

EL00-030

EL00-030

KS/M

EL00-030

DOCKET NO.

In the Matter of

IN THE MATTER OF THE PETITION FOR DECLARATORY RULING OF WEST RIVER ELECTRIC ASSOCIATION, INC. ON WHETHER A PROPOSED TRANSMISSION LINE MEETS THE DEFINITION OF SDCL 49-41B-2.1

Public Utilities Commission of the State of South Dakota

DATE

MEMORANDA

10/2/02 Filed and Docketed;
 10/16/00 Affidavit of Service;
 10/17/00 Reply Filing;
 11/3/00 Supplemental Information;
 11/30/00 Agreement/Consent Letters and two Maps;
 12/14/00 Declaratory Ruling;
 12/14/00 Docket Closed

BANGS McCULLEN LAW FIRM

Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

518 St. Joe Street
 Mailing Address P.O. Box 2870
 Rapid City, South Dakota 57709-2870
 605-343-1040
 Telecopier 605-343-1508
 www.bangsmccullen.com

Joseph M. Butler
 Thomas H. Foye
 Thomas E. Simmons
 Charles L. Ritter
 Allen G. Nelson
 James P. Hurley
 Michael M. Hickey
 Terry L. Hofen
 Rod Schlauger*
 Daniel F. Duffy
 Jeffrey G. Hurd
 Veronica L. Bowen
 John H. Reforth
 Terry G. Westergaard
 Steven R. Nolan
 Gregory J. Erlandson
 Kyle J. Sipprell
 Rachel V. Japsen
 George A. Bangs (1943-1995)
 W.A. McCullen (1943-1997)
 *Also admitted in Minnesota,
 Nebraska and North Dakota

October 11, 2000

Mr. William Bullard
 Executive Director
 Public Utilities Commission
 500 E. Capitol
 Pierre, SD 57501

Re: West River Electric Association, Inc.

Dear Mr. Bullard:

I enclose an original and 10 copies of the Petition which seeks a determination from the PUC if the PUC believes it has jurisdiction over the situation set forth in the attached Petition. If it does, the Petition requests approval of the proposed construction work by West River Electric Association. Once this has been properly filed, I would appreciate it if you would ask the individual who will be handling this matter on behalf of the PUC to contact me.

Best regards,

Sincerely,

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.


Allen G. Nelson

agn/ke
 Enc.

RECEIVED

OCT 12 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RECEIVED

OCT 12 2000

PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE PETITION)
OF WEST RIVER ELECTRIC)
ASSOCIATION, INC. SEEKING A)
DETERMINATION AS TO WHETHER)
THE SOUTH DAKOTA PUC HAS)
JURISDICTION IN THIS INSTANCE AND)
SECONDLY IF PUC DETERMINES)
THAT IS HAS JURISDICTION TO THEN)
APPROVE WREA'S REQUEST TO)
LOCATE A NEW 115 KV TRANSMISSION)
LINE NORTH OF RAPID CITY)

DOCKET NO. _____

Pursuant to the provisions of SDCL 49-41B-4, West River Electric Association, Inc., does hereby petition the South Dakota Public Utilities Commission for a permit or permission, if required, for West River Electric's decision to build and construct a new 115 KV transmission line North of Rapid City.

1. The state statute in question is:

SDCL 49-41B-2.1(2) which defines a transmission facility as follows:

An electric transmission line and associated facilities with a design of 115 to 230 kilovolts, if more than one mile in length of the transmission line does not follow section lines, property lines, roads, highways or railroads.....

2. West River Electric Association, Inc., (WREA) is a cooperative, not-for-profit utility incorporated under the laws of South Dakota and has been given an assigned and exclusive service area for the purpose of providing electric service to the customers within its assigned territory pursuant to South Dakota law.

3. WREA has determined that it is necessary to purchase approximately 20 acres of land from two individuals, Jack Sherman of Piedmont, South Dakota and Fred McFarland of Rapid City, South Dakota, and to also acquire easements from

both individuals for the purpose of locating a new 115 KV transmission line. (See Exhibit A and B whereby both of these individuals have signed an agreement authorizing the sale of land and easements discussed above).

4. Specifically, WREA has determined that it needs to obtain a 115 KV power connection from WAPA and run it into a switchyard where WREA would then take the 115 KV line out of the switchyard and run it approximately 2 miles to a distribution substation where it would be reduced to 7200 volts. The proposed 115 KV transmission line would terminate at this substation and would be owned and operated by WREA. Attached to this petition is a drawing that illustrates the above- described intended actions (Exhibit C).

5. The transmission line described above will run 2 miles in length but it does not follow the section lines of the property involved, the edge of the private property owned by Jack Sherman and Fred McFarland as discussed in paragraph B above, and it runs adjacent to County road 4C also known as Elk Creek Road. It specifically follows the section line of Section 12, which is owned by Jack Sherman and section line of Section 7 which is owned by Fred McFarland. The transmission line will be on a private right-of-way easement 40 feet in width which WREA is purchasing from the private landowners referenced above. WREA plans to use single pole structures, the precise location of this project is 8 miles east of Piedmont as shown on the attached Exhibits D.

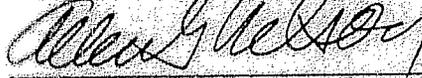
6. WREA has previously been advised by legal counsel that the above factual scenario will not result in subjecting this line to the supervision and jurisdiction of Federal Energy Regulatory Commission (FERC).

7. WREA has applied with Meade County officials for approval of the overall plans as explained above and have been given a preliminary response from Meade County officials that this project will be approved in its entirety.

WHEREFORE, West River Electric Association, Inc., requests that the Public Utilities Commission issue a Decision determining if the Public Utilities Commission has jurisdiction over the above scenario and, if so, approving WREA's request to locate the 115 KV transmission line as described-above.

Dated this 11th day of October, 2000.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, LLP



Allen G. Nelson
Attorney for West River Electric Association, Inc.
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 342-1040

REAL ESTATE PURCHASE AGREEMENT

Section 1.

PARTIES:

The parties to this Real Estate Sale Agreement (hereinafter "Agreement") are West River Electric Association, Inc., of P.O. Box 412, Wall, South Dakota 57790 (hereinafter "Buyer"), and Jack Sherman, of HC 80, Box 745, Piedmont, South Dakota 57769-9520, (hereinafter "Seller")

Section 2.

PURPOSE:

The Seller owns the real property described in Section 3 hereof and wishes to sell the property to the Buyer and the Buyer agrees to purchase the property from the Seller.

NOW, THEREFORE, for good and valuable consideration and based upon the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged by the Seller, the parties agree that this Agreement shall govern their transaction.

Section 3.

PROPERTY:

The property which is the subject of this agreement is described as follows:

A. Approximately 10 acres of land as shown on the attached Exhibit A which will be left stranded by Meade County realigning Elk Creek Road within the following legally described property known as the South One-Half (S $\frac{1}{2}$) of Section 12 in Township 3 North, Range 7 East of the Black Hills Meridian, Meade County, South Dakota. The precise land of approximately 10 acres will be surveyed, platted and rezoned by Buyer at Buyer's expense. The platted legal description shall then be used in a deed that Seller gives to Buyer.

EXHIBIT A

CONFIDENTIAL

[U]

SECTION 8.

CLOSING:

Closing shall take place at the office of _____. A Warranty Deed and Certificate of Real Estate Value shall be delivered by Seller to Buyer at the time of closing, and the Seller shall pay one-half of the costs of the requisite closing costs and the entire transfer fee for the deed. Buyer shall pay one-half of the closing costs and the entire recording fees.

SECTION 9.

CONTINGENCY OF PURCHASE:

A. This Agreement is subject to and contingent upon Buyer receiving the necessary approvals needed from Meade County for rezoning and replatting of the property Seller is transferring to Buyer pursuant to this Agreement.

B. This Agreement is also subject to and contingent upon Buyer receiving the approval from the South Dakota Public Utilities Commission for authorization to install a 115 KV transmission line upon the easement Seller is granting to Buyer pursuant to this Agreement.

SECTION 10.

COSTS:

A. Buyer agrees to pay the necessary surveying, platting and any rezoning costs involved in completing this transaction.

B. Buyer will prepare the initial legal documents needed for this transfer.

Section 11.

INTEGRATION:

This writing constitutes the entire Agreement between the parties and there are no other oral or collateral agreements or understandings of any kind or character except those contained

herein. This Agreement may be changed or modified only by written agreement signed by the parties.

Section 12.

BINDING EFFECT:

This Agreement shall extend to and be binding upon the heirs, administrators, personal representatives, successors, and assigns of the parties hereto.

Section 13.

HEADINGS:

The headings used for each paragraph herein are for descriptive purposes only.

Dated this 16 day of ^{August} July, 2000.

SELLER:

Jack Sherman
Jack Sherman

BUYERS:

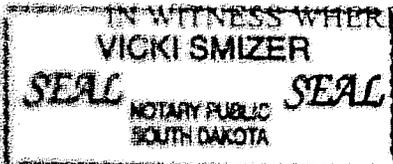
WEST RIVER ELECTRIC ASSOCIATION, INC.

By: Jerry Hamrick
Its: President

STATE OF SOUTH DAKOTA)
)§§
COUNTY OF PENNINGTON)

On this the 16 day of ^{August} July, 2000, before me, the undersigned officer, personally appeared, Jack Sherman known to me or satisfactorily proven to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he executed the same for the purposes therein contained.

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



Vicki Smizer
Notary Public, State of South Dakota
My Commission Expires: June 26, 2004

SEAL
My Commission Expires June 28, 2004

STATE OF SOUTH DAKOTA

)

)§§

COUNTY OF PENNINGTON

)

Sept Dtn

On this 25th day of ~~July~~ *Sept*, 2000, before me, the undersigned officer, personally appeared FREY HAMMERQUIST, who acknowledged himself to be the President of WEST RIVER ELECTRIC ASSOCIATION, INC., and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the ~~company~~ by himself as such President of WEST RIVER ELECTRIC ASSOCIATION, INC.

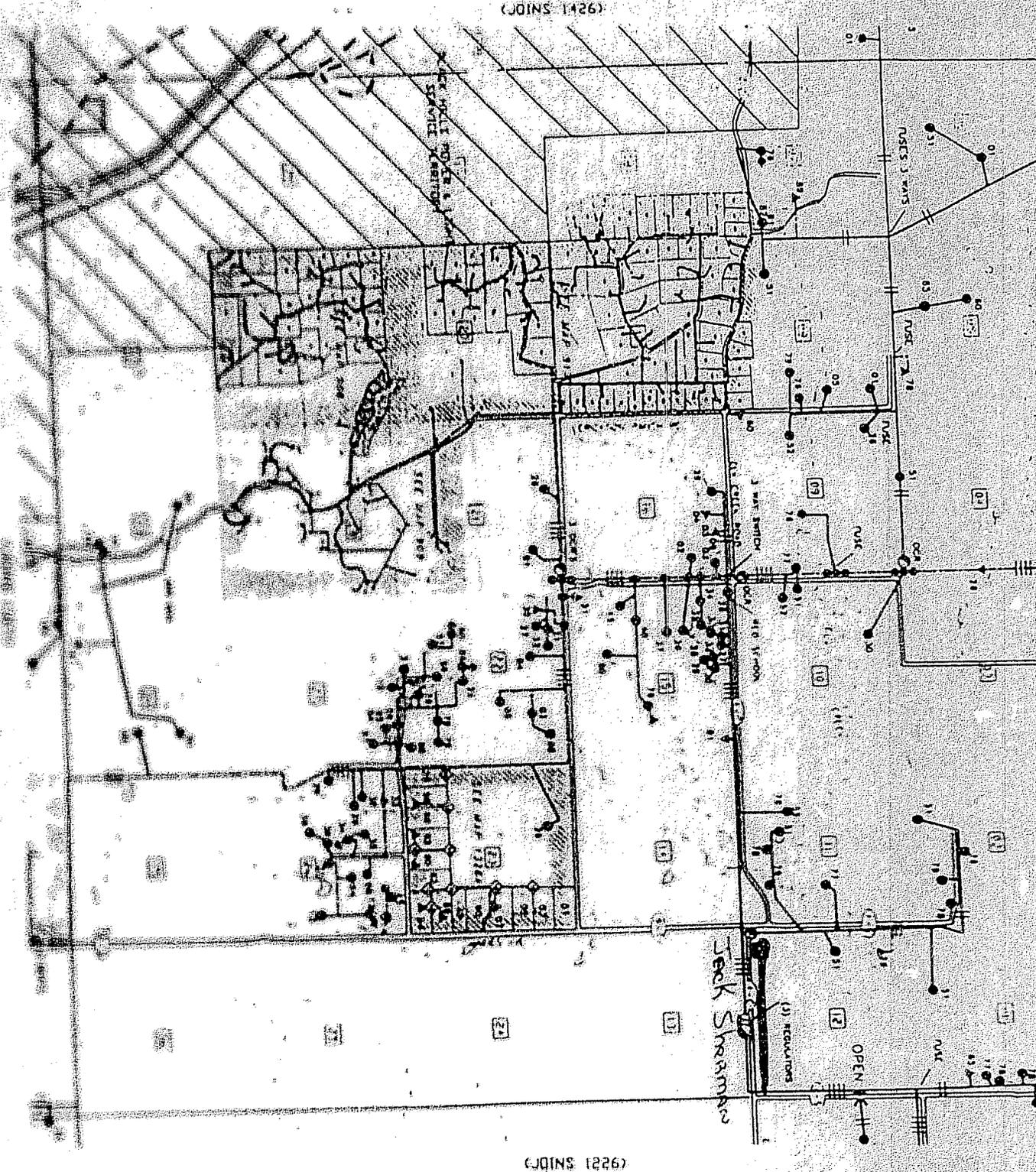
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

David Munt

Notary Public, State of South Dakota

My Commission Expires: Nov 1 2003

[SEAL]



(JOINS 1426)

(JOINS 1226)

DETAIL	
WEST RIVER ELECTRIC ASSOCIATION	
SOUTH DAKOTA II PENNINGTON	
DATE	1225
SCALE	3/8"
PROJECT	WEST
NO.	1225

WEST RIVER ELECTRIC ASSOCIATION
 WALL, SOUTH DAKOTA
 SOUTH DAKOTA II PENNINGTON

DRAWN BY: J. GRAVES
 LAST VOL: 648
 LAST REV: AUGUST 10
 FILE NAME: WR-DETAIL



RUSHMORE ELECTRIC POWER
 ENGINEERING DEP
 Rapid City, South

REAL ESTATE PURCHASE AGREEMENT

Section 1.

PARTIES.

The parties to this Real Estate Sale Agreement (hereinafter "Agreement") are West River Electric Association, Inc., of P.O. Box 412, Wall, South Dakota 57790 (hereinafter "Buyer"), and Paul H. Ferkel, of P.O. Box 2110, Rapid City, South Dakota 57709-2110, (hereinafter

"Seller").

Section 2.

RELEASE.

The Seller owns the real property described in Section 3 hereof and wishes to sell the property to the Buyer and the Buyer agrees to purchase the property from the Seller.

NOW, THEREFORE, for good and valuable consideration and based upon the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged by the Seller, the parties agree that this Agreement shall govern their transaction.

Section 3.

PROPERTY.

The property which is the subject of this agreement is described as follows:

- a. Approximately 8 acres of land as shown on the attached Exhibit A within the following legally described property known as the South One-Half (S½) of Section 7, Township 3 South, Range 4 East of the Black Hills Meridian, Meade County, South Dakota. The precise land of approximately 8 acres will be surveyed, platted and rezoned by Buyer at Buyer's expense. The platted legal description shall then be used in a deed that Seller gives to Buyer.

EXHIBIT B

CONFIDENTIAL

[2]

SECTION 8.

CLOSING.

Closing shall take place at the office of _____ . A Warranty Deed and Certificate of Real Estate Value shall be delivered by Seller to Buyer at the time of closing, and the Seller shall pay one-half of the costs of the requisite closing costs and the entire transfer fee for the deed. Buyer shall pay one-half of the closing costs and the entire recording fees.

SECTION 9.

CONTINGENCY OF PURCHASE:

A. This Agreement is subject to and contingent upon Buyer receiving the necessary approvals needed from Meade County for rezoning and replatting of the property Seller is transferring to Buyer pursuant to this Agreement.

B. This Agreement is also subject to and contingent upon Buyer receiving the approval from the South Dakota Public Utilities Commission for authorization to install a 115 KV transmission line upon the easement Seller is granting to Buyer pursuant to this Agreement.

SECTION 10.

COSTS:

A. Buyer agrees to pay the necessary surveying, platting and any rezoning costs involved in completing this transaction.

B. Buyer will prepare the initial legal documents needed for this transfer.

Section 11.

INTEGRATION:

This writing constitutes the entire Agreement between the parties and there are no other oral or collateral agreements or understandings of any kind or character except those contained

STATE OF SOUTH DAKOTA

)

)§§

COUNTY OF PENNINGTON

)

On this ~~28th~~^{Sept} day of ~~July~~, 2000, before me, the undersigned officer, personally appeared JERRY HAMMERQUIST, who acknowledged himself to be the President of WEST RIVER ELECTRIC ASSOCIATION, INC., and that he, as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the company by himself as such President of WEST RIVER ELECTRIC ASSOCIATION, INC.

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

D. J. Muto

Notary Public, State of South Dakota

My Commission Expires: Nov 1 2003

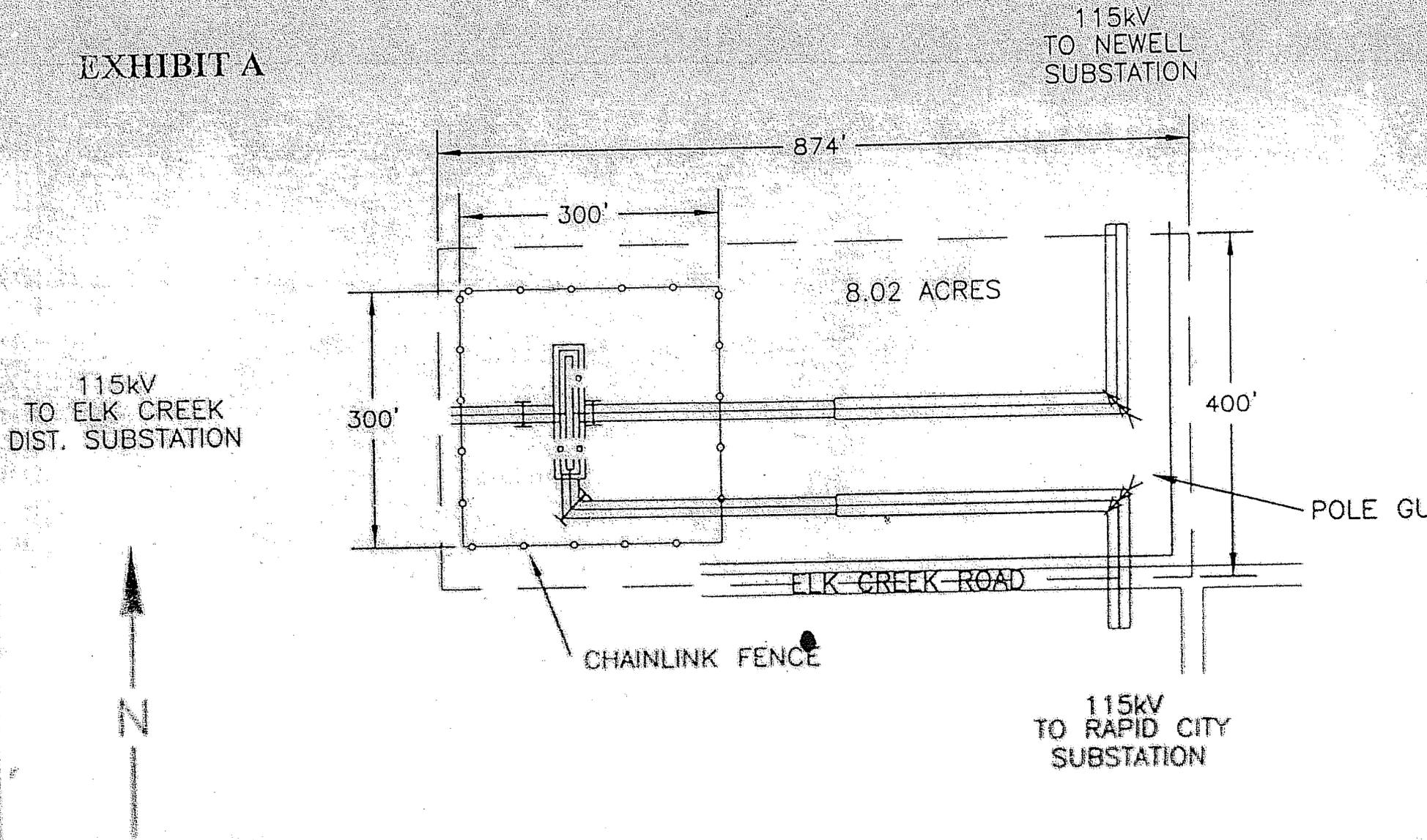
[SEAL]

CONTINUATION

1

-

EXHIBIT A

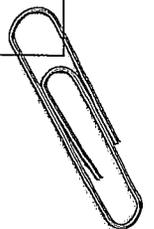


PROPOSED ELK CREEK TAP
WEST RIVER ELECTRIC ASSOCIATION
SHEET 2/6-21-00 NTS J

Continuation

2

of pages



(JOINS 1126)



(JOINS 1126)

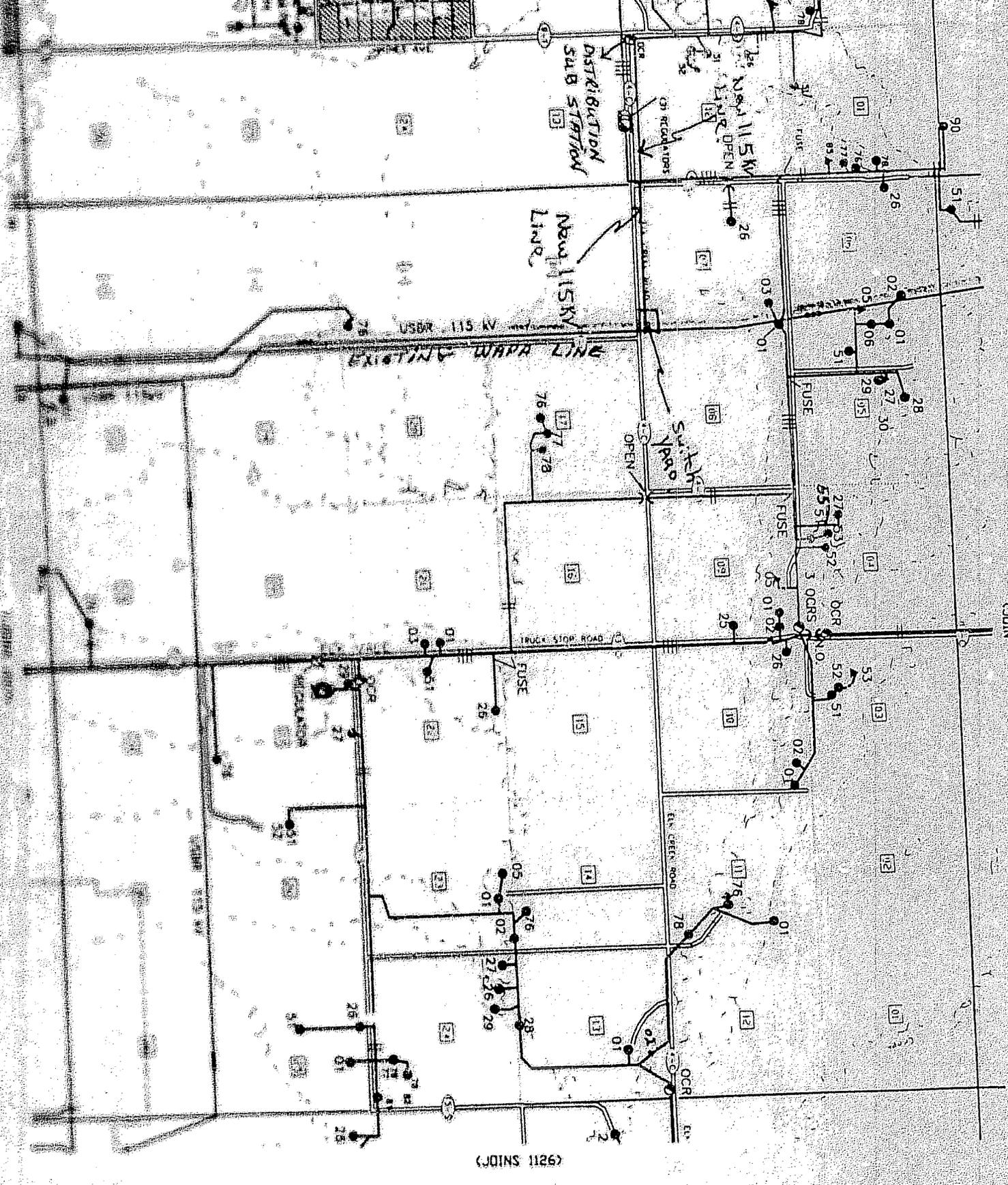
WEST RIVER ELECTRIC ASSOCIATION
 WALL, SOUTH DAKOTA
 SOUTH DAKOTA 11 PENNINGTON

DRAWN BY: J. GRAVES
 LAST WOI: 648
 LAST REV: AUGUST 10, 1964
 FILE NAME: WR DETAIL.DWG



RUSHMORE ELECTRIC POWER CO.
 ENGINEERING DEPARTMENT
 Rapid City, South Dakota

DETAIL	
CHECKED BY: J. GRAVES	
DATE: 12/26	
DESIGNED BY:	RE
DATE:	12/26



WEST RIVER ELECTRIC ASSOCIATION
 WALL, SOUTH DAKOTA
 SOUTH DAKOTA 11 PENNINGTON

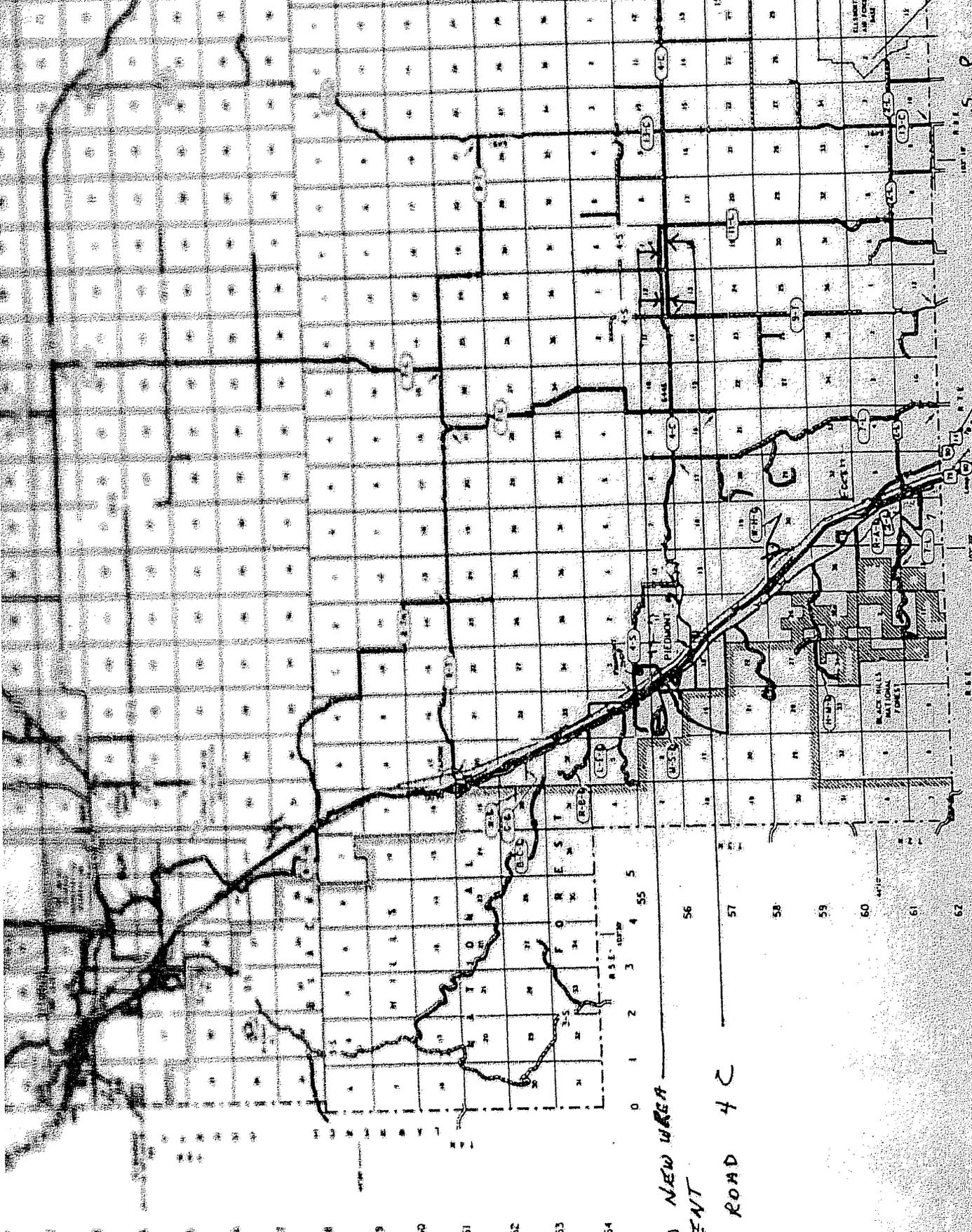
EXHIBIT C

DRAWN BY: J. GRAVES
 LAST WDI: 648
 LAST REV: AUGUST 10, 1998
 FILE NAME: WR DETAIL.DWG



RUSHMORE ELECTRIC POWER COOPERATIVE
 ENGINEERING DEPARTMENT
 Rapid City, South Dakota

DETAIL	
PROJECT NO.	1226
DATE	1226
BY	JG
CHECKED	JG
APPROVED	JG
SCALE	AS SHOWN
REVISIONS	



1055500
C101

PROPOSED NEW URGRA
EMSEMENT
COUNTY ROAD 4C

EXHIBIT D

BANGS McCULLEN LAW FIRM

Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

414 St. Joe Street
Mailing Address P.O. Box 2870
Rapid City, South Dakota 57708-2870
605-343-1640
Telecopier: 605-343-1503
www.bangsmccullen.com

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Allen G. Nelson
James P. Hurley
Michael M. Hickey
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Steven R. Nolan
Gregory J. Erlanson
Kyle J. Sipprell
Rachel V. Jepsen

George A. Bangs (1843-1885)
W.A. McCullen (1843-1887)

*Also admitted in Minnesota,
Nebraska and North Dakota

October 13, 2000

Mr. William Bullard
Executive Director
Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

Re: West River Electric Association, Inc.

Dear Mr. Bullard:

Enclosed please find an Affidavit of Service that I inadvertently forgot to send with the original Petition.

Best regards.

Sincerely,

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.



Allen G. Nelson

agn/ke
Enc.

RECEIVED
OCT 16 2000
SOUTH DAKOTA PUBLIC
UTILITY

PUBLIC UTILITIES COMMISSION
OF THE
STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION)
OF WEST RIVER ELECTRIC)
ASSOCIATION, INC. SEEKING A)
DETERMINATION AS TO WHETHER)
THE SOUTH DAKOTA PUC HAS)
JURISDICTION IN THIS INSTANCE AND)
SECONDLY IF PUC DETERMINES)
THAT IS HAS JURISDICTION TO THEN)
APPROVE WREA'S REQUEST TO)
LOCATE A NEW 115 KV TRANSMISSION)
LINE NORTH OF RAPID CITY)

DOCKET NO. _____

AFFIDAVIT OF SERVICE

STATE OF SOUTH DAKOTA)
COUNTY OF PENNINGTON)

Allen G. Nelson of Bangs, McCullen, Butler, Foye & Simmons, LLP, Rapid City, South Dakota, being duly sworn, says that on this 11th day of October, 2000, he served the Petition on Mr. William Bullard, Executive Director, Public Utilities Commission, 500 E. Capitol, Pierre, SD 57501, in the above-entitled action, by mailing the original and ten (10) copies enclosed in an envelope, postage prepaid, and by depositing same in the post office at Rapid City, South Dakota, directed to said executive director at Pierre, South Dakota, the last known address of said executive director.

Allen G. Nelson

Allen G. Nelson

Subscribed and sworn to before me this 11th day of October, 2000.

Karlene Johnson
Notary Public
My Commission Expires: 3/25/2006

(SEAL)

RECEIVED

OCT 16 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

**BANGS, McCULLEN, BUTLER, FOYE & SIMMONS,
L.L.P.**

818 St. Joseph Street

P.O. Box 2670

Rapid City, SD 57709

Phone: (605) 343-1040 Fax: (605) 343-1503

FAX COVER SHEET

REFERENCE NO. West River Electric Association

COMPANY: Public Utilities Commission

TO: William Bullard

FAX NUMBER: (605) 773-3809

FROM: Allen G. Nelson

DATE: October 16, 2000

NO. OF PAGES: 5
(including this sheet)

ORIGINAL TO FOLLOW? No.

The information contained in this facsimile message is privileged information under the attorney/client privilege; therefore, it is confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

618 St. Joe Street
 Mailing Address P.O. Box 2870
 Rapid City, South Dakota 57709-2870
 605-343-1040
 Telecopier 605-343-1503
 www.bangsmccullen.com

October 16, 2000

VIA FACSIMILE ONLY 773-3809

Mr. William Bullard
 Executive Director
 Public Utilities Commission
 500 E. Capitol
 Pierre, SD 57501

Re: West River Electric Association, Inc.

Dear Mr. Bullard:

On Wednesday, October 11, 2000, I sent an original and 10 copies of a Petition which seeks a determination from the PUC as to whether or not the PUC has jurisdiction over the fact situation set forth in the Petition and, if the PUC determines that it does have jurisdiction, to approval the proposed construction work outlined in said Petition.

I attached Exhibits A and B to the Petition referred to above. Upon further reflection, my client has asked that I write to you and ask that Section 4 (which is entitled Terms of Agreement) on page 2 of Exhibit A and Page 2 of Exhibit B be kept confidential by the PUC. I have attached copies of page 2 of Exhibit A and page 2 of Exhibit B with the pertinent portions marked. We are asking that the confidentiality of these two paragraphs be permanent for the reason that WREA is in a situation where they are continually negotiating with people for right-of-way and easements in carrying out their responsibilities of furnishing electricity in their assigned territory. The right-of-way and easements vary in value and price depending upon whether they are in the middle of a strictly rural area or whether they are fairly close in proximity to the municipality of Rapid City. Different prices are agreed upon, depending upon where the right-of-way and easements are located and on behalf of my client, WREA, we believe that it would be very detrimental to our client if the prices agreed upon in Exhibits A and B were to be made public at this time.

Joseph M. Butler
 Thomas H. Foye
 Thomas E. Simmons
 Charles L. Riter
 Allen G. Nelson
 James P. Hurley
 Michael M. Hickey
 Terry L. Hofer
 Rod Schlauger*
 Daniel F. Duffy
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 Rachel V. Japeen

George A. Bangs (1943-1995)
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*Also admitted in Minnesota,
 Nebraska and North Dakota

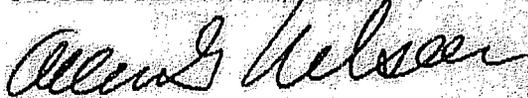
If this creates any problem for you or the PUC, I would appreciate the chance to discuss this request at a time convenient to you.

Thank you for your consideration.

Best regards,

Sincerely,

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, P.L.P.



Allen G. Nelson

ag:ke
Enc.

B. A 40 foot wide easement that runs approximately 1 mile in an east/west direction on Seller's property as shown and set forth in the attached Exhibit B which will be appropriately filed of record with the Meade County Register of Deeds pursuant to a separate document.

Section 4.

TERMS OF AGREEMENT:

The terms of this Agreement are as follows:

1. The purchase price for the approximate 10 acres referred to above is Thirty Thousand Dollars (\$30,000.00).
2. The purchase price for the easement referred to above is Ten Thousand Dollars (\$10,000.00).
3. All of the above sums will be paid to Seller at the time of Closing.

SECTION 5.

TITLE:

Seller hereby agrees to deliver to Buyer title insurance, and the Seller agrees to pay all related costs, showing good and merchantable title in Seller, free and clear of any and all encumbrances, except any and all reservations and easements now of record against the property.

SECTION 6.

TAXES AND ASSESSMENTS:

Taxes are to be prorated to date of possession between Seller and Buyer. Seller warrants there are no unpaid assessments recorded or unrecorded on the property.

SECTION 7.

POSSESSION:

Buyer shall receive possession to the property in Section three above at time of closing.

EXHIBIT A

ii. A 40 foot wide easement that runs approximately 1 mile in an east/west direction on Seller's property as shown and set forth in the attached Exhibit B which will be appropriately filed of record with the Meade County Register of Deeds pursuant to a separate document.

Section 4.

TERMS OF AGREEMENT:

The terms of this Agreement are as follows:

- 1. The purchase price for the approximate 8 acres referred to above is Thirty Thousand Dollars (\$30,000.00).
- 2. The purchase price for the easement referred to above is Ten Thousand Dollars (\$10,000.00)
- 3. All of the above sums will be paid to Seller at the time of Closing.

SECTION 5.

TITLE:

Seller hereby agrees to deliver to Buyer title insurance, and the Seller agrees to pay all related costs, showing good and merchantable title in Seller, free and clear of any and all encumbrances, except any and all reservations and easements now of record against the property.

SECTION 6.

TAXES AND ASSESSMENTS:

Taxes are to be prorated to date of possession between Seller and Buyer. Seller warrants there are no unpaid assessments recorded or unrecorded on the property.

SECTION 7.

POSSESSION:

Buyer shall receive possession to the property in Section three above at time of closing.

EXHIBIT B

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of October 12 2000 through October 18, 2000

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing.

Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINTS

CT00-106 In the Matter of the Complaint filed by Bill and Bev Gallagher, Stephan, South Dakota, against Excel Telecommunications, Inc. Regarding Unauthorized Switching of Services and Double Billing.

The Complainants indicate that for several months they have been double billed by Excel and Midstate for the same calls. They did not authorize Excel. They are seeking appropriate remedies.

Staff Analyst: Leni Healy
Staff Attorney: Karen Cremer
Date Docketed: 10/16/00
Intervention Deadline: NA

CT00-107 In the Matter of the Complaint filed by Amy and Craig Johnson, Sioux Falls, South Dakota, against MCI WorldCom Regarding Unauthorized Switching of Services.

The Complainants allege that they did not authorize MCI for services.

Staff Analyst: Leni Healy
Staff Attorney: Karen Cremer
Date Docketed: 10/16/00
Intervention Deadline: NA

ELECTRIC

EL00-030 In the Matter of the Petition for Declaratory Ruling of West River Electric Association, Inc. on Whether a Proposed Transmission Line Meets the Definition of SDCL 49-41B-2.1.

West River Electric Association, Inc. (WREA) is proposing to construct a 115 kilovolt transmission line north of Rapid City, South Dakota. WREA has determined that it needs to obtain a 115 kilovolt power connection from Western Area Power Administration and run it into a switchyard where WREA would then take the 115 kilovolt line out of the switchyard and run it approximately 2 miles to a distribution substation. WREA is seeking a declaratory ruling from the Commission as to whether or not the proposed project falls within the SDCL 49-41B-2.1 definition of a transmission line and associated facility, thereby requiring a South Dakota Public Utilities Commission permit.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Docketed: 10/12/00
Intervention Deadline: 10/27/00

TELECOMMUNICATIONS

TC00-171 In the Matter of the Application of Ionex Communications North, Inc. for an Amended Certificate of Authority to Include Providing Facilities-Based Local Exchange Services in South Dakota.

Ionex Communications North, Inc. (Ionex) is seeking an amended Certificate of Authority to provide facilities-based local exchange service in South Dakota. Ionex is a South Dakota corporation authorized to provide - and currently is providing - resale local exchange and interexchange telecommunications services in the state.

Staff Analyst: Heather Forney

Staff Attorney: Kelly Frazier

Date Docketed: 10/16/00

Intervention Deadline: 11/03/00

TC00-172 In the Matter of the Filing by Qwest Corporation for Approval of Revisions to its Access Service Tariff.

Qwest Corporation has filed revised "language in the intrastate Switched Access Tariff to be consistent with the changes to the Interstate Switched Access Tariff, related to direct-trunk and tandem-switched routed traffic as a result of the FCC's 1996 Access Reform local transport restructure. As a result of that restructure, interexchange carriers are required to purchase direct-trunk transport between the service wire center and the access tandem, removing the option to purchase either tandem-switched transport or direct-trunk transport between these two points. When interstate and intrastate traffic is routed over the same facility, the changes made to interstate switched access also apply to intrastate switched access. The ... revised language changes provide consistency between the state and federal switched access services for direct-trunk and tandem-switched traffic."

Staff Analyst: Harlan Best

Staff Attorney: Kelly Frazier

Date Docketed: 10/17/00

Intervention Deadline: 11/03/00

TC00-173 In the Matter of the Application of Legacy Long Distance International, Inc. for a Certificate of Authority to Provide Telecommunications Services in South Dakota.

Legacy Long Distance International, Inc. is seeking a Certificate of Authority to provide interexchange telecommunication services in South Dakota. The applicant is a reseller that intends to offer presubscribed outbound, toll-free inbound, travel card and operator assisted services to both residential and business customers.

Staff Analyst: Keith Senger

Staff Attorney: Kelly Frazier

Date Docketed: 10/17/00

Intervention Deadline: 11/03/00

You may receive this listing and other PUC publications via our website or via internet e-mail. You may subscribe or unsubscribe to the PUC mailing lists at <http://www.state.sd.us/puc/>

Bangs, McCullen Law Firm

Bangs, McCullen, Butler, Foye & Simmons, L.L.P.

Rapid City

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Thomas H. Foye
Thomas E. Simmons
Charles L. Ritter
Allen G. Nelson
James P. Hurley
Michael M. Hickey
Terry L. Hofer
Rod Schlauger
Daniel F. Duffy
Jeffrey G. Hurd
Veronica L. Duffy
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Kyla J. Sipprell
Rachel V. Jepsen
Pamela S. Snyder
Tracey A. Fischer

Sioux Falls

Michael A. Hauck
John P. Mullen

Attorneys also admitted in
Nebraska, North Dakota,
Minnesota and Montana

Reply to Rapid City Office

November 9, 2000

Michele M. Farris, PE
SD PUC
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501-5070

RECEIVED
NOV 13 2000
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: EL00-030- In the Matter of the Petition for Declaratory Ruling of West River Electric Association, Inc. on Whether a Proposed Transmission Line Meets the Definition of SDCL 49-41B-2.1.

Dear Michele:

This letter is a response to the questions you raised in your letter which I received on October 26, 2000.

1. IS THE SWITCHYARD EXISTING OR WILL IT BE CONSTRUCTED FOR THIS PROJECT?

ANSWER: The planned switchyard will be constructed hopefully within the next 12 months.

2. PROVIDE A COLOR MAP SHOWING THE LOCATION OF THE TRANSMISSION LINE. ON THE MAP INDICATE THE PUBLIC HIGHWAY OF THE SECTION LINE AND THE AREA PURCHASED FROM THE LANDOWNERS AS WELL AS THE EASEMENTS OBTAINED FROM THE LANDOWNERS.

ANSWER: See the attached Exhibit A.

3. ITEM 5 STATES "THE TRANSMISSION LINE DESCRIBED ABOVE WILL RUN 2 MILES IN LENGTH BUT IT DOES FOLLOW THE SECTION LINES OF THE PROPERTY INVOLVED, THE EDGE OF THE PRIVATE PROPERTY OWNED BY JACK SHERMAN AND FRED MCFARLAND AS DISCUSSED IN PARAGRAPH B ABOVE, AND IT RUNS ADJACENT TO COUNTY ROAD 4C..." I DID NOT SEE A PARAGRAPH B IN THE DOCUMENT; PLEASE EXPLAIN WHAT IS DISCUSSED IN PARAGRAPH B. HOW FAR IS THE TRANSMISSION LINE LOCATED FROM THE CENTER OF COUNTY ROAD 4C?

ANSWER: The initial draft of the Petition filed by WREA was drafted utilizing alphabetical paragraphs. In a subsequent draft, those paragraphs were changed to numerical paragraphs. The reference above to paragraph B merely refers to the

Trust Building
818 St. Joseph Street
P.O. Box 2670
Rapid City, SD 57709-2670
605-343-1040
Fax: 605-343-1503

Security Bank Building
100 N. Phillips Ave.
Suite 610
P.O. Box 949
Sioux Falls, SD 57101-0949
605-339-6800
Fax: 605-339-6801

www.bangsmccullen.com

statement in paragraph 3 which discusses the purchase of property and the acquisition of the easements by WREA from Jack Sherman and Fred McFarland. WREA intends to locate the new transmission line approximately 52 feet from the center of County road 4C because Meade County plans to extend the right-of-way in this area to a 100-foot easement within the next 5 years. See the attached letter from the Meade County Highway Superintendent. See the attached Exhibit B.

4. WHY IS WEST RIVER ELECTRIC ASSOCIATION PURCHASING 8 ACRES FROM MR. MCFARLAND AND 10 ACRES FROM MR. SHERMAN, AS WELL AS PROCURING A ONE-MILE EASEMENT 40 FEET WIDE?

ANSWER: WREA initially intended on purchasing 10 acres from Fred McFarland but, at his request, the purchase was scaled back to 8 acres to allow Mr. McFarland to retain a certain portion of property he wanted to retain and still allow WREA a location to build a switchyard with a security fence located immediately around the switchyard. WREA purchased 10 acres from Jack Sherman in that Mr. Sherman requested WREA to purchase all of the excess land created by the realignment of Elk Creek Road which will allow WREA the needed land to build the distribution sub-station along with a security fence immediately around the needed sub-station. A one-mile easement 40 foot in width was purchased from Jack Sherman and Fred McFarland in order to allow WREA the necessary space to build and maintain the needed transmission line.

5. IS COUNTY ROAD 4C, ALSO KNOWN AS ELK CREEK ROAD BEING REALIGNED? IF SO, IS THE REALIGNMENT A RESULT OF THIS PROJECT? WHAT IS THE RIGHT-OF-WAY OF THE REALIGNED ROAD?

ANSWER: County road 4C and Elk Creek Road has been substantially realigned at the present time primarily based on safety considerations for the traveling public. The realignment of the road was not a result of the project discussed in the Petition recently filed with the PUC on behalf of WREA. WREA has been advised that the right-of-way of the realigned portion of the road is 100 feet.

6. PROVIDE A MAP SHOWING THE REALIGNMENT OF ELK CREEK ROAD

ANSWER: See the attached Exhibit A.

Michele, if you need anything further, please call me at: 605-343-1040. Unless we hear from you otherwise, we will plan to appear in front of the PUC in Pierre on Thursday, November 30, 2000, at 2:00 p.m.

Sincerely,

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, L.L.P.


Allen G. Nelson

12

14250 AVE

PURCHASED PROPERTY

**ELK CREEK
SUBSTATION**

ELK CREEK ROAD

WREA EASEMENT LIM.

NORTH HAINES AVE.

13



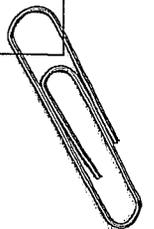
West River Electric Association, Inc.

Continuation

4

of pages

1



START

OF

RETAKE

CONTINUATION

5 -

PURCHASED PROPERTY

ELK CREEK
SUBSTATION

ELK CREEK ROAD

142ND AVE

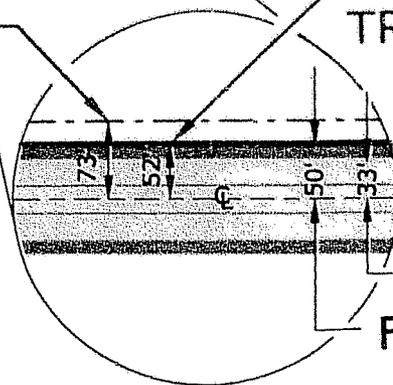
ELK

ELK CREEK ROAD

NORTH HAINES AVE.

WREA EASEMENT LIMITS

13



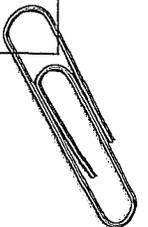
West River Electric Association, Inc.

18

Continuation

6

of pages



END

OF

RETAKE

OFFICE OF
MEADE COUNTY HWY SUPERINTENDENT
HC 75, BOX 2 STURGIS, S.D. 57785
TELEPHONE: (605)347-4565 FAX: (605)347-6810

November 1, 2000

Dan Muth
WREA
3250 E. Highway 44
P.O. Box 3486
Rapid City, SD 57709-3486

Dear Mr. Muth:

In regards to our telephone conversation on October 30, 2000, concerning the power line along Elk Creek Road in Meade County, I wish to advise as follows:

1. I did some measuring from fence-to-fence in the area where you want to build your power line and it is 74 feet to 84 feet between fences and in some places 37 feet to 42 feet from the centerline. This indicates that Meade County will need to purchase additional right-of-way for the new road we plan to build within the next 5 years in order to have a minimum of 100 feet of right-of-way or 50 feet from the center of the section line. I have enclosed a map and a copy of the S.D.D.O.T. 5 year plans which show that this area of the road will be widened to a 100-foot right-of-way (2001-2005).

2. We would appreciate it if your power line could be placed at 52 feet from the centerline of the current right-of-way in order to save costs to Meade County at a later date.

Thank you for your cooperation. If you have any questions, please call 605-347-4565.

Sincerely,

Meade County Highway Supt.

By: *Samuel E. Le... ..*

EXHIBIT B

CONTINUATION

7

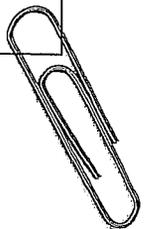
Mendo County

Line #	Project Number	PCN	County	Length	Route	Location of Project	Type of Improvement	Federal Funds	Fiscal Year	Total Cost (M\$)
663	BRO 8047()	6354	Mendo	0.2		4.5 S & 3 W of Elm Springs over Elk Creek	Structure & Approach Grading	0.035	2003	0.172
664	BRF 6609()	6355	Mendo	0.2		8 E & 9.5 N of Sturgis over Nine Mile Creek	Structure & Approach Grading	0.020	2003	0.175
665	BRO 8047()	6356	Mendo	0.2		6 W & 15.5 S of Falk over a Creek	Structure & Approach Grading	0.025	2003	0.182
666	BRF 6167()	6357	Mendo	0.2		11.8 S of US 212 over a Creek	Structure & Approach Grading	0.025	2003	0.172
667	BRO 8047()	6360	Mendo	0.2		10 E & 4.5 N of Sturgis over Spring Creek	Structure & Approach Grading	0.020	2003	0.186
668	P 6491(00) P 6446()	6358 6359	Mendo	10.8		Elk Vale Road for Pearlington County Line 4 N & 4 W	Grading & Gravel Surfacing	0.000	2003	1.000

Continuation

R

of pages



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

IN THE MATTER OF THE PETITION FOR)	DECLARATORY RULING
DECLARATORY RULING OF WEST RIVER)	
ELECTRIC ASSOCIATION, INC. ON WHETHER)	EL00-030
A PROPOSED TRANSMISSION LINE MEETS)	
THE DEFINITION OF SDCL 49-41B-2.1)	

On October 12, 2000, the Public Utilities Commission (Commission) received a petition from West River Electric Association, Inc. (WREA) seeking a determination as to whether the Commission has jurisdiction over the siting of WREA's proposed construction of a new 115 kV transmission line near Rapid City, South Dakota. In its petition, WREA stated that it "has determined that it needs to obtain a 115 kV power connection from WAPA and run it into a switchyard where WREA would then take the 115 kV line out of the switchyard and run it approximately 2 miles to a distribution substation where it would be reduced to 7200 volts. The proposed 115kV transmission line would terminate at this substation and would be owned and operated by WREA." WREA further stated that the transmission line will be two miles long and that it follows section lines, the edge of private property and runs adjacent to county road 4C, also know as Elk Creek Road.

On November 13, 2000, the Commission received a response from WREA which addressed questions from Michele Farris, a staff analyst for the Commission. In that response WREA attached a letter from the Office of the Meade County Highway Superintendent which requested WREA to place its proposed transmission line 52 feet from the centerline of the current right-of-way because Meade County intended to build a new road within the next five years and anticipated purchasing a minimum of 100 feet of right-of-way. In order to accommodate the county, a map submitted by WREA showed that the proposed transmission line would be built 52 feet from the existing centerline which would be 19 feet outside of the existing 66 foot right-of-way and two feet outside the proposed 100 foot right-of-way for the new road.

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-41B. At its November 30, 2000, meeting, the Commission considered this matter. WREA presented additional information on its proposed transmission line. Following the presentation, the Commission voted to find it has jurisdiction over siting the proposed transmission line (Commissioner Burg, dissenting). Pursuant to SDCL 49-41B-2.1(2), a 115 kV transmission line is subject to the Commission's siting jurisdiction "if more than one mile in length of the transmission line does not follow section lines, property lines, roads, highways or railroads, or is not reconstruction or modification of existing transmission lines and existing associated facilities located on abandoned railroad rights-of-way." Consistent with its decision in Docket EL98-004, the Commission finds that following roads or highways means the transmission line must be located within the easement or right-of-way of the road or highway, that following section lines means the transmission line must be located within the section line public highway, and that following property lines means the transmission line must be located on the property line. See Docket EL98-004, *In the Matter of the Petition for Declaratory Ruling Filed by the City of Pierre Regarding a Transmission Line, Declaratory Ruling*, issued June 30, 1998, (conclusions of law 4, 5 and 6). As proposed by WREA, the proposed transmission line would be 19 feet outside of the existing 66 foot right-of-way. Under the facts of this case, the Commission finds that more than one mile of the proposed transmission line does not follow section lines, property lines, roads, highways or railroads, or is not reconstruction or modification of existing transmission lines and existing associated facilities located on abandoned railroad rights-of-way. Therefore, the Commission finds it has siting jurisdiction over the 115 kV transmission line as proposed by WREA. It is therefore

ORDERED, that WREA's proposed 115 kV transmission line is not exempt from the Commission's siting jurisdiction.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 14th day of December, 2000. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 14th day of December, 2000.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u><i>Alvin Kelbo</i></u>
Date:	<u>12/14/00</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION

JAMES A. BURG, Chairman, dissenting

Pam Nelson
PAM NELSON, Commissioner

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

RECEIVED

NOV 30 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

November 20, 2000

Dan Muth
West River Electric Association, Inc.
PO Box 3486
Rapid City, SD 57709

RE: Agreement/Consent Letter

Dear Mr. Muth:

We, Jack and Amy Kerstien, 928 Elk Creek Rd, Piedmont, SD 57769-7246, live and/or own property in the immediate proximity of the new transmission line, substation and switchyard that West River Electric Association, Inc., plans to construct. I have had the entire construction project explained to me to my satisfaction and I have located an "X" on the attached map indicating the general proximity of my property in relationship to the planned construction project. I have no objection to the transmission line and related construction project that is planned by West River Electric Association, Inc.

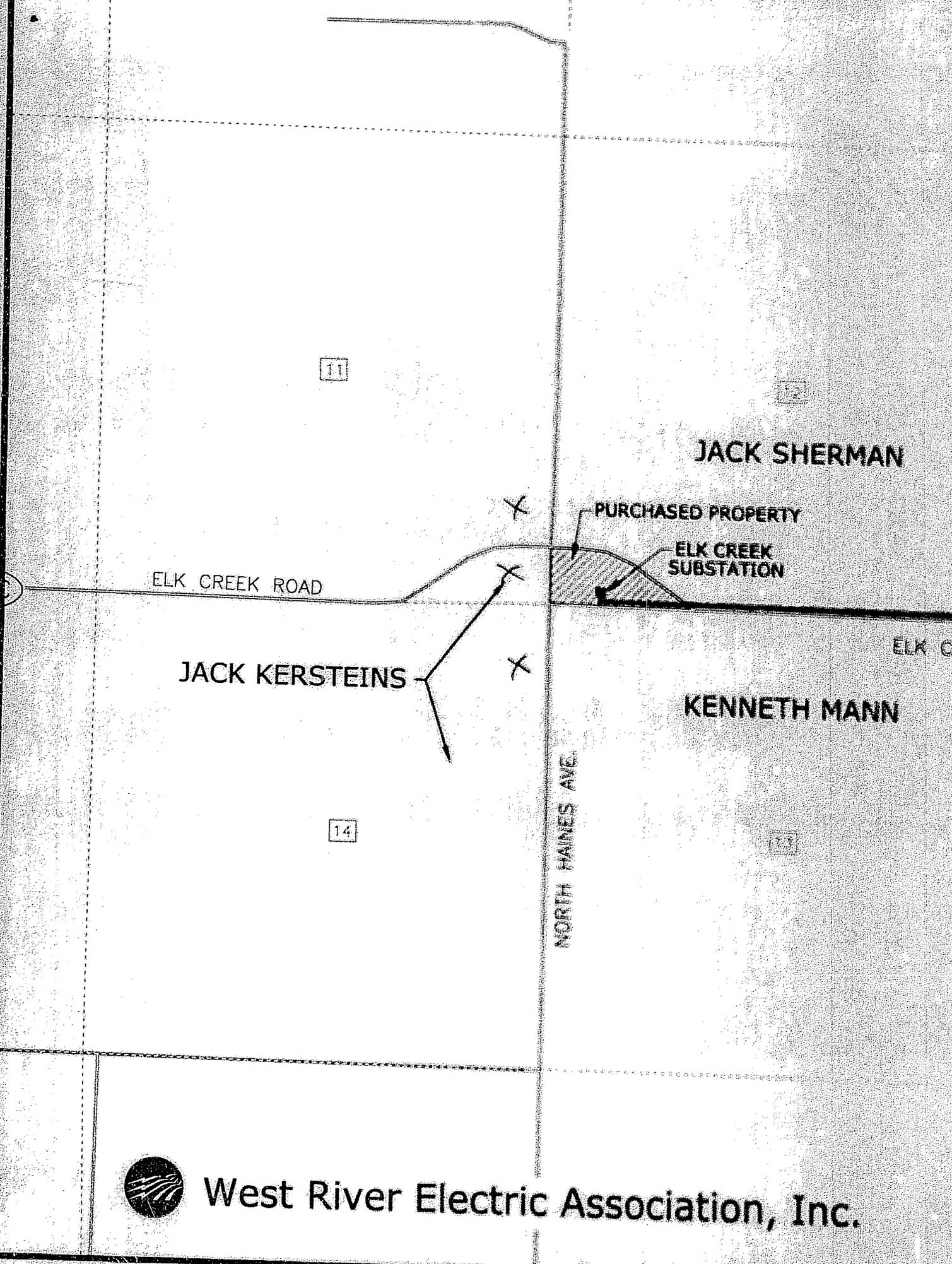
Dated this 27th day of November, 2000.



Jack Kerstien



Amy Kerstien



11

12

JACK SHERMAN

PURCHASED PROPERTY

ELK CREEK SUBSTATION

ELK CREEK ROAD

ELK CR

JACK KERSTEINS

KENNETH MANN

NORTH HAINES AVE.

14

15



West River Electric Association, Inc.

RECEIVED

NOV 30 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

November 20, 2000

Dan Muth
West River Electric Association, Inc.
PO Box 3486
Rapid City, SD 57709

RE: Agreement/Consent Letter

Dear Mr. Muth:

We, Glenn and Rosalind McPherson, HC 80 Box 724 Piedmont, SD 57760-9510, live and/or own property in the immediate proximity of the new transmission line, substation and switchyard that West River Electric Association, Inc. plans to construct. I have had the entire construction project explained to me to my satisfaction and I have located an "X" on the attached map indicating the general proximity of my property in relationship to the planned construction project. I have no objection to the transmission line and related construction project that is planned by West River Electric Association, Inc.

Dated this 22 day of November, 2000.


Glenn McPherson


Rosalind McPherson

218th ST.

144th AVE.

07

15

FRED McFARLAND

JOE & DIANE NORMAN

PURCHASED
PROPERTY

ELK CREEK TAP

WAPA 115KV

ELK CREEK ROAD

ROAD

ALICE IVERSON

GLEN & ROSALIND
McPHERSON

18

WAPA 115KV

RECEIVED

NOV 30 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

November 20, 2000

Dan Muth
West River Electric Association, Inc.
PO Box 3486
Rapid City, SD 57709

RE: Agreement/Consent Letter

Dear Mr. Muth:

I, Donald Norman, Norman Ranch, P.O. Box 767 Black Hawk, SD 57718-0767 live and/or own property in the immediate proximity of the new transmission line, substation and switchyard that West River Electric Association, Inc. plans to construct. I have had the entire construction project explained to me to my satisfaction and I have located an "X" on the attached map indicating the general proximity of my property in relationship to the planned construction project. I have no objection to the transmission line and related construction project that is planned by West River Electric Association, Inc.

Dated this 21st day of November, 2000.


Donald Norman

218th ST.

07

FRED McFARLAND

PURCHASED
PROPERTY

ELK CREEK TAP

WAPA 115KV



JOE & DIANE NORMAN

144th AVE.

ELK CREEK ROAD

ROAD

ALICE IVERSON

GLEN & ROSALIND
McPHERSON

18

WAPA 115KV



RECEIVED

NOV 20 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

November 20, 2000

Dan Muth
West River Electric Association, Inc.
PO Box 3486
Rapid City, SD 57709

RE: Agreement/Consent Letter

Dear Mr. Muth:

I, Alice M. Iverson, HC 75 Box 320, Sturgis, SD 57785, live and/or own property in the immediate proximity of the new transmission line, substation and switchyard that West River Electric Association, Inc., plans to construct. I have had the entire construction project explained to me to my satisfaction and I have located an "X" on the attached map indicating the general proximity of my property in relationship to the planned construction project. I have no objection to the transmission line and related construction project that is planned by West River Electric Association, Inc.

Dated this 21st day of November, 2000.



Alice M. Iverson

218th ST.

07

FRED McFARLAND

PURCHASED
PROPERTY

ELK CREEK TAP

WAPA 115kV

JOE & DIANE NORMAN

144th AVE.

ELK CREEK ROAD

ROAD



ALICE IVERSON
e

GLEN & ROSALIND
McPHERSON

08

WAPA 115kV

RECEIVED

NOV 18 2000

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

November 20, 2000

Ross Johnson
West River Electric Association, Inc.
PO Box 3486
Rapid City, SD 57709

RE: Agreement/Consent Letter

Dear Mr. Johnson:

I, Kenneth Mann, P.O. Box 373, Rapid City, South Dakota 57709-0373, live and/or own property in the immediate proximity of the new transmission line, substation and switchyard that West River Electric Association, Inc. plans to construct. I have had the entire construction project explained to me to my satisfaction and I have located an "X" on the attached map indicating the general proximity of my property in relationship to the planned construction project. I have no objection to the transmission line and related construction project that is planned by West River Electric Association, Inc.

Dated this 11-22 day of November, 2000.



Kenneth Mann

11

12

JACK SHERMAN

PURCHASED PROPERTY

ELK CREEK
SUBSTATION

ELK CREEK ROAD

ELK CR

JACK KERSTEINS

KENNETH MANN

14

13

NORTH HAINES AVE.



West River Electric Association, Inc.

12

07

142nd AVE.

WAPA 115KV

PURCHASED PROPERTY

PURCHASED PROPERTY

ELK CREEK SUBSTATION

ELK CREEK TAP

ELK CREEK ROAD

ELK CREEK ROAD

WREA EASEMENT LIMITS

PROPOSED 115KV TRANSMISSION LINE

EXISTING ROAD ROW
FUTURE ROAD ROW

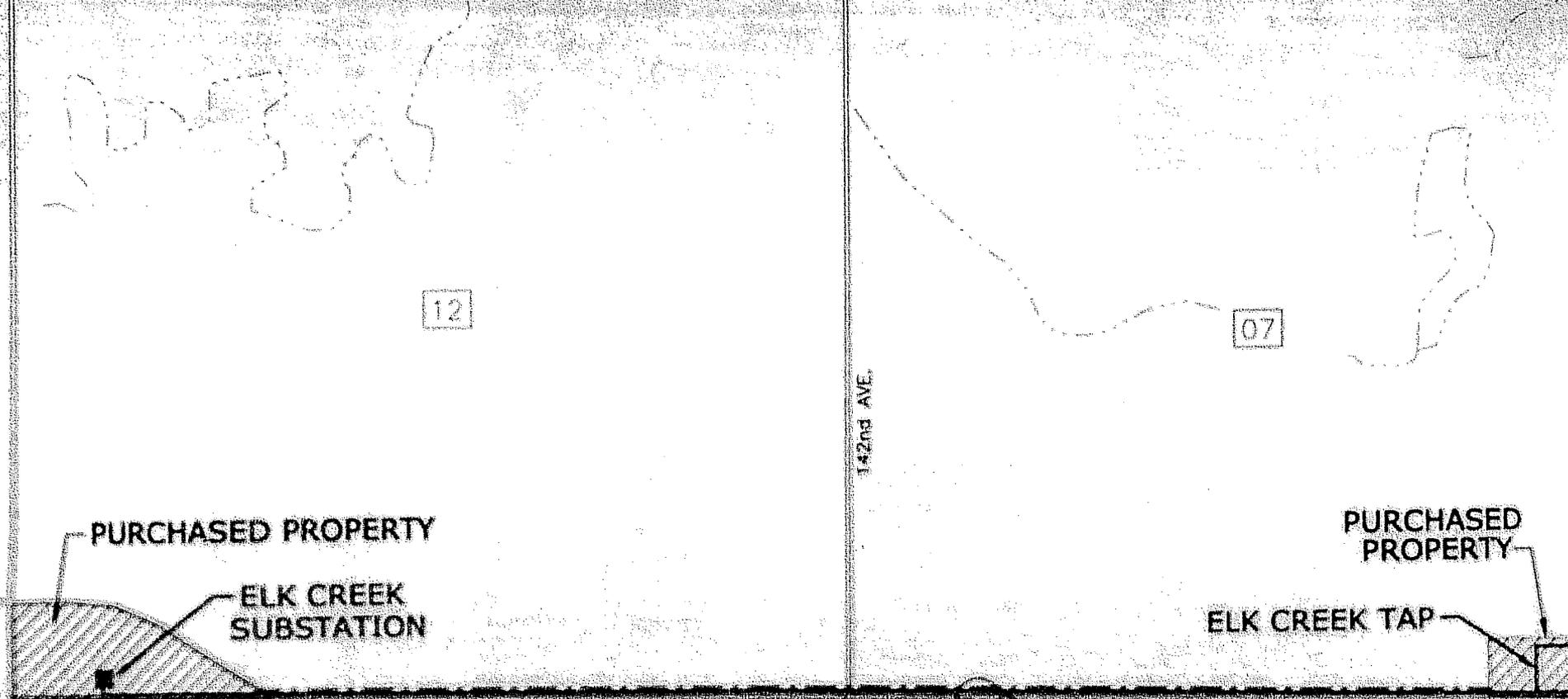
NORTH MAIN ST

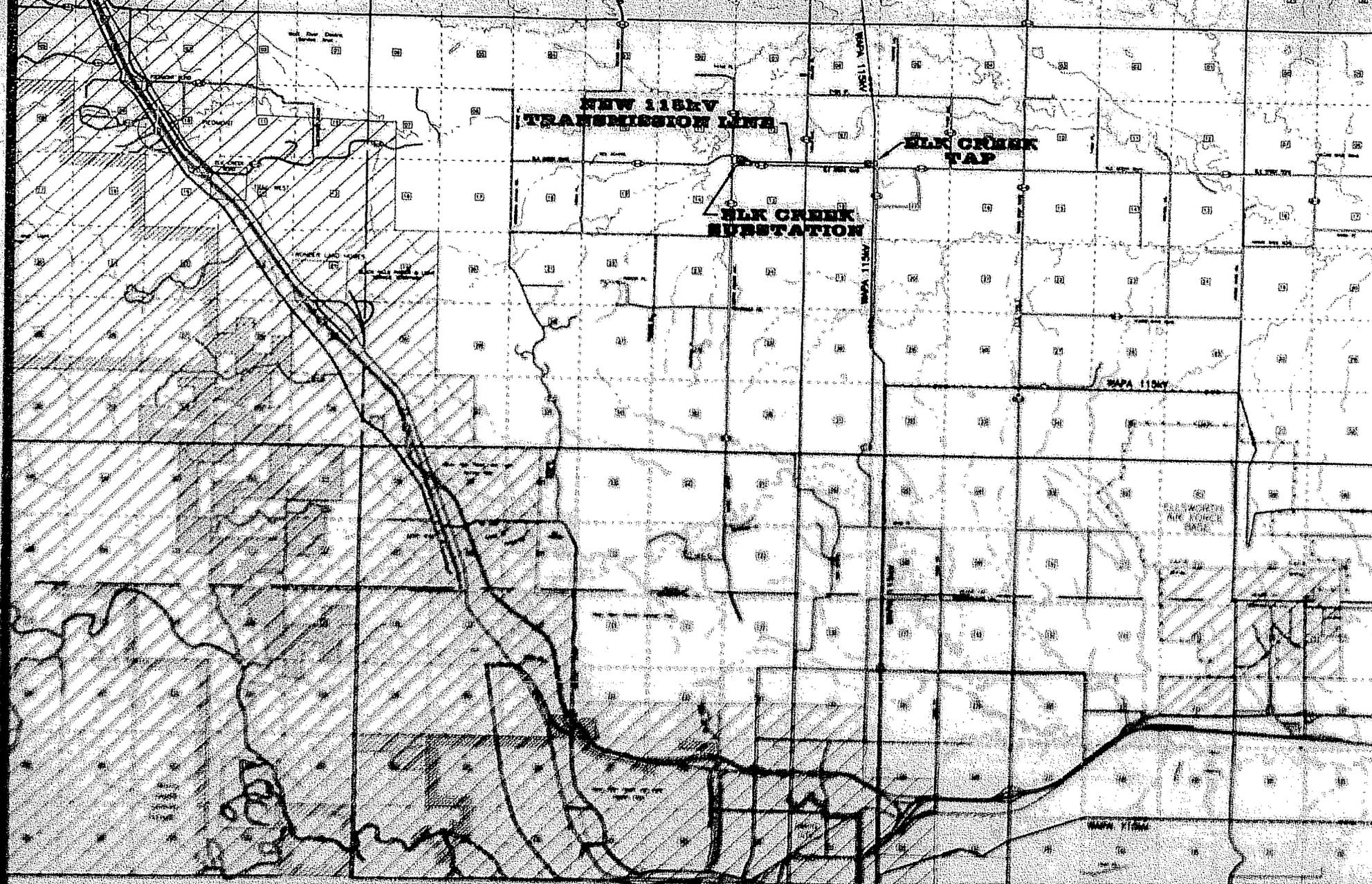
WAPA 115KV

3

18

West River Electric Association, Inc.





● West River Electric Association, Inc.

