants, flowers, etc. shall be placed in accordance with the provisions specifically stipulated herein.
  - b) All trees, plants, flowers, etc. shall be maintained by, and at the expense of, the Permittee and the provisions of this permit shall become null and void if and when said Permittee ceases to maintain said trees, plants, flowers, etc.
14. **AS-BUILT PLANS**
- a) The applicant shall provide the Department with survey-quality as-built plans in accordance with the requirements set forth in the Department's "A Policy for Accommodating Utilities on Highway Rights of Way."



## Special Provision for Greenville County

Work will be done in clear weather when traffic is lightest - no traffic altering work will be allowed during inclement weather. The applicant will furnish and maintain all traffic control devices needed to ensure the safety of the traveling public as well as all working within the workzone. All Traffic Control Devices shall conform to Manual on Uniform Traffic Control Devices - Part V (latest version).

Where applicable this installation shall conform to the standards in the SC DOT manual A Policy for Accommodating Utilities on Highway Rights Of Way (March 1987).

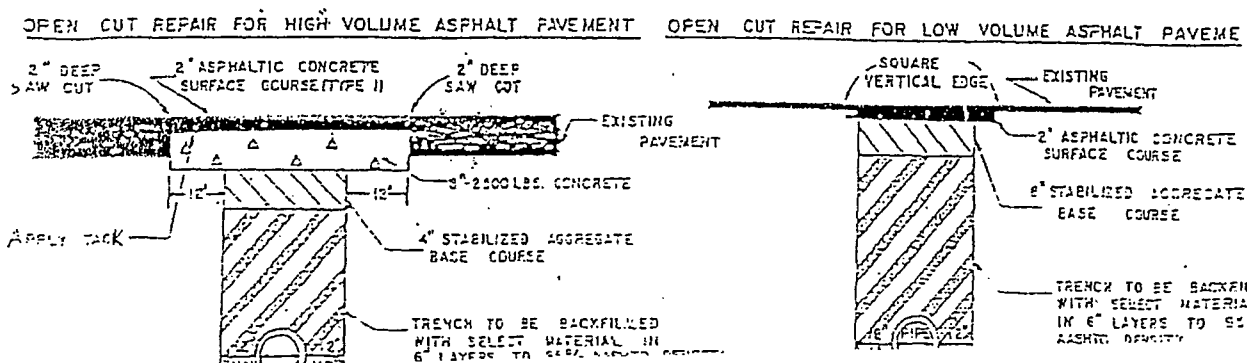
Where applicable this installation shall conform to the standards in the SC DOT manual Access and Roadside Management Standards (October 1996).

The Permittee is responsible for immediate removal of such traffic hazards as mud, debris, loose stones and trash as may be washed or spilled on the traveled way by any vehicles or persons concerned with the work outlined in this permit. Emergency contacts listed on attached permit must be available 24 hrs a day 7 days a week. In the event that there is a problem caused or connected to the work being done under permit the contact must be available to be on site with short notice. If the contact can not be reached or can not respond within a reasonable amount of time, the permittee will be billed a minimum of **4 hours** for all DOT personnel and equipment plus materials used. In addition if the bill payment is not remitted to the DOT within **30 days** the permit will be **void**.

The Ditches, shoulders, pavement, sidewalk, signs, drainage structures or any other appurtenances existing shall be restored to their original condition. All Drainage structures will be cleaned and all areas reseeded or re-sodded. All driveways will be graded, drained and paved to prevent surface run-off from entering the traveled way. The Permittee will hold the SC DOT harmless for damages to upstream and downstream properties.

All Roads, driveways, sidewalk and Curb and gutter will be bored unless otherwise stated in the Permit. Where Pavement cuts must be made, the Permittee will notify the SC DOT at 864-241-1224 prior to any pavement cut. Bore Pits will be closed immediately after installation. Bores will be made at a minimum depth of 48" below the lowest point of the cross section of the road. Bore Pits will be placed a minimum of 5' from the edge of pavement. All bores will be made by dry bore method.

Trenches will be a minimum of 36" below the cross section as originally constructed. No trenches/excavation shall be left open along the highway. All excavated material shall be placed on the side of the trench away from the traveled roadway. Trenches will be thoroughly tamped and backfilled with select earth material (No sand, stone dust or crusher run), placed in 8" layers ensuring a compaction of 95% per ASSHTO using mechanical tamping equipment. Where pavement is cut, cut will be sawed in a straight line. A one-foot cutback shall be made on each side of the excavation. The patch is to be smooth, flat, and even with the existing pavement (see typical below and shall be maintained by the Permittee). For Concrete Pavement with no asphaltic surfacing, use 10" of concrete with no asphalt.





NAME: Hwy. 11 North  
MAP LOCATION #: 71-41-002  
JOB ORDER #: 04-10-79463-2  
SERVICE ORDER #: LINE SECTION #:

STAKING DRAWING  
**BLUE RIDGE ELECTRIC COOPERATIVE, INC.**  
SC 38 AN6 PICKENS  
SUBSTATION 38 CIRCUIT 3 TOTAL DISTANCE:  
PHASE XYZ RULING SPAN:

SCHOOL DISTRICT #: 1 COUNTY: GREENVILLE  
WORK PLAN DESIGNATION: 00-216  
MEMBER SEP. #:  
STAKED BY: S. GRIFFIN DATE: 04-12-07 SHEET 5 OF 12

**NOTES:**

Maintain 6' of clearance between the 1 phase line and the 3 phase circuit. Also Maintain a 6' neutral. The 1 phase line will run under the 3 phase circuit.

New Pole #20 is to be set 61' from center line. It is off the Right of Way.

Existing Pole #18 is to be changed out and is 46' from center line.

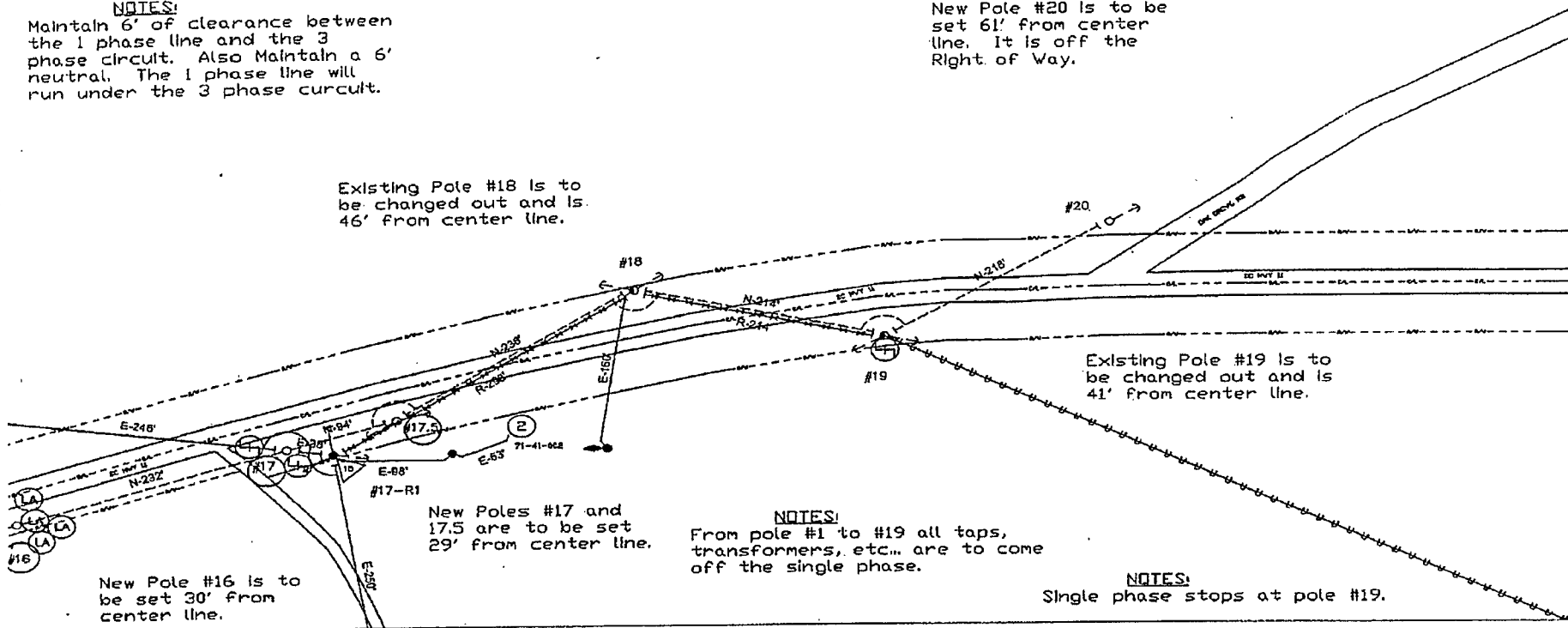
Existing Pole #19 is to be changed out and is 41' from center line.

New Poles #17 and 17.5 are to be set 29' from center line.

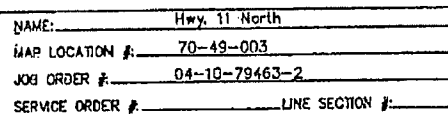
New Pole #16 is to be set 30' from center line.

**NOTES:**  
From pole #1 to #19 all taps, transformers, etc., are to come off the single phase.

**NOTES:**  
Single phase stops at pole #19.



POWER DELIVERY ASSOCIATES, INC. 250 WASHINGTON AVENUE SUITE 100 COLUMBIA, SOUTH CAROLINA 29201 716-32-2000



SC 38 AN6 PICKENS  
SUBSTATION 38 CIRCUIT 3 TOTAL DISTANCE: \_\_\_\_\_  
PHASE XYZ RULING SPAN: \_\_\_\_\_

SCHOOL DISTRICT #: 1 COUNTY: GREENVILLE  
WORK PLAN DESIGNATION: 00-216  
MEMBER SEP. #:  
STAKED BY: S. GRIFFIN DATE: 04-12-07 SHEET 1 OF 12



TOP CRT (32)

NOTES:

From pole #1 to #19 all taps, transformers, etc., are to come off the single phase.

NOTES:

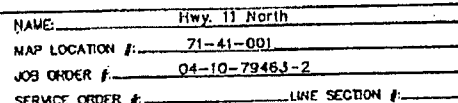
NOTES:  
Maintain 6' of clearance between the 1 phase line and the 3 phase circuit. Also Maintain a 6' neutral. The 1 phase line will run under the 3 phase circuit.

Existing Pole #4 is to be changed out and is 48' from center line.

Existing Pole #2 is to be changed out and is 49' from center line.

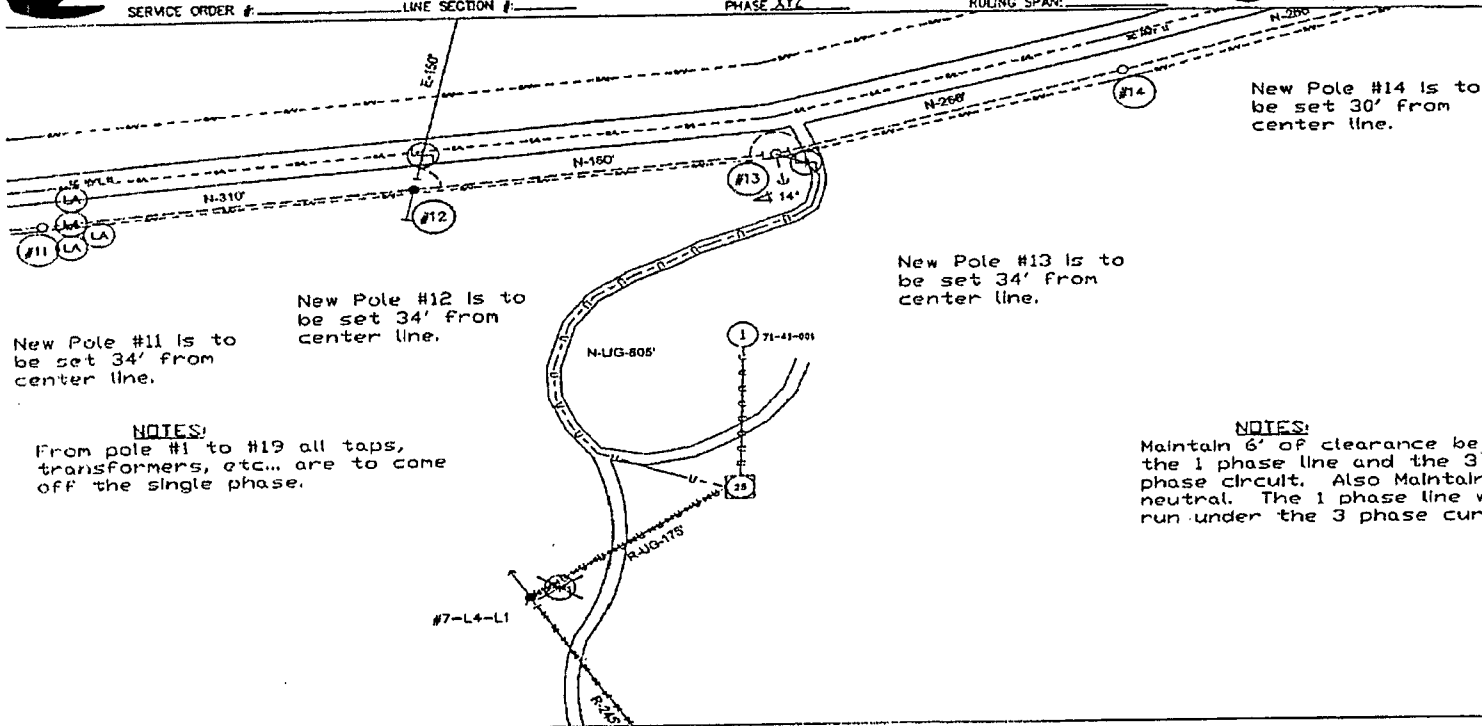
7. New Pole #7 is to be set 44' from center line.

POWER DELIVERY ASSOCIATES INC



SC 38 AND PICKENS  
SUBSTATION 38 CIRCUIT 3 TOTAL DISTANCE: \_\_\_\_\_  
PHASE XYZ RULING SPAN: \_\_\_\_\_

SCHOOL DISTRICT #: 1 COUNTY: GREENVILLE  
WORK PLAN DESIGNATION: 00-216  
MEMBER SEP. #: \_\_\_\_\_  
STAKED BY: S. GRIFFIN DATE: 04-12-07 SHEET 3 OF 12



**NOTES:**  
Maintain 6' of clearance between the 1 phase line and the 3 phase circuit. Also Maintain a 6' neutral. The 1 phase line will run under the 3 phase circuit.

199

POWER DELIVERY ASSOCIATES, INC. 1900 MAIN STREET, SUITE 100, FORT WORTH, TEXAS 76102-1000



NAME: Hwy. 11 North  
MAP LOCATION #: 71-40  
JOB ORDER #: 04-10-79463-2  
SERVICE ORDER #: \_\_\_\_\_ LINE SECTION #: \_\_\_\_\_

STAKING DRAWING  
**BLUE RIDGE ELECTRIC COOPERATIVE, INC.**

SC 38 ANG PICKENS  
SUBSTATION 38 CIRCUIT 3 TOTAL DISTANCE: \_\_\_\_\_  
PHASE XYZ RULING SPAN: \_\_\_\_\_



SCHOOL DISTRICT #: 1 COUNTY: GREENVILLE  
WORK PLAN DESIGNATION: 00-216  
MEMBER SEP. #: \_\_\_\_\_  
STAKED BY: S. GRIFFIN DATE: 04-12-07 SHEET 2 OF 12

New Pole #10 is to be set 34A' from center line.

NOTES:  
From pole #1 to #19 all taps, transformers, etc... are to come off the single phase.

MAP  
71-40

11'

#10A

#10

N-310'

N-265'

#9

#8

#7

New Pole #10 is to be set 34' from center line.

New Pole #9 is to be set 38' from center line. It is off the Right of Way.

New Pole #8 is to be set 42' from center line. It is off the Right of Way.

New Pole #7 is to be set 42' from center line. It is off the Right of Way.

New Pole #7 is to be set 46' from center line. It is off the Right of Way.

NOTES:

Maintain 6' of clearance between the 1 phase line and the 3 phase circuit. Also Maintain a 6' neutral. The 1 phase line will run under the 3 phase circuit.



NAME: Hwy. 11 North  
MAP LOCATION #: 71-40-001  
JOB ORDER #: 04-10-79453-2  
SERVICE ORDER #: LINE SECTION #

STAKING DRAWING  
**BLUE RIDGE ELECTRIC COOPERATIVE, INC.**  
SC 38 A16 PICKENS  
SUBSTATION 38 CIRCUIT 3 TOTAL DISTANCE:  
PHASE XYZ RULING SPAN:



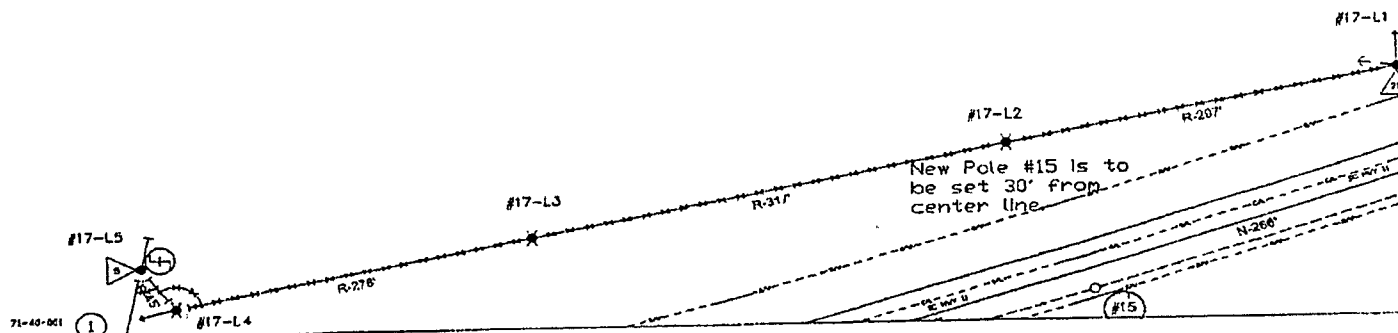
SCHOOL DISTRICT #: 1 COUNTY: GREENVILLE  
WORK PLAN DESIGNATION: 00-216  
MEMBER SEP. #:  
STAKED BY: S. GRIFFIN DATE: 04-12-07 SHEET 4 OF 12

**NOTES:**

Maintain 6' of clearance between the 1 phase line and the 3 phase circuit. Also Maintain a 6' neutral. The 1 phase line will run under the 3 phase circuit.

**NOTES:**

From pole #1 to #19 all taps, transformers, etc... are to come off the single phase.



POWER DELIVERY ASSOCIATES, INC. 17043-0000 - 17043-0000 - 17043-0000

G. Gresham  
(854)895-4222

370545

(COMBO) 1HR - 45 Kiosk Prints DIG/1 CD  
from Digital

09/26/08 04:54 PM  
MEGAN

Store #11463  
Order #990201397

PICKUP TIME: 09/26/08 05:54 PM



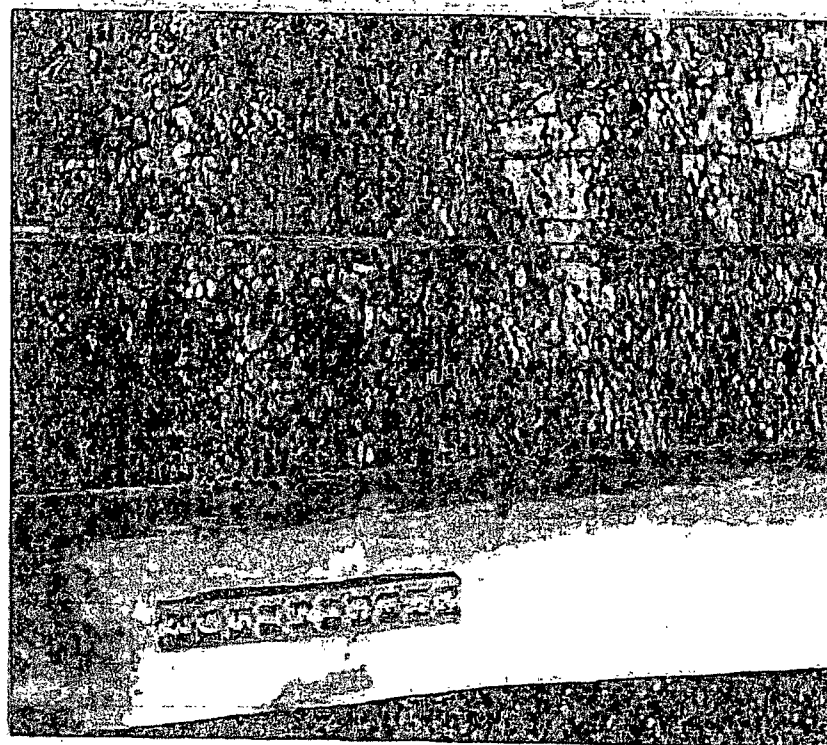
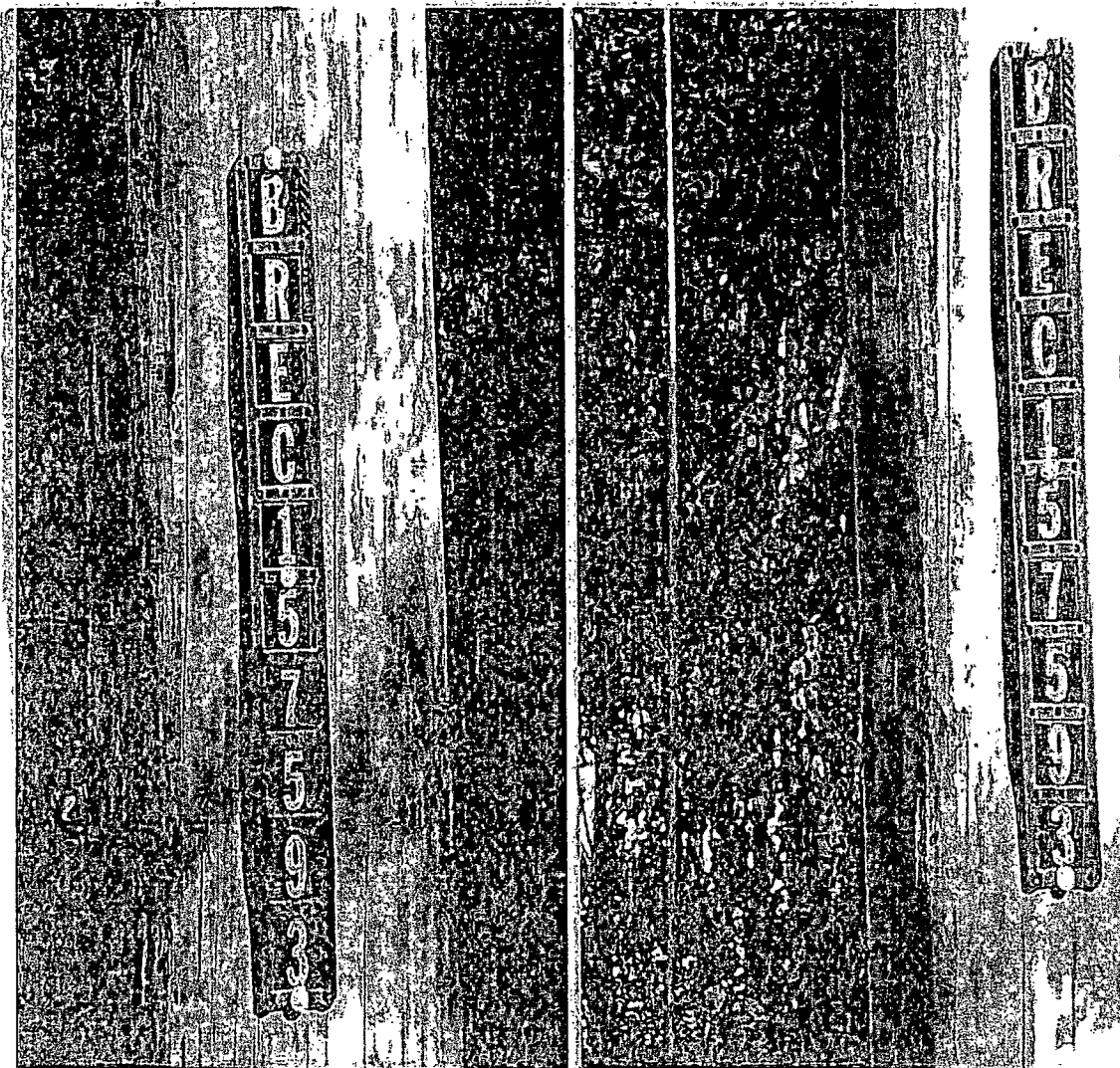
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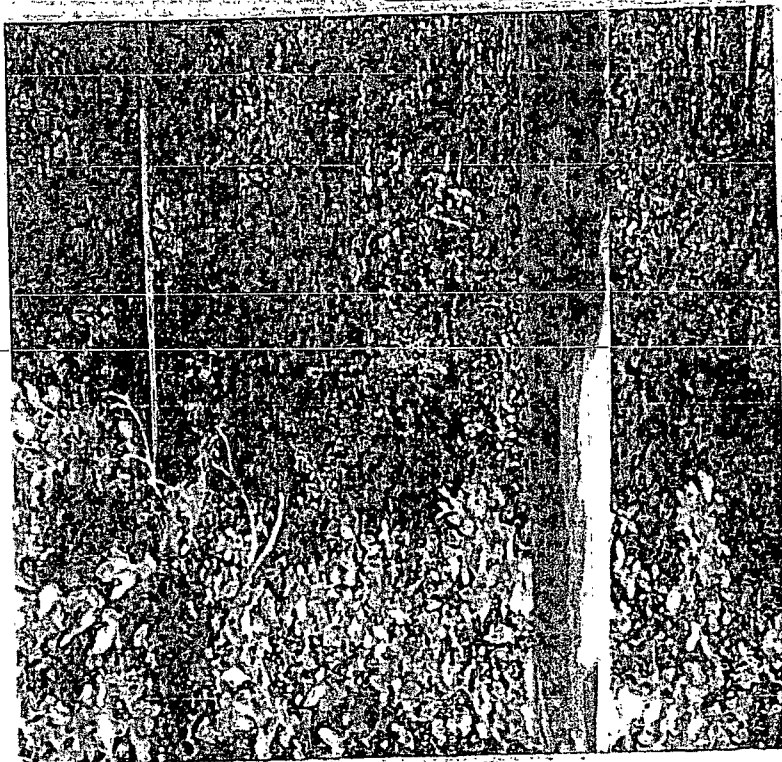
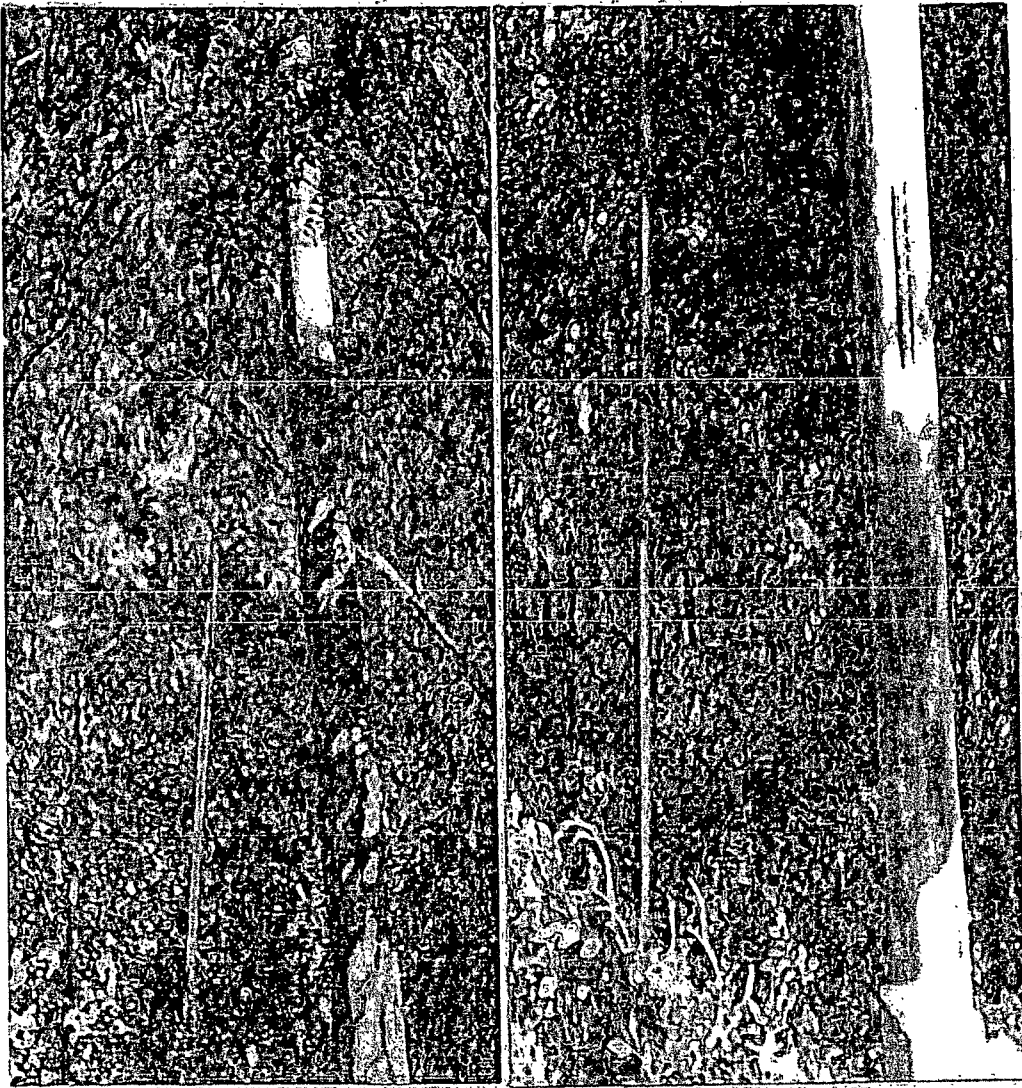
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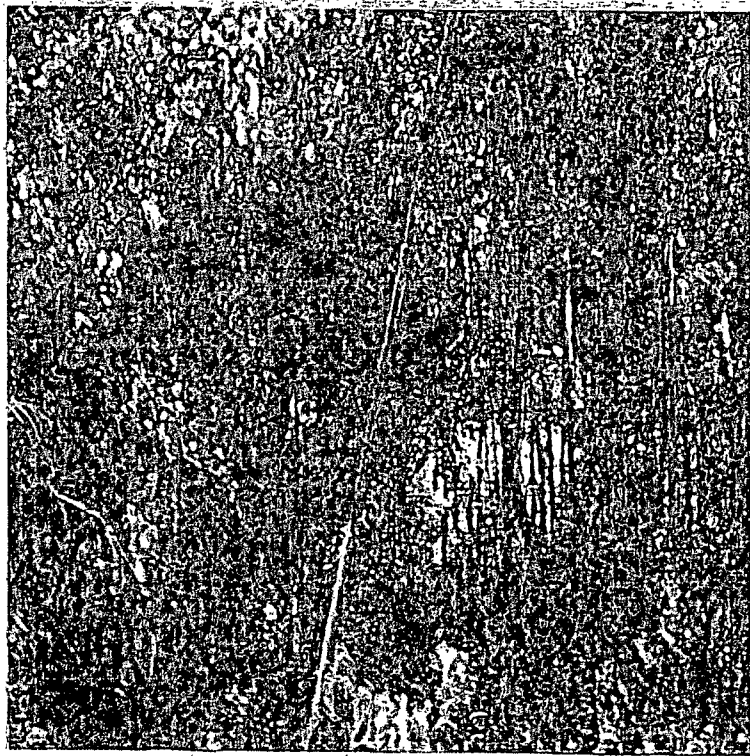
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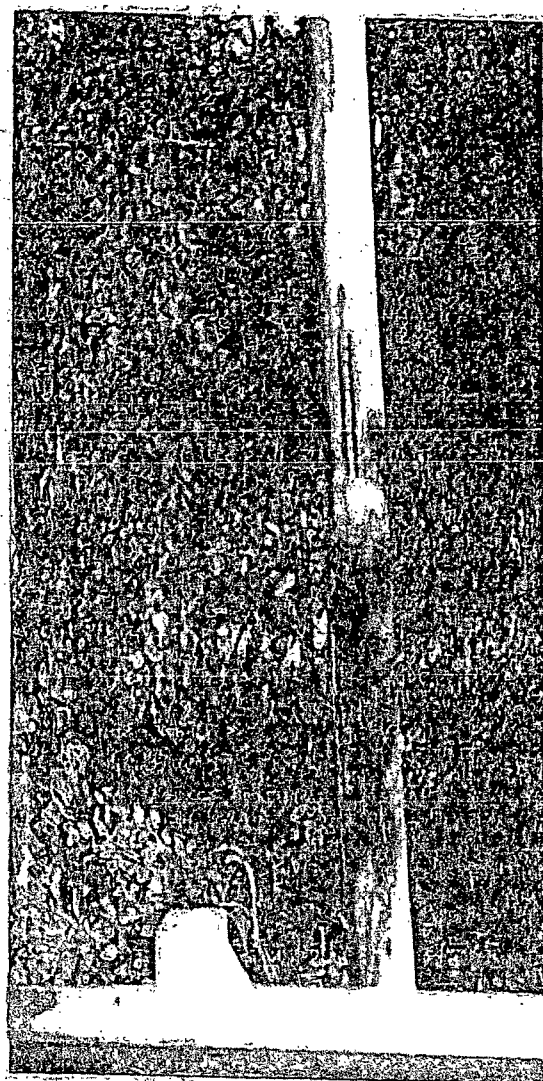
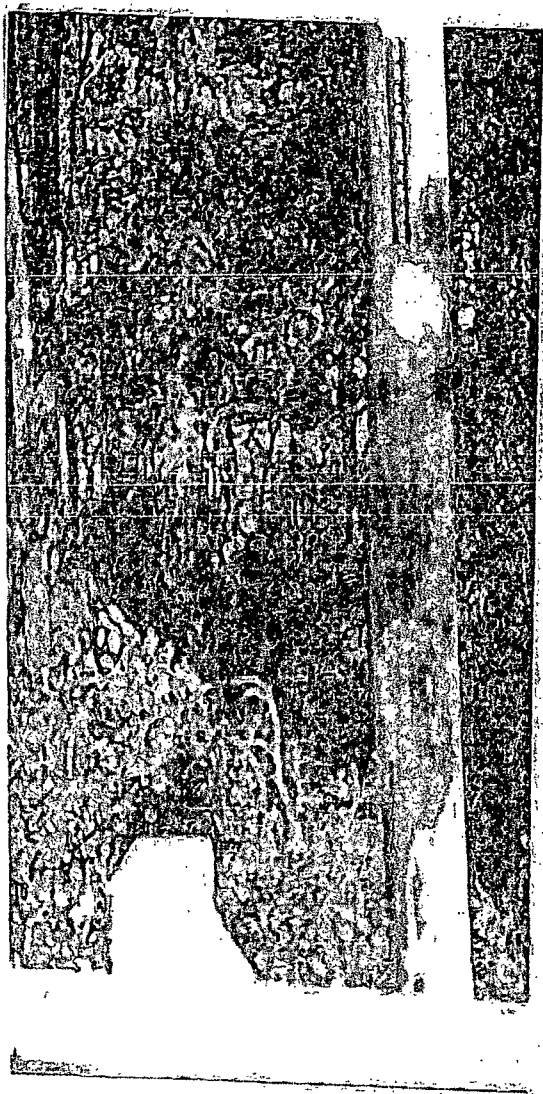
DEFENDANT'S  
EVIDENCE EXHIBIT  
8-26-09 MED

Wphoto.com is just a click away!



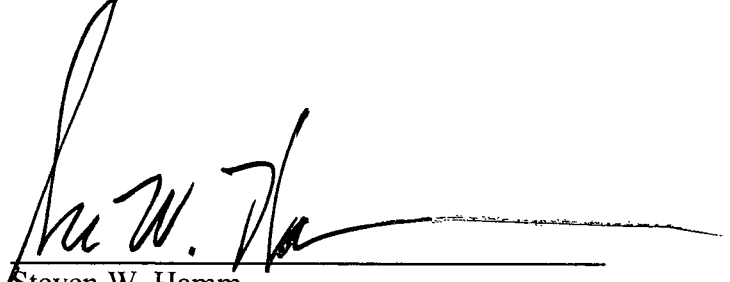






**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in black ink, appearing to read "Steven W. Hamm", is written over a horizontal line.

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864/638-5406

ATTORNEYS FOR APPELLANT BLUE RIDGE  
ELECTRIC COOPERATIVE, INC.

April 11, 2014  
Columbia, South Carolina