

Rosebud Sioux Tribe



Utility Commission:

*Rights-of-Way in
Indian Country*

Indian Reorganization Act

June 18, 1934

Indian Reorganization Act, also called Wheeler–Howard Act, measure enacted by the U.S. Congress, aimed at decreasing federal control of American Indian affairs and increasing Indian self-government and responsibility.

Rosebud Sioux Tribe

June 18, 1934

Adoption of tribal constitution and bylaws on same date as Indian Reorganization Act.

Rural Electrification Act

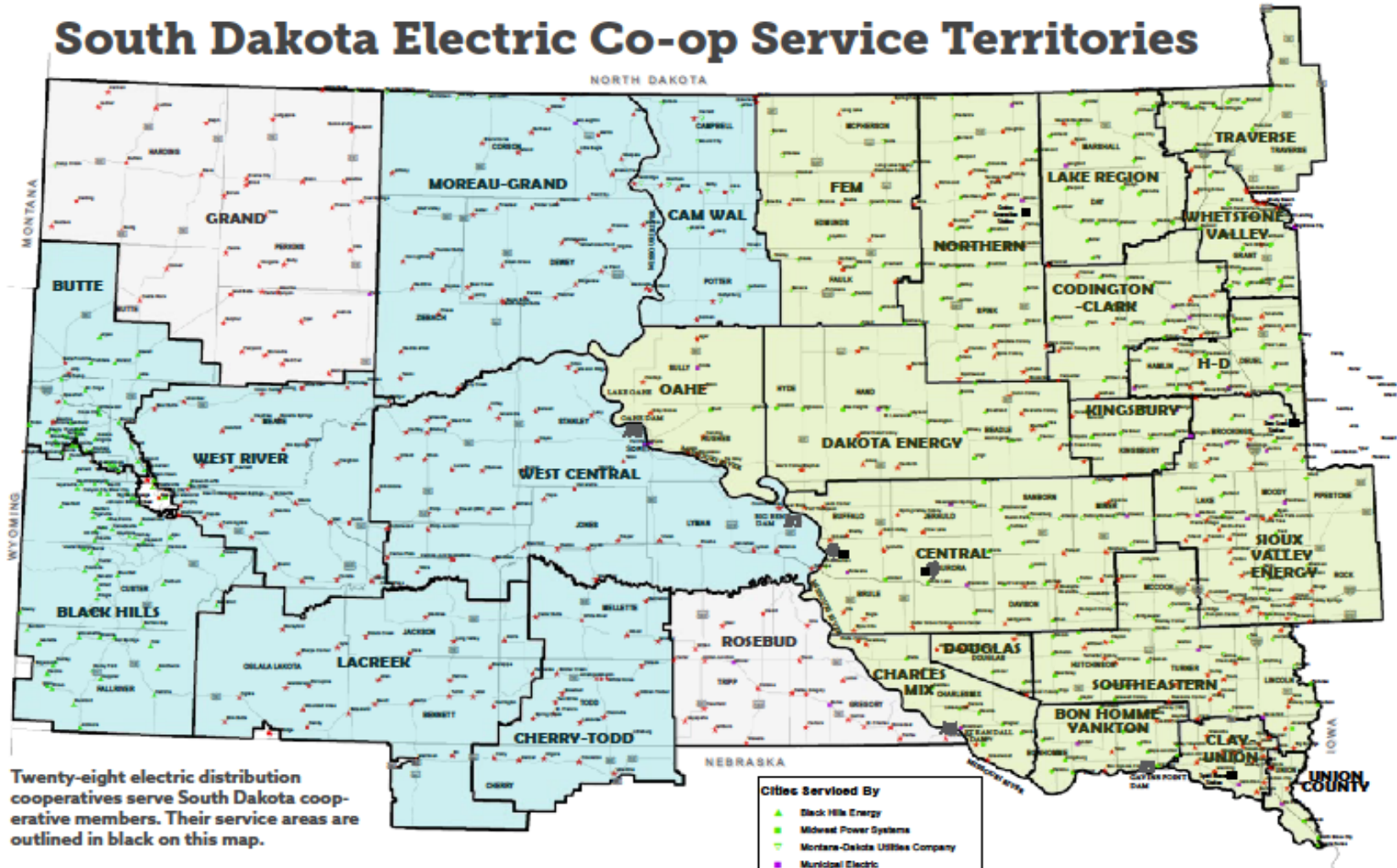
May 20, 1936

Provided federal loans for the installation of electrical distribution systems to serve isolated rural areas of the United States (i.e. Indian Reservations). The funding was channeled through cooperative electric power companies, most of which still exist today.

Electric service comes to the Rosebud Indian Reservation through rural electric cooperatives

	<u>Year Formed</u>
Rosebud Electric	1945
Lacreek Electric	1948
Cherry Todd Electric	1949

South Dakota Electric Co-op Service Territories



Twenty-eight electric distribution cooperatives serve South Dakota cooperative members. Their service areas are outlined in black on this map.

[@SDCoopPower](#)

[@SDRuralElectricAssociation](#)

[@SDCoopPower](#)



Cities Served By

- ▲ Black Hills Energy
- Midwest Power Systems
- ▼ Montana-Dakota Utilities Company
- ◆ Municipal Electric
- Northern State Power Company
- Northwestern Power Systems Company
- ◆ Otter Tail Power Company
- ★ Rural Electric Cooperative

Rushmore Electric Power Cooperative
Rapid City, South Dakota

By: A. Blaszewski Date: May 21, 2018

Scale: None

1992: The Rosebud Sioux Tribe adopts a utility regulation code

- RST Resolution 92-13
- February 14, 1992
- RST Law & Order Code Title 20: Utilities



Rosebud Sioux Tribe: Utilities Commission

MISSION: The mission of the Tribal Utility Commission (TUC) is to protect and represent ratepayers in the provision of safe and reliable utility service, at the lowest possible cost, and to ensure that utility customers have access to the best possible information about their options and choices.

JURISDICTION: The general jurisdiction of the Commission extends to and includes telecommunications companies engaged in the furnishing of telecommunications services, telegraph and telephone companies engaged in the transmission of messages or conversations by voice or electronic means. Pipeline utilities engaged in the generation and distribution of light or power, Gas utilities engaged in the distribution of natural, synthetic or artificial gas. Water companies for the storage and distribution of water for domestic or other beneficial use. Heating utilities engaged in the distribution of heat, and all other utilities that operate, maintain or control any equipment or facilities within the Reservation.

TITLE 20: Utilities

20-6-102. UTILITY TO FURNISH INFORMATION OF RESERVATION EASEMENTS.

Within 180 days of the effective date of this Title, each electric utility providing service on the Reservation shall provide to the Commission information justifying any easements its exercises on the Reservation.



Could there be poles and wires on the Rez without a valid right-of-way agreement?

Absolutely !!

More than likely there are telephone poles and power lines on the reservation with no right-of-way, given the recent history (first half of the 20th Century) of the reservations and electric and telephone utility companies.

Given the early history of these utilities, their goal was to provide services, electricity and telephone, to as many rural households as possible.

For new or possibly non-existent right-of-way agreements:

Request copies of agreements/contracts from utility co.

Request copies of agreements/contracts with the US DOI/BIA
Reservation Agency Offices
Regional Title Plants (Portland, Aberdeen, etc.)

Research tribal land office documents & maps

Review Title Status Reports (TSR's): a “report issued after a title examination which shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances on record; and whether the land is in unrestricted, restricted, trust, etc.

Reservation Trust Land Rights-of-Way Partner Agencies:

US Dept of the Interior: Bureau of Indian Affairs: Realty Office

Tribal Land Offices:

Sicangu Oyate Land Office & Tribal Land Enterprise

Tribal Historic Preservation Office (THPO)

Tribal Utility Commission (regulatory)

Legal: Tribal AG's Office / trust land specialists



Just when we thought we had the process down, the Feds changed the rules ...

In 2016 the US Department of the Interior, after consultation with tribes, published a change to the Right-Of-Way approval rules contained in 25 CFR 169.

Remember, all Indian reservation land is either fee or trust in its legal ownership. Fee land is that which is in private ownership. Trust land is land held by the United States Government for the benefit of federally recognized Indian tribes and individual citizens of those tribes.

The US Dept of the Interior has in the past had the sole responsibility of approving all rights-of-way on trust land.

Highlights of this final rule include:

- Simplifying requirements by relying on general statutory authority to grant rights-of-way and eliminating outdated requirements that apply to specific types of rights-of-way;
- Clarifying processes for BIA review of right-of-way documents;
- Streamlining the process for obtaining a right-of-way on Indian land by:
Eliminating the need to obtain BIA consent for surveying in preparation for applying for a right-of-way; Establishing timelines for BIA review of rights-of-way requests;
- Adding certainty to applicants by allowing BIA disapproval only where there is a stated compelling reason;

The “trustee” role of the federal gov. evolved:

- Providing Indian landowners with notice of actions affecting their land;
- Deferring to individual Indian landowner decisions subject to an analysis of whether the decision is in their best interest;
- Promoting tribal self-determination and self-governance by providing greater deference to Tribes on decisions affecting tribal land;
- Clarifying tribal jurisdiction over lands subject to a right-of-way; and
- Incorporating tribal land policies in processing a request for a right-of-way, and to allow Indian landowners as much flexibility and control as possible over rights-of-way on their land.

Negotiating the term of the lease

- Lessee may try and negotiate a “perpetual” lease agreement or claim they have a perpetual lease.
- On an existing agreement, review the date of the agreement and compare it with the appropriate sections of 25 CFR. The statutory limitations on the length of these agreements has changed over time.
- Rules contained within 25 CFR limit the length of new agreements.
- All new agreements will be governed by the 25 CFR 169 right-of-way rules last amended in 2016. Lessor will need to review the requirements of the new rules (i.e. notice requirements, rights of landowners)

What is the value of the right-of-way?

- The age-old valuation method used by the Bureau of Indian Affairs was an appraisal of the land based on its use prior to the ROW. If the ROW is across trust grazing land, the value of the ROW would be based on the per acre value of the grazing land, as determined by historic BIA land leases. This valuation will be the lowest of all methodologies and will be heavily favored by lessee.
- A newer valuation model is based on comparable trust lease agreements, similar to reviewing sales of comparable properties for residential real estate. Lesseeq will argue that this model is not representative of the land they are leasing for the ROW. Differences may be geographic location of the ROW (i.e. comparable ROW's located in New Mexico v. South Dakota)
- A third valuation model that should be investigated is the value of the ROW based on the value of the power line. What is the annual value of the kWh transmitted by the power line?

Some final considerations:

- You may want to consider the parties signing a non-disclosure agreement during the pendency of the negotiations. Otherwise there may be third-parties attempting to influence the negotiations.
- All parties at all times should be negotiating in good faith. If you feel that the lessee is not acting in good faith, you may have to halt the negotiations in the case of a new line, or file a legal action compelling them to negotiate in good faith for an existing line or a renewal.
- There is no adverse possession on Indian land held in trust by the federal government. Just because a utility company has lines on the reservation without a ROW, does not mean those lines are grandfathered in, nor that they have a right to that easement through adverse possession.
- On an existing line, keep in mind the cost of the lessee removing the line if you cannot reach an agreement.
- Keep in your back pocket formal condemnation (smash & grab) proceedings. Make sure the tribe has a good trespass code.
- Finally, everything is negotiable. Think outside the box and beyond a price tag.

Non-monetary consideration for WAPA 50-year ROW agreement:

- Membership in the Southwest Power Pool and technical assistance in the form of training to buy/sell wholesale electricity.
- A two-year audit of the Rosebud Sioux Tribe bill credit program.
- Assistance in establishing Rosebud Energy Services Company, a tribal owned and operated electric utility.
- Technical advice and support to the Tribe in areas such as: initial transmission studies, marketing studies, training, identifying potential customers, assistance with requests for proposals to acquire energy or proposals for renewable power projects and similar areas of assistance.

Contact Information

- Rosebud Sioux Tribe Utility Commission Office
- 2431 Legion Avenue/P.O. Box 430
- Rosebud, South Dakota 57570
- Phone: 605-747-3194 ♦ Fax: 605-747-3168
- Email: tuc@rst-nsn.gov

