KC/MB

EL 02-003

EL 02-003

DOCKET NO. _____

In the Matter of — IN THE MATTER OF THE PETITION OF WEST RIVER ELECTRIC ASSOCIATION, INC. FOR A DECLARATORY RULING REGARDING SERVICE TERRITORY RIGHTS CONCERNING BLACK HILLS POWER, INC. AND WEST RIVER ELECTRIC ASSOCIATION, INC.

Public Utilities Commission of the State of South Dakota

DATE		MEMORANDA
2/21	02	Filed and Docketed;
2/28	02	Weekly Filing;
3/11	02	Black Hills' Petition for Leave to Intervene and Brief in Resistance to West River's Petition for Declaratory Ruling;
4/4	02	Order for and Notice of Hearing and Order Granting Intervention;
4/17	02	Order Cancelling Hearing;
4/17	02	Second Order for and Notice of Hearing;
5/10	02	West River's and BHP's Joint Submittal of Stipulated Facts;
5/10	02	West River's Additional Proposed Finding of Fact;
5/10	02	BHP's Additional Proposed Finding of Fact;
5/22	02	Additional Exhibits Introduced on behalf of Intervenor BHP;
5/31	02	Order Setting Briefing Schedule;
6/4	02	Transcript of Hearing held 5/22/02;
6/25	02	Closing Brief of West River;
6/28	02	Order Amending Briefing Schedule;
7/10	02	Intervenor Black Hills Power's Post-Hearing Brief;
7/15	02	Staff's Response to West River Electric's Post Hearing Brief;
7/23	02	Reply Brief of West River;
9/24	02	Declaratory Ruling Regarding SDCL 49-34A-42 and Rapid City Wastewater Plant;
9/24	02	Docket Closed.

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Bangs McCullen Law Firm

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

Rapid City
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
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Kyla J. Sipprell
Rachel V. Jepsen
Tracey A. Fischer

Sioux Falls
Michael A. Hauck
John P. Mullen
Robert J. Hollan

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

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

Reply to Rapid City Office

Writer's e-mail address: gerland@bangsmccullen.com

February 19, 2002

Ms. Debra Elofson
Executive Director
Public Utilities Commission
Capitol Building, 1st floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Re: In the Matter of the Petition for Declaratory Ruling Filed For West River Electric Association, Inc.

Dear Ms. Elofson:

Our Firm represents West River Electric Association, Inc. ("WREA")in the above-referenced matter. Enclosed for filing, pursuant to the provisions of S.D.C.L. § 1-26-15 and A.R.S.D. 20:10:01:34, and in accordance with A.R.S.D. 20:10:01:02.5, please find an original and ten copies of WREA's Petition for Declaratory Ruling.

Our Firm has provided a copy of its Petition to Mr. Steven Helmers, attorney for Black Hills Power, Inc. ("BHP") but would request the Commission formally serve BHP with a copy of said Petition at such time as the Commission may set the matter for hearing.

Please advise should the Commission desire any further information to be submitted for its consideration prior to the hearing. Thank you.

Sincerely,

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

Gregory J. Erlandson

Enclosures
cc: Mr. James Pahl (w/encl.)
Mr. Steven Helmers (w/encl.)

EL 02-003
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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

STATE OF SOUTH DAKOTA
PUBLIC UTILITIES COMMISSION

PETITION FOR DECLARATORY RULINGS

IN THE MATTER OF THE PETITION FOR DECLARATORY RULING FILED FOR WEST RIVER ELECTRIC ASSOCIATION, INC., AS IT RELATES TO BLACK HILLS POWER, INC.	)))))	DOCKET NO. _____

Pursuant to the provisions of S.D.C.L. § 1-26-15 and A.R.S.D. 20:10:01:34, West River Electric Association, Inc. ("WREA"), does hereby petition the South Dakota Public Utilities Commission ("Commission") declaratory rulings in regard to the following issues:

A. Whether Black Hills Power, Inc. is rendering or has extended service within WREA's territory in violation of S.D.C.L. § 49-34A-42.

B. Whether WREA has the right to provide future electrical service to the Rapid City Waste Treatment Facility located within WREA's assigned service area.

STATEMENT OF FACTS AND LAW

1. **The state statutes in question are:**

A. **S.D.C.L. § 49-34A-42:** Each electric utility has the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975, and to each and every present and future customer in its assigned service area. No electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless such other electric utility consents thereto in writing and the agreement is approved by the commission consistent with §49-34A-55. However, any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

The commission shall have the jurisdiction to enforce the assigned service areas established by §§ 49-34A-42 to 49-34A-44, inclusive, and §§ 49-34A-48 to 49-34A-59, inclusive.

B. **S.D.C.L. § 49-34A-43:** The boundaries of each assigned service area, outside of incorporated municipalities, shall be a line equidistant between the electric lines of adjacent electric utilities as they existed on March 21, 1975, provided that these boundaries may be modified by the public utilities commission to take account of natural and other physical barriers which would make service of electric power and energy beyond those

barriers economically impractical and shall be modified to take account of the contracts provided for in this section, and provided further that said boundaries shall also be modified by the commission to take into account orders entered before July 1, 1975 by the electric mediation board.

Contracts between electric utilities, which are executed on or before July 1, 1976, designating service areas and customers to be served by the electric utilities approved by the commission shall be valid and enforceable and shall be incorporated into the appropriate assigned service areas. The commission shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected and will promote the efficient and economical use and development of the electric systems of the contracting electric utilities.

Where a single electric utility provided electric service within a municipality on March 21, 1975, that entire municipality shall constitute a part of the assigned service area of that electric utility. Nothing contained in this chapter shall modify existing rights of municipalities to establish an electric utility. Where two or more electric utilities provided electric service in a municipality on March 21, 1975, the boundaries of the assigned service areas within an incorporated municipality shall be assigned pursuant to the equal distance concept as applied to lines located only within the municipal boundaries.

C. **S.D.C.L. § 49-34A-44:** On or before January 1, 1976, or, when requested in writing by an electric utility and for good cause shown, and at a further time as the public utilities commission may fix by order, each electric utility shall file with the commission a map or maps showing all its electric lines outside of incorporated municipalities as they existed on March 21, 1975. Each electric utility shall also submit in writing a list of all municipalities in which it provided electric service on March 21, 1975. Where two or more electric utilities serve a single municipality, the commission may require each utility to file with the commission a map showing its electric lines within the municipality.

On or before July 1, 1976, the commission shall, after notice and hearing, establish the assigned service area or areas of each electric utility and shall prepare or cause to be prepared a map or maps to accurately and clearly show the boundaries of the assigned service area of each electric utility.

In those areas where, on March 21, 1975, the existing electric lines of two or more electric utilities were so intertwined that §49-34A-43 cannot reasonably be applied, the commission shall, after hearing, determine the boundaries of the assigned service areas for the electric utilities involved. In making its decision, the commission shall be guided by the following conditions as they existed on March 21, 1975:

(1) The proximity of existing distribution lines to such assigned territory, including the length of time such lines have been in existence;
(2) The adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service;
(3) The elimination and prevention of duplication of distribution lines and facilities supplying such territory;
(4) The willingness and good faith intent of the electric utility to provide adequate and dependable electric service in the area to be assigned;
(5) That a reasonable opportunity for future growth within the contested area is afforded each electric utility.

Any electric utility which feels itself aggrieved by reason of an assignment of a service area may protest such assignment within a ninety-day period after issuance of the map of the assigned service areas by the commission and the commission shall have the power, after hearing, to revise or vacate such assigned service area or portions thereof consistent with the provisions of this section and §49-34A-43.

2. **The facts and circumstances which give rise to this petition are as follows:**

WREA is a cooperative, not-for-profit utility incorporated under the laws of South Dakota and has been given an assigned service area (*See* Exhibits A and B indicating partial service area) for the purpose of providing electric service to the customers within its assigned territory pursuant to South Dakota law. S.D.C.L. § 49-34A-44.

Black Hills Power, Inc. ("BHP")[1] is a for profit corporation incorporated under the laws South Dakota and has also been given an assigned service area (*See* Exhibits A and B indicating partial service area) for the purpose of providing electric service to the customers within its assigned territory pursuant to South Dakota law. Id.

The City of Rapid City, South Dakota, ("City") has owned and operated the sewer plant since approximately 1967. WREA supplied temporary power for the initial construction of the plant. BHP, as explained below, provided an initial service to the plant which is located within WREA's designated service area. During the mid-1980's, BHP, by adding a second service to

the plant without consultation or approval from WREA or the Commission, impermissibly expanded its service within WREA's designated service area.

City has prepared specifications and is preparing to receive bids for substantial construction of new facilities and expansion of the plant. The City will need additional electrical services within WREA's designated service area. WREA respectfully submits it is entitled to provide the new service to the plant.

The territorial map filed with the Commission clearly indicates the sewer plant is in WREA's assigned service area.[2] S.D.C.L. § 49-34A-44. The locations of existing, planned and the potential future service sites are identified in Attached Exhibit C and described as follows:

1. **Service Number One**. This was the first service to the plant was installed and maintained by BHP around 1967, the year the plant went on line. Exhibit C. WREA has never challenged BHP's right to maintain this service. WREA supplied temporary electrical service to the plant during construction and did construct three phase at the time of construction.
2. **Service Number Two**. This disputed service was installed in 1985 or 1986 by BHP. BHP did not have WREA's consent to install this service within WREA's territory and there is no indication the Commission ever considered or approved the same. Id.
3. **Services Three through Five**. Services three through five are the proposed new services as indicated in the specifications. Id. Service three would be for the new sludge handling building, service four to the new blower building and service five to the new administration building. These new services will consist of separate transformers, meters, and primary

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[1] Formerly known as Black Hills Power & Light Company.

[2] "Assigned service are," is defined as the "geographical area in which the boundaries are established as provided in §§ 49-34A-42 to 49-34A-44, inclusive, and §§ 49-34A-48 to 49-34A-59[.]" S.D.C.L. § 49-34A-1 (1).

wires. Id. Each of these new service sites will have its own transformer, meters, entrance panels, and standby generators.

3. **Service Six.** Service six is a potential future service site.

A. BHP is rendering or has extended service within WREA's territory in violation of S.D.C.L. § 49-34A-42.

Through a special city election held on July 11, 1967, BHP was given the right to provide the original service to the sewer plant.[3] WREA does not dispute that in 1975, the sewer plant was a BHP customer, pursuant to S.D.C.L. § 49- 34A-42, for retail electric power within WREA's territory.

S.D.C.L. § 49-34A-42 provides:

> Each electric utility has the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975, and to each and every present and future customer in its assigned service area. No electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless such other electric utility consents thereto in writing and the agreement is approved by the commission consistent with §49-34A-55. However, any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.
>
> The commission shall have the jurisdiction to enforce the assigned service areas established by §§ 49-34A-42 to 49-34A-44, inclusive, and §§ 49-34A-48 to 49-34A-59, inclusive.

WREA does, however, dispute BHP's extension of its original service to the plant in approximately 1985 or 1986 when BHP installed Service Two. See Exhibit C. BHP did not have WREA's consent to install this service within WREA's territory and there is no indication the Commission ever approved the same. See S.D.C.L. § 49-34A-42 ("No electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless such other electric utility consents thereto in writing and the agreement is approved

[3] WREA supplied power for the initial construction of the sewer plant.

by the commission consistent with §49-34A-55.). Therefore, WREA respectfully requests a declaratory ruling that BHP's installation and maintenance of Service Two within WREA's service area is illegal and invalid.

B. WREA has the right to provide future electrical service to the sewer plant located within its assigned service area.

The South Dakota Supreme Court has consistently held that electric utilities have the right to exclusively serve customers within their assigned service areas. Matter of Certain Territorial Elec. Boundaries (Aberdeen) 281 N.W.2d 72 (S.D. 1979) (citing S.D.C.L. § 49-34A-42). Indeed, the plain language of S.D.C.L. § 49-34A-42 confirms WREA's right to deliver and maintain the proposed new services to the sewer plant by providing in part:

> No electric utility shall render or extend[4] electric service at retail within the assigned service area of another electric utility unless such other electric utility consents thereto in writing and the agreement is approved by the commission consistent with §49-34A-55.

Again, WREA does not dispute that BHP was serving the sewer plant as of March 21, 1975. City proposes three more services for its expansion and new construction of the plant as well as one potential additional future site. WREA submits it is entitled to provide any new service to the sewer plant and that "location" refers to the original single service site rather than City's entire property. Id.

There are no South Dakota Supreme Court cases defining "location" as it is used in S.D.C.L. § 49-24A-42. The South Dakota Supreme Court, however, in the Matter of Clay-Union Electric Corporation, rejected an argument that this statute and its predecessor, S.D.C.L. § 49-41-7, reflected a "legislative intent to protect exclusive service rights, not merely to a customer, but to a legally described area surrounding that customer." 300 N.W.2d 58, 61 (1980). The court rejected the specific argument that the legislative "change of the word "structures" in S.D.C.L. §

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[4] The word "extend" has been defined as to "reach or be or make continuous over a certain area" or to add to, increase, stretch or lay out. The Oxford Dictionary 511 (Am. Ed. 1996).

49-41-7 to "location" in S.D.C.L. § 49-34A-42 requires a more expansive interpretation of the reserved rights. Id.

> By the terms of [S.D.C.L. § 49-34A-42] the Legislature provided two specific types of protection. First, it assured that each utility would be granted all *future service rights* within its designated service area; and second, it protected *individual service* existing at the time the franchise was granted.

Id. at 62 (emphasis added).

It is clear that the Legislature sought to protect WREA by granting it *all service rights* within its designated service area after the enactment of S.D.C.L. § 49-34A-42 in 1975. Id. Further, the Legislature sought to protect BPH's then existing "individual service" to the plant. Id. The prohibition found in S.D.C.L. § 49-34A-42 against extending services, without the consent of the utility who has control over the service is consistent with WREA's position on entitlement to provide the new service to the plant. The same prohibition also clearly supports WREA's position that the word "location" refers only to a single service site or meter rather than the customer's entire property.

The following guidelines have been held to govern interpretation and application of Chapter 49-34A:

> The intent of the legislature is "derived from the plain, ordinary and popular meaning of statutory language." . . . Statutes are to be read in pari materia. . . . It is presumed that the legislature intended provisions of an act to be consistent and harmonious. . . . It is also presumed that the legislature did not intend an absurd or unreasonable result.

Matter of Northwestern Public Service Co., 560 N.W.2d 925, 927 (citations omitted).

The protection of existing service rights, as found in S.D.C.L. § 49-34A-42, is subordinate only to the ability of utility companies' right to contract to designated service areas and customers to be served (subject to Commission approval). Id. The bottom line is that the

exclusive service rights contained in S.D.C.L. § 49-34A-42 must be recognized unless the competing utilities contract otherwise and receive Commission approval.

WREA is entitled to provide new service to the plant no matter how the term "location" is interpreted. S.D.C.L. § 49-34A-42 unambiguously provides that BHP is prohibited from *extending* electric service within the sewer plant which is in WREA's assigned service area unless WREA consents[5] in writing and the agreement is approved by the Commission. There is no question BHP would have to *extend* its facilities to provide the new service to the plant which is in WREA's service area.[6]

The South Dakota Supreme Court has been called upon to determine what actions constitute rendering or extending services within the meaning of S.D.C.L. § 49-34A-42. In the Matter of Northern States Power Co., 489 N.W.2d 365 (1992). The Supreme Court held that extending a private power line to a transformer constituted an impermissible extension of services within another's designated service area. Id. There is little room to doubt that the new services to the plant consisting of extending primary distribution lines, separate transformers and meters constitute an extension of services within the meaning of S.D.C.L. § 49-34A-42. See Ex. C (services 3 through 5).

3. The precise issues to be answered by the commission's declaratory ruling is:

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[5] WREA does not dispute that, subject to approval of the Commission, electric utilities may buy, sell, or exchange service rights by mutual agreement. S.D.C.L. § 49-34A-55. Any agreement which "changes assigned service areas" has to be filed and approved by the Commission before it may become effective. Id. In the present case, there has never been a mutual agreement or Commission approval to allow BHP to serve the sewer plant. WREA and BHP have, however, previously entered into agreements which, under certain conditions, allow them to serve certain customers in each others' designated service areas. Typically, if the general character of the customer's usage is deemed to have changed the service is to revert back to the utility holding the service area. The agreements also provided that the utility certified to the territory shall have the option to serve *any new service* in that territory.

[6] BHP's right to protest the assignment of the sewer plant in WREA's service area expired ninety-day's after the issuance of the map of the assigned service areas by the Commission. S.D.C.L. § 49-34A-44.

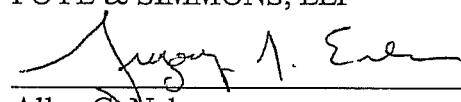
a. Whether WREA has the right to provide the service to the sewer plant installed by BHP in 1985 or 1986.

b. Whether WREA has the right to provide future electrical service to the sewer plant located within WREA's assigned service area.

WREA respectfully submits it is entitled to a declaratory ruling that BHP has illegally extended its service within WREA's designated service area and that WREA is entitled to provide all future service to the sewer plant.

Dated at Rapid City, South Dakota, this 19th day of February, 2002.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, LLP



Allen G. Nelson
Gregory J. Erlandson
Attorneys for West River Electric Association, Inc.
P.O. Box 2670
Rapid City, SD 57709-2670
(605) 343-1040

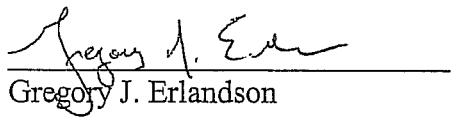
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a copy of this legal document upon the person herein next designated, all on the date below shown, by depositing a copy thereof in the United States mail at Rapid City, South Dakota, postage prepaid, in an envelope addressed to said addressee, to wit:

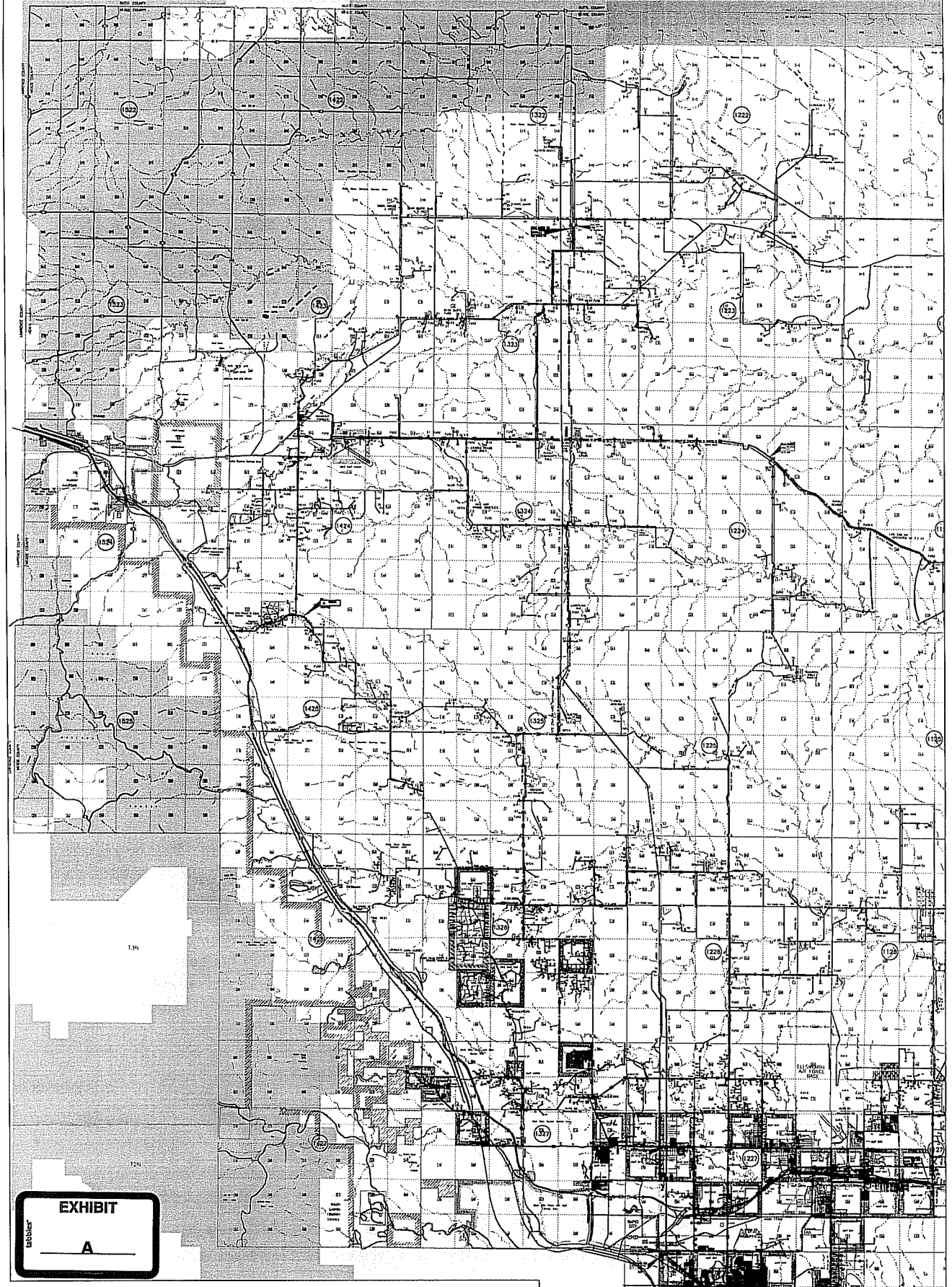
Mr. Steven J. Helmers, Esq.
Attorney for Black Hills Corporation
625 9th St.
Rapid City, SD 57701

which address is the last address of the addressee known to the subscriber.

Dated this 19th day of February, 2002.



Gregory J. Erlandson



EXHIBIT
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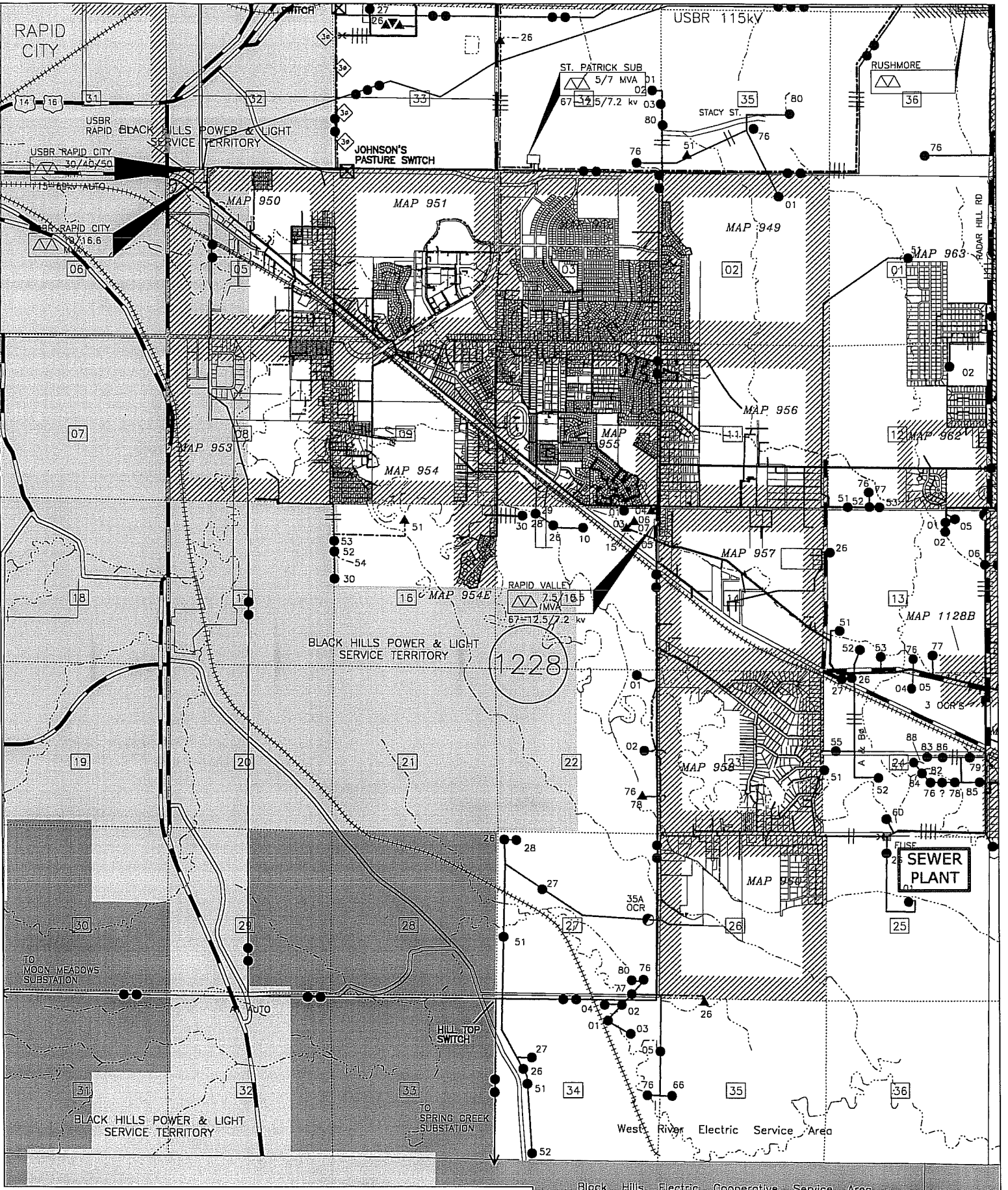
West River Electric Association
Black Hills Electric Cooperative
Butte Electric Cooperative
Grand Electric Cooperative
Black Hills Power


RAPID CITY
USBR 115kV
ST. PATRICK SUB
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RUSHMORE
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115-69kV AUTO
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USBR RAPID CITY
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MAP 950
MAP 951
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MAP 963
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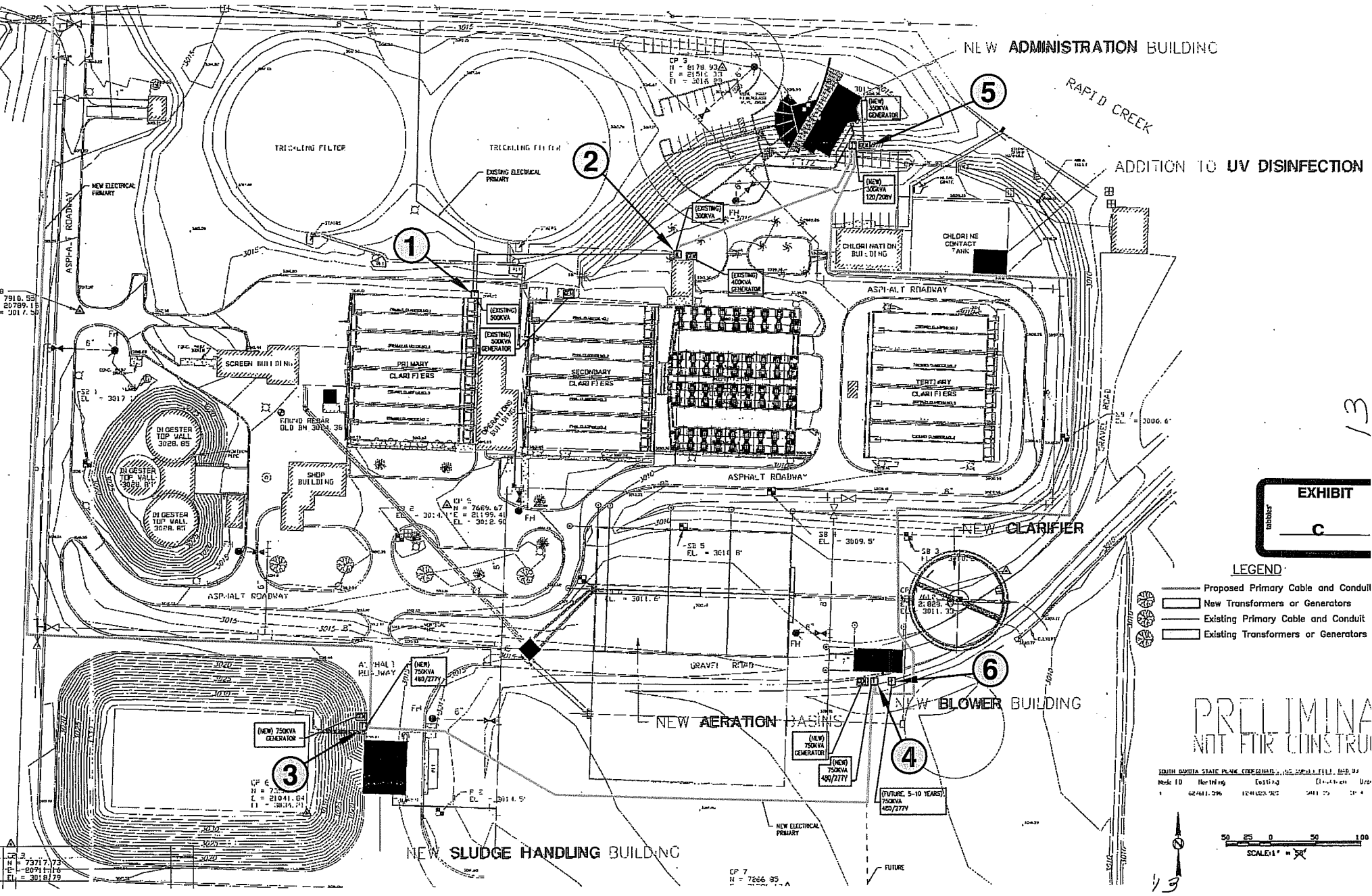
3 OCR'S
MAP 958
MAP 959
SEWER PLANT
FUSE
35A OCR
TO MOON MEADOWS SUBSTATION
HILL TOP SWITCH
TO SPRING CREEK SUBSTATION
BLACK HILLS POWER & LIGHT SERVICE TERRITORY
West River Electric Service Area
Black Hills Electric Cooperative Service Area
West River Electric Association
Black Hills Electric Cooperative
Black Hills Power
EXHIBIT
B


NEW ADMINISTRATION BUILDING
RAPID CREEK
ADDITION TO UV DISINFECTION
TRICKLING FILTER
TRICKLING FILTER
EXISTING ELECTRICAL PRIMARY
NEW ELECTRICAL PRIMARY
ASPHALT ROADWAY
(EXISTING) 300KVA
(EXISTING) 500KVA
(EXISTING) 500KVA GENERATOR
(EXISTING) 400KVA GENERATOR
(NEW) 300KVA 120/208V
(NEW) 300KVA GENERATOR
CHLORINATION BUILDING
CHLORINE CONTACT TANK
SCREEN BUILDING
PRIMARY CLARIFIERS
SECONDARY CLARIFIERS
TERTIARY CLARIFIERS
OPERATIONS BUILDING
DIGESTER TOP WALL 3028.85
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SHOP BUILDING
FOUND REBAR OLD BM 3024.36
GRAVEL ROAD
NEW CLARIFIER
NEW AERATION BASINS
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(NEW) 750KVA 480/277V
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EL 02-003

Bangs McCullen Law Firm

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

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Joseph M. Butler
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Tracey A. Fischer

Sioux Falls
Michael A. Hauck
John P. Mullen
Robert J. Hollan

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

Reply to Rapid City Office

Writer's e-mail address: gerland@bangsmccullen.com

February 22, 2002

Ms. Karen E. Cremer, Esq.
Public Utilities Commission
Capitol Building, 1st floor
500 East Capitol Avenue
Pierre, SD 57501-5070

Re: In the Matter of the Petition for Declaratory Ruling Filed For West River Electric Association, Inc.

Dear Karen:

It was a pleasure speaking with you on February 22, 2002, concerning the above-referenced matter. This letter serves to confirm that I agreed to extend the 15 day hearing requirement (S.D.C.L. § 49-34A-59) to 30 days to accommodate the PUC's schedule.

I also advised you that I believe our position may be adequately stated in a half day.

Thank you and please advise should the Commission desire any further information prior to the hearing. Thank you.

Sincerely,

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

Gregory J. Erlandson

cc: Mr. James Pahl
Mr. Steven Helmers

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

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of February 21, 2002 through February 27, 2002

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

ELECTRIC

EL02-003 In the Matter of the Petition of West River Electric Association, Inc. for a Declaratory Ruling Regarding Service Territory Rights Concerning Black Hills Power, Inc. and West River Electric Association, Inc.

West River Electric Association, Inc. (WREA) has filed a petition with the South Dakota Public Utilities Commission for a declaratory ruling in regard to the following issues:

A. Whether Black Hills Power, Inc. is rendering or has extended service within WREA's territory in violation of SDCL 49-34A-42.
B. Whether WREA has the right to provide future electrical service to the Rapid City Waste Treatment Facility located within WREA's assigned service area.

Staff Analyst: Martin Bettmann
Staff Attorney: Karen Cremer
Date Docketed: 02/21/02
Intervention Deadline: 03/15/02

TELECOMMUNICATIONS

TC02-019 In the Matter of the Filing by New Edge Network, Inc. d/b/a New Edge Networks for Approval of Relief of Certification Requirement to Post Surety Bond.

In an Order dated December 8, 1999, the Commission granted New Edge Network, Inc. d/b/a New Edge Networks (New Edge) authority to provide interexchange and local exchange telecommunications services in South Dakota, subject to a continuous $25,000 surety bond. On February 21, 2002, the Commission received a filing from New Edge requesting relief from the Commission's bond requirement.

Staff Analyst: Keith Senger
Staff Attorney: Karen Cremer
Date Docketed: 02/21/02
Intervention Deadline: 03/08/02

TC02-020 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and DIECA Communications, Inc. d/b/a Covad Communications Company.

On February 22, 2002, the Commission received for approval a filing of an Amendment to the Wireline Interconnection Agreement between Qwest Corporation (Qwest) and Covad Commununications Company for the State of South Dakota (Covad). According to the parties the Amendment is a negotiated amendment which is made in order to add terms and conditions for testing on Shared Loops and adding paragraph 19.A to the Repair and Maintainance section of the Agreement as set forth in the Amendment. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than March 14, 2002. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 02/22/02
Initial Comments Due: 03/14/02

TC02-021 In the Matter of the Filing for Approval of an Amendment to an Interconnection Agreement between Qwest Corporation and New Edge Network, Inc. d/b/a New Edge Networks.

On February 22, 2002, the Commission received for approval a filing of an Amendment for Unbundled Loops and Unbundled Dedicated Interoffice Transport (UDIT) to the Interconnection Agreement between New Edge Network, Inc. (New Edge) and Qwest Corporation (Qwest). According to the parties the Amendment is a negotiated amendment which is made in order to replace in its entirety, the terms, conditions and rates for Unbundled Loops and Unbundled UDIT to the agreement or any associated amendment, as set forth in Attachments 1 and 2 and Exhibits A and B of the Amendment. Any party wishing to comment on the agreement may do so by filing written comments with the Commission and the parties to the agreement no later than March 14, 2002. Parties to the agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 02/22/02
Initial Comments Due: 03/14/02

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You may subscribe or unsubscribe to the PUC mailing lists at http://www.state.sd.us/puc**

Black Hills Corporation
Energy, communications...and you.

LINDEN R. EVANS, P.E.
Associate Counsel

Telephone: (605) 721-2305
Facsimile: (605) 721-2550
Email: levans@bh-corp.com

March 7, 2002

VIA FACSIMILE: 605.773.3809

Ms. Karen E. Cremer, Esq.
Staff Attorney
Public Utilities Commission
500 E. Capitol
Pierre, South Dakota 57501

Ms. Sue Cichos
Assistant Executive Director
Public Utilities Commission
500 E. Capitol
Pierre, South Dakota 57501

Re: In the Matter of the Petition of West River Electric Association, Inc. for a Declaratory Ruling Regarding Service Territory Rights Concerning Black Hills Power, Inc. and West River Electric Association
Docket No. EL02-003

Dear Karen and Sue:

This evening, I spoke with WREA's attorney, Allen Nelson, regarding the captioned matter. Mr. Nelson and I discussed Black Hills Power, Inc.'s difficulty with the proposed March 21, 2002 hearing date. Mr. Nelson has provided me with authority to represent to the Commission that West River Electric Association, Inc. agrees to continue the March 21 hearing date. Mr. Nelson did not want to commit to a firm number of days for the continuance, except to state that WREA wishes for the hearing to occur at the Commission's earliest convenience.

Mr. Nelson requested that I inform you that he will be travelling the remainder of this week and most of next week; however, if necessary, you can reach him through his secretary, Carlene at (605) 343-1040.

I will call you tomorrow to confirm that you have received this fax and determine if you will need additional information.

Thank you very much for your consideration in this matter.

Sincerely,

BLACK HILLS CORPORATION

Linden R. Evans
LRE/ls
CC: Allen G. Nelson (via facsimile – (605) 343-1503)

EL 02-003

Black Hills Corporation
Energy, communications...and you.

LINDEN R. EVANS, P.E.
Associate Counsel

Telephone: (605) 721-2305
Facsimile: (605) 721-2550
Email: levans@bh-corp.com

March 8, 2002

Deb Ellofson, Executive Director
Public Utilities Commission
Capitol Building, First Floor
500 East Capitol Avenue
Pierre, SD 57501

RECEIVED
MAR 11 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Re: PUC File Number: EL02-003
Petition of West River Electric Association for Declaratory Ruling Regarding Service Territory Rights Concerning Black Hills Power, Inc. and West River Electric Association

Dear Ms. Ellofson:

Enclosed for filing in the above matter, are the original and ten copies of *Black Hills Power, Inc.'s Petition for Leave to Intervene and Brief in Resistance to West River Electric Association, Inc.'s Petition for Declaratory Ruling.*

Sincerely,

BLACK HILLS CORPORATION

Linden R. Evans

Linden R. Evans

/jmr
Encl.

cc: Allen G. Nelson (w/encl.)

EL 02-003

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF WEST RIVER ELECTRIC ASSOCIATION, INC. FOR A DECLARATORY RULING REGARDING SERVICE TERRITORY RIGHTS CONCERNING BLACK HILLS POWER, INC. AND WEST RIVER ELECTRIC ASSOCIATION, INC.	)	**EL02-003**

RECEIVED
MAR 1 1 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BLACK HILLS POWER, INC.'S
PETITION FOR LEAVE TO INTERVENE

and

BLACK HILLS POWER INC.'S BRIEF IN RESISTANCE TO
WEST RIVER ELECTRIC ASSOCIATION, INC.'S
PETITION FOR DECLARATORY RULING

PETITION FOR LEAVE TO INTERVENE

Black Hills Power, Inc. ("**BHP**"), pursuant to the provisions of SDCL § 1-26-17.1 and ARSD § 20:10:01:15.02, hereby petitions the South Dakota Public Utilities Commission ("**Commission**") for leave to intervene in the captioned matter. BHP presents the following in support of this Petition to Intervene.

Facts Supporting BHP's Petition to Intervene

On February 21, 2002, BHP was served with West River Electric Association, Inc.'s ("**WREA**") Petition for a Declaratory Ruling ("**Petition**").[1]/ WREA's Petition seeks to enjoin BHP from serving specific electrical requirements of the Rapid City Wastewater Treatment Facility, owned and operated by the City of Rapid City, South Dakota ("**Facility**").

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[1]/ BHP sought to jointly file a petition for declaratory ruling with WREA, as illustrated by the correspondence attached as Exhibit "A."

BHP has served all of the electrical needs of the Facility for 35 years (since 1967) and over several decades has invested capital to efficiently continue service of those electrical needs for years to come – including the six electrical services described in WREA's Petition. BHP has a direct legal and pecuniary interest in WREA's Petition, and therefore, its Petition to Intervene in these proceedings is appropriate and should be granted.

BHP'S POSITION AS TO THE REQUEST FOR A DECLARATORY RULING

Factual Background

BHP Serves the Facilities Electrical Requirements Pursuant to a 1967 City Council Resolution, a 1967 Canvassing Vote, and SDCL ch. 49-34A.

BHP has served the electrical requirements of the Facility since 1967. BHP received a mandate to serve the Facility by virtue of a 1967 City Council Resolution, a subsequent Canvassing Vote at Special City Election held on July 11, 1967 ("**1967 Vote**"), and pursuant to SDCL § 49-34A-42. (Copies of the 1967 City Council Resolution and Canvassing Vote Resolution are attached and marked as Exhibit "B.")

The Facility is located upon a 120-acre tract of land, owned by the City of Rapid City, South Dakota ("**City**"). The City originally purchased 40 acres in 1965 and an additional 80 acres in 1973. (Attached and marked as Exhibit "C" are copies of the 1965 and 1973 Warranty Deeds.) Accordingly, beginning with the 1967 Vote and the subsequent implementation of SDCL ch. 49-34A-42, it was clear to the City, this Commission, and BHP, that the size of the Facility, along with its electrical load, would necessarily increase in relation to the City's population. Given BHP's obligation to serve the Facility as it grew, BHP invested capital to ensure it could reliably serve the Facility's electrical needs and

growth. Specifically, BHP has invested capital by installing electrical distribution facilities sufficient to serve all future load growth at the Facility.

BHP currently serves the Facility's electrical needs utilizing a primary distribution line connected to two transformers and electrical meters strategically located at the Facility pursuant to the City's requests. BHP plans to serve the additional electrical needs of the Facility by using the same primary distribution line and installing additional transformers and electrical meters as requested by the City's engineers and consultants. BHP serves the Facility's current electrical requirements through two Large Demand Curtailable Service Agreements and this Commission's Order Approving Contracts With Deviations (Docket EL93-021). (Copies of the Service Agreements and the Commission's Order are attached and marked as Exhibit "D.")

Argument and Authorities

A. BHP has the right and obligation to serve all the current and future electrical needs of the Facility.

BHP's right and obligation to serve all current and future electrical needs of the Facility, is supported by: (1) the purpose and intent of SDCL ch. 49-34A; (2) this Commission's implementation of SDCL ch. 49-34A as to WREA and BHP (see Docket F-3103); (3) this Commission's precedent (see, March 1, 1979 Order For Temporary Service entered in Matter of the Petition For Declaratory Ruling Filed By Clay-Union Electric Corporation (Docket F-32922)); (4) South Dakota Attorney General Opinion No. 75-135 defining the term "location," as used in SDCL § 49-34A-42; and (5) Court opinions that have defined the term "location," as used in statutes substantially similar to SDCL § 49-34A-42.

1. BHP's continued service of all of the Facility's electrical needs accomplishes the purpose and intent of SDCL ch. 49-34A.

The Legislature's primary purpose in enacting SDCL ch. 49-34A (hereinafter "**the Territorial Act**")[2]/ was to prevent duplication of electric distribution facilities and wasteful spending that could otherwise occur among utilities serving the electrical needs of South Dakota customers. The Supreme Court of South Dakota has described the policy of the Territorial Act as follows: "The policy underlying the Act was 'elimination of duplication and wasteful spending in all segments of the electric utility industry.'" Matter of Northwestern Public Service Co., 1997 SD 35, ¶ 15, 560 N.W.2d at 927 (Citations omitted).

BHP has continuously served the electrical needs of the Facility for 35 years pursuant to the 1967 City Vote and the plain language of the Territorial Act. Contemplating the obvious growth of Rapid City and the accompanying growth of the Facility, BHP has continuously maintained and invested capital in its electrical supply and distribution systems to efficiently provide the current needs and the future growth of the Facility. To avoid the duplication of services and wasteful spending and fulfill the intent of the Territorial Act, BHP must continue to serve the Facility, including its load growth – whether that load growth is 10 kilowatt-hours or 10,000 kilowatt-hours, and whether through one connection point or multiple connection points. To allow WREA to serve those same needs would undermine the policy for which the Territorial Act was enacted – the unnecessary duplication and wasteful spending otherwise sought to be eliminated.

WREA's Petition asserts that the Commission should grant WREA the right to serve all new service sites and load growth at the Facility, which was added after 1975 – the year the Territory Act was enacted. WREA's Petition asserts that additional meters and extension of a primary electric distribution line are impermissible "service sites" and

"extensions," in violation of the Territory Act and SDCL § 49-34A-42. See, WREA Petition, p. 8. BHP submits, however, that such an interpretation of the Territory Act would lead to absurd results and constant "policing" by the Commission. For example, many South Dakota customers make use of the "electric heat" tariff offered by several South Dakota utilities, including WREA. To effectuate this tariff, a second electric meter is installed and, occasionally, additional service wiring is likewise installed. The separate meter is installed to measure the customer's electricity consumption dedicated to electric heat for billing pursuant to the applicable tariff. According to WREA's reasoning, BHP should similarly serve the new the additional load growth at the "service sites" and "extensions" represented by the additional meters and service wiring installed by "frozen customers" served by WREA within BHP's territory. This, of course, would be an absurd construction of the intent and purpose of the Territorial Act and SDCL § 49-34A-42, and would create an impossible system for the Commission to "police." Obviously, the Commission does not want to immerse itself in the quagmire of distinctions that arise simply because of demand growth of a customer at a particular location. Otherwise, the Commission will be required to determine what amount of load growth or number of additional of meters will require a utility to construct distribution facilities to serve a frozen customer.

To further illustrate, please consider the following hypothetical under South Dakota law: A duplex that is located in the service area of "Utility A" is served as a frozen customer by "Utility B." The owner of the duplex decides to expand the same building to create a four-plex, using additional electrical connection points and meters for the new units. Should Utility B, the present supplier, be permitted to serve the addition (and corresponding load growth) utilizing existing electric distribution facilities, or should Utility A be permitted

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[2]/ See, Matter of Northwestern Public Service Co., 1997 SD 35, ¶ 4, 560 N.W.2d 925, 926.

or required to build additional electric distribution facilities to serve the addition (and corresponding load growth)? BHP believes that under South Dakota law it is clear that Utility B, the present provider to the frozen customer, would be legally entitled and obligated to serve the new addition.

Futher, BHP anticipates that WREA will argue that, because it currently maintains electric distribution lines located near the Facility, any consideration pertaining to duplication of facilities and wasteful spending is irrelevant. While perhaps factually true, the Commission's decision in this matter will have far-reaching impact upon the service of "frozen" customers (and all electricity consumers) throughout South Dakota, as illustrated above. Consequently, when the purpose of the Territorial Act is considered, and to avoid an absurd construction of the Territorial Act, BHP has the lawful right and obligation to continue serving all the electrical needs of the Facility.

2. BHP's continued service of the growth of the Facility is consistent with the Territorial Act.

When implementing the Territorial Act, BHP was statutorily granted the right and obligation to serve all of the electrical needs of the Facility (no matter the load or the load growth). As stated above, it was clear to the City, the Commission, WREA, and BHP that the Facility must grow as the City's population increased. Consequently, BHP has ensured its ability to efficiently serve all of the Facility's current electrical needs and load growth – whether the load growth is 10 kilowatt-hours or 10,000 kilowatt-hours. As discussed above, WREA's Petition asserts, however, that it has the right to service all future "service sites" as they are implemented at the Facility. This assertion is based primarily upon WREA's argument that BHP's service of the additional load growth is the service of additional "service sites" and an impermissible "extension" of BHP's facilities into WREA's territory,

contrary to SDCL § 49-34A-42. See, WREA's Petition, pp. 6-8. WREA's assertion inappropriately seeks to equate "service sites" with the locations of transformers and meters that are strategically located at the Facility.

The transformers and meters installed at the Facility were, of course, installed and located pursuant to the City's requests, and BHP's mission to accomplish those requests. To elude WREA's Petition and the issues presented therein, BHP could have insisted the City take delivery of electricity at primary ("high") voltage, and thereby provided electricity to the Facility through a single point (primary meter), which would have eliminated WREA's present contention. However, this would have required the City to own and maintain a primary voltage distribution system, something it did not wish to do, perhaps for capital cost considerations and operational concerns. Consequently, BHP should not be "punished" because it worked successfully with the City to accomplish the City's wishes and power needs at the Facility. This notion, of course, illustrates another distinction that the Commission would have to consider in future declaratory ruling petitions should it accept WREA's position in this matter.

B. The Plain Language of SDCL § 49-34A-42 Provides that BHP Must Continue to Serve the Electrical Growth at the Facility.

SDCL § 49-34A-42 provides:

> Each electric utility has the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975 . . . ." [Emphasis added.]

The plain language and intent of SDCL § 49-34A-42 grant BHP the exclusive right and obligation to serve all of the electrical needs at the Facility, including any growth that occurs at the Facility's current location. This is because the load growth of the Facility will be served by BHP to the same customer and at the same "location" that BHP has served

since 1967. BHP's construction of SDCL § 49-34A-42 is supported by: (a) this Commission's holding in The Matter of the Petition For Declaratory Ruling Filed By Clay-Union Electric Corporation (Docket F-32922); (b) an Attorney General Opinion No. 75-135, and (c) the Illinois appellate court's holding in Coles-Moultrie Elec. Coop. v. Ill. Commerce Comm., 394 N.E.2d 1068 (Ill. App. 4th 1979).

1. BHP's continued service of the growth of the Facility is consistent with the Commission's prior decisions.

This Commission has rendered a prior decision wherein it construed the term "location," as used in SDCL § 49-34A-42. The Commission's April 6, 1979 Decision and Order entered in The Matter of the Petition For Declaratory Ruling Filed By Clay-Union Electric Corporation (Docket F-32922) (hereinafter "**Clay-Union Decl. Ruling**"), is instructive precedent upon this Commission, and supports BHP's continued service of the electrical load growth at the Facility. (A copy of the Commission's Order is attached and marked Exhibit "E.")

In Clay-Union Decl. Ruling, this Commission construed the term "location" when it decided that the service of a farmhouse on a particular piece of property allowed the utility to continue serving the electrical needs of a new plant to be constructed on the same property. Id. While the Supreme Court of South Dakota affirmed the Circuit Court's reversal of the Commission's decision in Clay-Union Decl. Ruling, it did so upon grounds not applicable to the Commission's interpretation of the term "location" and that are not applicable in this proceeding. See, Id. (attached and marked as Exhibit "E"); see also, Matter of Clay-Union Elec. Corp., 300 N.W.2d 58, 62 (S.D. 1980).

Quite opposite to WREA's assertion, the Supreme Court of South Dakota in Clay-Union did not "reject" Clay-Union Electric Corporation's[3]/ determination that the term "location," as used in SDCL § 49-34A-42, includes "a legally described area surrounding that customer." Clay-Union, 300 N.W.2d at 61. The Clay-Union decision did not even respond to this portion of the Commission's ruling and analysis of SDCL § 49-34A-42, nor did it "respond" to the validity of the Clay-Union Electric Corporation's construction of the law. Rather, the Court simply recognized the general intent of the Territorial Act to prevent the type of service dispute that was raised by the Clay-Union's contention. Id. at 62. Accordingly, the Clay-Union Court declined the invitation to define the term "location," and found other grounds upon which to base its holding. Consequently, to suggest that the Clay-Union Court "rejected" BHP's position in this case is a plain misinterpretation of the Court's decision.

Further, the Clay-Union Court's holding is actually limited to the interpretation of a unique, Commission-approved contract between utilities, which provided that a utility could continue to serve "existing structures and outlets," but "no new connections or hookups" could be made within the designated service area of the other utility. Id. at 59, 62. The Court specifically held that the contract between the utilities "took away the right the utilities had under SDCL 49-34A-42." Id. at 62. (Emphasis added.) Accordingly, the Court did not interpret SDCL § 49-34A-42, except to state that the statutorily created "exclusive right" that is otherwise granted by SDCL § 49-34A-42 was subordinate to the utilities' Commission-approved contract. Id.

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[3] / It is noteworthy that Clay-Union Electric Corporation, a South Dakota cooperative, has taken the exact opposite position as its fellow cooperative, WREA, in these proceedings.

Unlike the facts presented in the Clay-Union decision, WREA and BHP have not entered any Commission-approved contract that modifies BHP's exclusive right to serve the Facility's electrical needs at its current "location." The Clay-Union decision provides no basis for speculating what the Court's holding would have been in the absence of a governing contract. Consequently, the Commission's construction of the term "location" in the Clay-Union Decl. Ruling remains instructive precedent in resolving the pending Petition, and under that Commission decision, BHP is entitled to serve the growth at the Facility.

2. BHP's continued service of the growth of the Facility is supported by Attorney General Opinion No. 75-135.

The South Dakota Attorney General has construed SDCL § 49-34A-42 in an opinion that supports BHP's continued service of all the electrical load at the Facility.[4]/ See, Attorney General Opinion No. 75-135, p. 309-311 (a copy of the Attorney General's Opinion No. 75-135 is attached and marked as Exhibit "F"). The Attorney General's Opinion, submitted by Attorney General Janklow, responds to a question submitted by this Commission. The Commission requested an opinion whether Northwestern Public Service Company ("NWPS") should be allowed to install permanent underground distribution facilities to replace a temporary service line to a newly-constructed shredder facility. On the same parcel of land, located "several hundred feet" away, NWPS was providing services to an alcohol and drug referral center, which NWPS had served since about 1925. The Brown County Commission sought bid proposals from NWPS and Northern Electric for

[4]/ The Supreme Court of South Dakota has stated: "Although an Attorney General's opinion does not have the legal effect of a judicial decision, it provides the administrative agencies guidance on legal issues until those issues are ruled upon by a court or the law is changed by the Legislature." Spink County v. Heinold Hog Market, Inc., 299 N.W.2d 811, 812 (S.D. 1980).

the supply of electricity to the new shredder facility. Northern Electric was the low bidder, and several years prior, had located a three phase overhead line immediately in front of the new shredder facility. Id. at 310. In response to this Commission's request, the Attorney General opined that "there is little argument that [NWPS] was providing electric service to the shredder *location* [i.e., the alcohol and drug center] as of March 21, 1975," and thereby determined that NWPS had the statutory right to serve the shredder "location" pursuant to SDCL § 49-34A-42.[5]/ Id. at 311. Obviously, NWPS's service of the shredder facility was service at a point separate and apart from the alcohol and drug center and was an additional load growth beyond the original load of the center. Consequently, the Attorney General Opinion is directly contrary to WREA's position.

3. BHP's continued service of the growth at the Facility is supported by the holding in Coles-Moultrie Elec. Coop. v. Illinois Commerce Commission, 394 N.E.2d 1068 (Ill. App. 4th 1979).

In Coles-Moultrie Elec. Coop. v. Ill. Commerce Comm., 394 N.E.2d 1068 (Ill. App. 4th 1979), the Illinois appellate court interpreted the term "locations" as that term is used in the Illinois Electric Supplier Act.[6]/ The statutory framework and language of Section 5 of the Illinois Electric Supplier Act are substantially the same as that of SDCL § 49-34A-42. Section 5 provides as follows, in its entirety:

> *Each electric supplier is entitled*, except as otherwise provided in this Act or (in the case of public utilities) the Public Utilities Act, *to (a) furnish service to customers at* ***locations*** *which it is serving on the effective date of this Act*, (b) furnish service to customers or premises

[5]/ It is noteworthy that the Commission assigned the service facility to Northern Electric, which decision was reversed by the Circuit Court and assigned the facility to NWPS. See, Matter of Certain Territorial Electric Boundaries, 281 N.W.2d 72, 77 (S.D. 1979).

[6]/ In fact, the Coles-Moultrie court phrased the issue as follows: "The issue here: What does the term 'locations' mean as used in the Electric Supplier Act?' Id. at 1068. "The quintessence of the instant dispute is the meaning to be given to the term 'locations.'" Id. at 1069.

> which it is not now serving but which it had agreed to serve under contracts in existence on the effective date of this Act, and (c) resume service to any premises to which it has discontinued service in the preceding 12 months and on which are still located the supplier's service facilities.
>
> Except as otherwise provided in this Act or (in the case of public utilities) the Public Utilities Act, no electric supplier may construct new lines, or extend existing lines, to furnish electric service to a customer or his premises which another electric supplier is entitled to serve, as provided in this Section, except with the written consent of such other electric supplier subject to the approval of the Commission as to such consent, if required.
>
> This Section does not deprive an electric supplier of any right to furnish permanent service under a contract existing on the effective date of this Act to premises receiving temporary service from another supplier on the effective date of this Act.
>
> Nothing in this Section prevents a generation and transmission electric cooperative from furnishing service to its member distribution electric cooperatives which are not incorporated municipalities.

Ill. Rev. Stat. ch. 220, ¶ 30/5 (2002) [Emphasis added.]

In Coles-Moultrie, the Coens owned a 70-acre tract of property. Coles-Moultrie, an electrical utility, had provided electrical services to two Coen residences on the property since 1947. On July 2, 1965 (the effective date of the Illinois Electric Supplier Act), a competing utility, Central Illinois Public Service Company ("CIPS"), had one power line traversing the northern portion of the Coens' property, but was not providing any services. Id. at 1068-1069. In 1971, CIPS extended its line to provide services to 19 seasonal residences on the same 70-acre tract. Coles-Moultrie subsequently initiated proceedings with the Illinois Commerce Commission claiming it had the right to serve the 19 seasonal residences in question. Id. at 1069.

The Illinois Commerce Commission determined that CIPS had the right to serve the additional 19 seasonal residences because that property consisted of different physical locations. The circuit court reversed the Commerce Commission's decision and

determined that Section 5 of the Illinois Electric Supplier Act was applicable. The court found that the entire 70 acre tract constituted a single "location" as that term is used in Section 5. Id.

The appellate court affirmed the circuit court's reversal, and expressly rejected the Commerce Commission's "restrictive interpretation" of the term "locations," which would have defined the two Coen residences as separate "locations" from the 19 additional residences. The Coles-Moultrie court also expressly rejected the argument that the term "locations" should equate with "points of delivery" – which, notably, is the very argument WREA's Petition asserts. Id. The Coles-Moultrie court reasoned that the term "locations" must be construed to mean a geographic area, and held,

> In order to constitute a separate location, there must be some feature of the area in question which would set it apart from the surrounding parcels. A public road, a body of water, or a legal division (such as platting or subdividing the land) all could serve to distinguish one location from the surrounding area. In this case there was none. . . [T]he fact that the entire tract is owned by the same individuals is highly persuasive. Id.

Similarly, the 120 acres comprising the Facility is owned entirely by the City of Rapid City. The property is not platted or subdivided, nor does a public road or any other geographic feature physically distinguish one "location" from the remainder of the surrounding property. Consequently, the 120-acre tract occupied by the Facility (including all six service points) constitutes a single "location," for purposes of applying SDCL § 49-34A-42, and BHP is both entitled and obligated to serve all the electrical needs of the Facility. The new electrical service facilities will simply augment the service currently provided to the Facility, consistent with City wishes, as discussed above.

WREA's assertion that, "the word 'location' refers to a single service site or meter rather than a customer's entire property" (Petition, p. 7) is unduly restrictive for the same

reasons cited in Coles-Moultrie. The term "service point," is a term-of-art defined by the National Electrical Safety Code (NESC) and the National Electric Code (NEC), Codes that the Legislature has relied upon when enacting various South Dakota statutes. See, e.g., SDCL §§ 31-26-5, 36-16-16 and 47-21-75.[7]/ If the Legislature intended that a frozen customer could only be served through an existing "service point" it would have used a term widely recognized in the electrical engineering and utility communities. However, the Legislature, so as to effectuate the rationale of the Territorial Act and to avoid duplication of electric distribution facilities, chose to use the term "location" indicating its intent not to limit future service of a frozen customer to a single service point as asserted by WREA's Petition. See, e.g., Freeman Community Hospital and Nursing Home v. Hutchinson County, 2001 SD 112, 633 N.W.2d 179 (Courts must assume that the Legislature, in enacting a provision, had in mind previously enacted statutes relating to the same subject.)

WREA also relies upon the decision in Matter of Northern States Power Co., 489 N.W.2d 365 (S.D. 1992), to support its position that BHP is impermissibly "extending" its services into WREA's territory. BHP respectfully submits that WREA's reliance upon Northern States is erroneous, as this case does not address the issue presented herein. Rather, Northern States pertains to a customer whose property was originally split by a electric service territory line and whose electrical needs were originally serviced by two competing utilities pursuant to a Commission-approved contract between the utilities. In Northern States, the Court determined that the customer's attempt to construct a private power line so as to provide an "artificial point of delivery" was a violation of the Commission-approved contract. Id. at 369.

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[7]/ The NEC and the NESC define the term "service point" as, "The point of connection between the facilities and the serving utility and the premises wiring."

As stated above, there is no contract between BHP and WREA relating to the Facility. Consequently, the Northern States case provides no guidance as to how SDCL § 49-34A-42 should be applied in this matter. Moreover, BHP is not "extending" services into WREA's service territory. BHP is simply continuing to serve the same customer at a particular location as required by SDCL § 49-34A-42.

D. WREA has waived its right to object to BHP's "Service Number Two".

WREA's Petition describes a total of six electrical services that BHP currently serves or will serve in the future. The Petition acknowledges that BHP has provided "Service Number Two" to the Facility since 1985 or 1986.[8]/ WREA waited more than fifteen years to dispute BHP's authority to provide Service Number Two.

SDCL § 15-2-13(2) provides that the applicable statute of limitations within which an action created by statute must be commenced is six years. WREA's Petition asserts that SDCL § 49-34A-42 provides it with the statutory right to serve Service Number Two. Clearly, the applicable statute of limitations bars WREA's claim.

Moreover, in Hammerquist v. Warburton, 458 N.W.2d 773, 778 (S.D. 1990), the South Dakota Supreme Court defined the doctrine of waiver as being applicable where:

> [O]ne in possession of any right, whether conferred by law or by contract, and with a full knowledge of the material facts, does or forebears the doing of something inconsistent with the exercise of the right.

WREA has clearly acquiesced in BHP's provision of Service Number Two for many years. Accordingly, it is respectfully submitted that WREA waived any right to object to Service Number Two.

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[8]/ According to BHP records, Service Number Two became permanent on April 16, 1987.

Conclusion

To prevent this Commission from having to "police" the addition of service points and additional load growth for "frozen customers," and to give effect to the intent of the Territory Act, WREA's Petition must be denied. The Territorial Act required BHP to serve all of the Facility at issue, which naturally includes all subsequent load growth. To adopt WREA's position in this matter, would unnecessarily draw this Commission into a quagmire of distinctions (including the load growth and additional services that accompany the installation of heat meters, etc.) that would be difficult to maintain, distinctions the Territorial Act was clearly intended to prevent. The Commission should use this opportunity to establish certainty in regard to providing for the service of growth in electric service requirements.

Moreover, the term "location," as used in SDCL 49-34A-42, and as previously interpreted by this Commission, compels the conclusion that BHP is the lawful provider of all current and future electrical services at the Facility. No South Dakota court has defined the term "location." Thus, this Commission's prior decision on this issue is instructive precedent.

Finally, Attorney General Opinion 75-135, and the well-reasoned opinion of Coles-Moultrie Elec. Coop. v. Ill. Commerce Comm., 394 N.E.2d 1068 (Ill. App. 4th 1979), likewise support the Commission's decision in Clay-Union Decl. Ruling and the determination that current and future electrical loads at the Facility should be deemed service at one "location" pursuant to SDCL § 49-34A-42. Consequently, BHP respectfully submits that the construction of SDCL § 49-34A-42 that this Commission provided in Clay-Union Decl. Ruling is the appropriate construction that should be reaffirmed by this Commission.

WHEREFORE, BHP respectfully requests that the Commission grant BHP's Petition to Intervene, and deny WREA's request to serve any of the electrical needs at the Rapid City Wastewater Treatment Facility.

Respectfully submitted this 8th day of March 2002.

BLACK HILLS CORPORATION

By: _____

Steven J. Helmers
Linden R. Evans
P.O. Box 1400
Rapid City, SD 57709-1400
Tel: (605) 721-1700
Fax: (605) 721-2550
Attorneys for Black Hills Power, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March 2002, I served a copy of **BLACK HILLS POWER, INC.'S PETITION FOR LEAVE TO INTERVENE** upon:

Mr. Allen G. Nelson
Mr. Greg J. Erlandson
Bangs, McCullen, Foye & Simmons
P.O. Box 2670
Rapid City, South Dakota 57709-2670

by depositing the same in the U.S. Mail, postage prepaid, at Rapid City, South Dakota.

_____
Linden R. Evans

Black Hills Corporation
Energy, communications...and you.

LINDEN R. EVANS, P.E.
Associate Counsel

Telephone: (605) 721-2305
Facsimile: (605) 721-2550
Email: levans@bh-corp.com

February 15, 2002

VIA FACSIMILE & U.S. Mail

Mr. Allen G. Nelson
Bangs McCullen Law Firm
P.O. Box 2670
Rapid City, SD 57709

Re: West River Electric Association's (WREA) Declaratory Petition re: Electrical Service to the Rapid City Wastewater Treatment Facility

Dear Allen:

Thank you for delivering a draft copy of WREA's Declaratory Petition to our offices on Wednesday afternoon. As was discussed during that meeting, it remains our hope that BHP and WREA will draft a Joint Petition to be filed with the SDPUC.

We believe that a Joint Petition will exemplify the spirit of collaboration between WREA and BHP in resolving this issue, particularly, where this issue will impact other "frozen" customers located within BHP's and WREA's service territories.

We appreciate the fact that WREA intends to file the Petition next Tuesday. However, if WREA is willing to postpone that filing for a few days, we are confident that a Joint Petition can be prepared that would be acceptable to both parties.

Thank you very much for your consideration in this matter.

Sincerely,

BLACK HILLS CORPORATION

Linden R. Evans

LRE/ls

Cc: Ev Hoyt
Stuart Wevik

11. The City Auditor and the City Treasurer are authorized and directed to furnish to the purchaser of said bonds and to the attorneys approving the same certified copies of all proceedings and records of the city relating to said bonds and to the improvements financed thereby and to the right and power of the city to make said improvements, to levy assessments therefor and to issue said bonds and all said certified copies and certificates shall be deemed representations of the city as to the facts therein stated.

Approved Henry J. Baker
Mayor

Attest R. R. Lang
City Auditor

(Seal)

The motion for the adoption of the foregoing resolution was seconded by Alderman St. Pierre and upon vote being taken thereon, the following voted in favor thereof: Rand, St. Pierre, Shoener, Baumann, Fenner, Goodhope, Harrison, Kies, Larson and the following voted against the same: None, whereupon said resolution was declared duly passed and adopted.

Mayor Baker introduced an Ordinance entitled "an Ordinance Providing for the Acquisition and Construction of Automobile Parking Facilities and the Issuance and Sale of Revenue Bonds to Provide Funds Therefor and Providing Covenants for the Security of Such Bonds". Upon motion duly made, seconded and carried, said Ordinance was placed on its first reading and was fully and distinctly read.

Thereupon said Ordinance was declared duly passed upon its first reading. Upon motion duly made, seconded and carried, the meeting was adjourned to June 5, 1967, at 7:30 o'clock P.M., for the purpose of giving the second reading to said Ordinance and adopting the same.

An offer from Allison-Williams Co., to purchase legally issued Parking Revenue Bonds for par and accrued interest was read to the Council.

Upon motion made by Shoener, seconded by Larson and carried by unanimous vote, the Council accepted the offer and authorized the Mayor and City Auditor to execute the same on behalf of the City of Rapid City.

Upon motion made by Kies, seconded by St. Pierre and carried, the Council approved a trailer court license for Jerry & Verna Burrow at 602 E. Watertown Street, conditioned that compliance with two items of request by the Inspection Department are met.

Upon motion made by Kies, seconded by Goodhope and carried, the Council licensed Robert Froehlich to operate 5 ice cream vending machines.

Upon motion made by Kies, seconded by Rand and carried, the Council licensed the following as apprentice electricians: Gary Bloom, 513 St. James Street; Jerry Freeman, 224 East St. Joe Street; Bernard Potts, 520 East Madison Street.

Upon motion made by Rand, seconded by Baumann and carried, the Council authorized the City Treasurer to sell on June 15, 1967, at 10:00 o'clock A.M., abandoned bicycles accumulated by the Police Department; and authorized the City Auditor to publish notice thereof, all in accordance with the provisions of Ordinance No. 983.

In accordance with the recommendation of the Water & Sewer Committee, Alderman St. Pierre moved that the City accept service from Black Hills Power & Light Co., for furnishing power to the new waste water treatment plant now under construction.

The motion was seconded by Alderman Baumann.

Alderman St. Pierre read a letter from the City's consulting engineer, Kirkham, Michael & Associates, relating to the statement of service from each potential supplier of power for the new waste water treatment plant, which statement was filed.

Alderman St. Pierre also read telegrams from Alderman Fritts and Al McDonald.

Alderman Harrison moved to postpone action to June 5, 1967, on selecting a power supplier to the waste water treatment plant to allow more time for research and to better inform the public. The motion was seconded by Alderman Fenner.

Alderman Fenner and William Rensch, Attorney for Rapid City Taxpayers Ass'n. then spoke in support of the motion to postpone.

A vote was taken on the motion to postpone and the motion lost. The vote was 2 for

and 7 against postponing.

Discussion was then had on St. Pierre's original motion.

Alderman Kies explained his position favoring power from Black Hills Power & Light Co.

Alderman Fenner gave his reasons for favoring the West River Electric Ass'n.

Alderman Dewey Harrison read a prepared statement as to his stand and filed the same for record.

Also heard for R.E.A. power were Reuben Deutsch and Charles Johnson, Directors, Louis Freiberg, Attorney, Cone Hunter, Manager, all of or for West River Electric Ass'n., Everett Weaver and Mr. Mabon, rate expert.

After hearing all persons, a roll call vote was asked for and taken on St. Pierre's motion with the following voting Yes: Rand, St. Pierre, Shoener, Baumann, Goodhope, Kies, Larson and the following voted No: Fenner, Harrison. The motion was declared to have carried.

On motion made by Fenner, seconded by Shoener and carried, the City Engineer was authorized to proceed with repair of those downtown sidewalks which were included in the original notice to repair and which have not yet been fixed.

The following written resolution was introduced, read by the Mayor and St. Pierre moved its adoption:

RESOLUTION

WHEREAS, the structures located on Lots 20, 21, and 22, Block 118, Original Townsite, owned by Donald Getchell, do not meet the minimum occupancy Code, and

WHEREAS, by reason of inadequate maintenance, dilapidation and abandonment, these structures constitute a fire hazard, are a hazard to public welfare, health and safety and are hereby declared to be a public nuisance, and

WHEREAS, the above owner has been ordered to correct this Public Nuisance and has failed to make the necessary corrections.

NOW THEREFORE, BE IT RESOLVED by the Common Council of the City of Rapid City, South Dakota, that the above named person be prosecuted as a violator of the Uniform Building Code of the City of Rapid City and that the Building Official be instructed to proceed with the necessary corrections and the cost thereof be charged to the owner as a special assessment on the real estate described, all in accordance with the Ordinance in such case made and provided.

Common Council

By Henry J. Baker
Mayor

Attest:

R. R. Lang
City Auditor

(Seal)

The motion was seconded by Rand and carried by unanimous vote.

The following bills having been audited, it was moved by St. Pierre to authorize the City Auditor to issue warrants drawn on the proper funds in payment thereof:

A & B Welding Supply Co.	Supplies	182.18
Ace Radiator Works	Repairs	23.50
Aero Sheet Metal Works	Radio Box	4.38
Afco Trim & Awning, Inc.	Repairs	55.75
Amstan Supply Division	Parts	138.16
Assoc. Hosp. Serv. Inc.	Group Insurance	2,614.33
Dale Barber	Appraisal Fee	150.00
Bean Bag Market	Food for Jail	23.87
Beckers Drug	Projector Bulb	3.92
Birdsall Sand & Gravel Co.	Concrete	1,277.70

Henry J. Baker
Mayor

Attest:

R R Ling
City Auditor

(Seal)

******* ******* ******* ******* ******* ******* ***

OFFICIAL PROCEEDINGS OF
THE COMMON COUNCIL OF
RAPID CITY, SOUTH DAKOTA

Rapid City, S. D.
July 14, 1967

Pursuant to due call and notice thereof, a special meeting of the Common Council of the City of Rapid City, South Dakota, was held at the Municipal Building in said City on Friday, July 14, 1967, at 4:45 o'clock P.M.

The following Aldermen were present: Fritts, Goodhope, Kies, Larson, St. Pierre, Shoener and the following were absent: Baumann, Fenner, Harrison, Rand.

Kenneth Kies, President of the Council presided because of the absence of the Mayor.

The City Auditor presented to the Council the official returns of the Judges and Clerks of the special election held in and for the City on July 14, 1967, which returns were duly examined, canvassed, approved and ordered placed on file.

The following written resolution was introduced, read by the Council's President and St. Pierre moved its adoption:

RESOLUTION
CANVASSING VOTE AT SPECIAL CITY
ELECTION HELD ON JULY 11, 1967

WHEREAS, there was held in the City of Rapid City, South Dakota, on Tuesday, the 11th day of July, 1967, a special city election of said City of Rapid City for the purpose of voting upon the question"Shall the action of the Common Council of May 15, 1967, accepting the proposal of Black Hills Power & Light Co., to furnish electrical service to the new waste treatment plant be approved or rejected?"

AND WHEREAS, at said election the total number of votes cast upon the question were as follows:

	For Approval	Against Approval	Spoiled Ballots	Total
1st Ward, 1st Precinct	109	98	1	208
1st Ward, 2nd Precinct	48	83		131
1st Ward, 3rd Precinct	242	177		419
1st Ward, 4th Precinct	219	195		414
1st Ward, 5th Precinct	234	201	1	436
2nd Ward, 1st Precinct	281	137		418
2nd Ward, 2nd Precinct	243	86		329
3rd Ward, 1st Precinct	77	124		201
3rd Ward, 2nd Precinct	156	87		243
4th Ward, 1st Precinct	205	211	2	418
4th Ward, 2nd Precinct	129	176	3	308
4th Ward, 3rd Precinct	103	160		263
5th Ward, 1st Precinct	232	126	1	359
5th Ward, 2nd Precinct	317	148		465
5th Ward, 3rd Precinct	269	195	2	466
5th Ward, 4th Precinct	306	190	1	497
5th Ward, 5th Precinct	325	202		527

Total	For Approval	Against Approval	Spoiled Ballots	Total
	3,495	2,596	11	6,102

NOW THEREFORE, Be It Resolved by the Common Council of the City of Rapid City, South Dakota, as follows:

The vote on the proposition "SHALL THE ACTION OF THE COMMON COUNCIL OF MAY 15, 1967, ACCEPTING THE PROPOSAL OF BLACK HILLS POWER AND LIGHT CO., TO FURNISH ELECTRICAL SERVICE TO THE NEW WASTE TREATMENT PLANT BE APPROVED OR REJECTED?" being 3495 for approval of the Common Council's action and 2596 against approval of the Common Council's action, the action of the Common Council of May 15, 1967, accepting the service of Black Hills Power & Light Co., to furnish electricity to the new waste water treatment plant is hereby approved.

Adopted at Rapid City, South Dakota, on July 14, 1967.

Approved Kenneth J. Kies
President of the
Common Council

Attest:

R.R. Lang
City Auditor

(Seal)

The motion for the adoption of the foregoing resolution was seconded by Larson and upon vote being taken thereon, the following voted in favor thereof: Fritts, Goodhope, Kies, Larson, St. Pierre, Shoener and the following voted against the same: None, whereupon said resolution was declared duly passed and adopted.

The following election bills were presented:

First Ward	$380.00
Second Ward	156.00
Third Ward	146.00
Fourth Ward	222.00
Fifth Ward	383.00
Total:	$1,287.00

It was moved by Larson to pay the election bills. The motion was seconded by Shoener and upon vote being taken thereon, the following voted in favor thereof: Fritts, Goodhope, Kies, Larson, St. Pierre, Shoener and the following voted against the same: None, whereupon the motion was declared to have carried.

City Engineer Swanson presented Change Order No. 1 to the contract with Northwestern Engineering Co., for constructing Street Improvements Nos. 148-149-150-151. The change order provides for changing the seal coat from chips to slurry seal, at no change in cost.

It was moved by Shoener to approve the change order and to authorize the Mayor and City Auditor to execute said change order on behalf of the City of Rapid City.

The motion was seconded by Fritts and carried by unanimous vote.

Upon motion made by Shoener, seconded by Larson and carried, the meeting adjourned.

Kenneth J. Kies
President of the
Common Council

Attest: R.R. Lang
City Auditor

(Seal)

WARRANTY DEED — State Form

Jenkin's Bindery Co., Rapid City, S.D. — 41266 174 — 177

W. W. Walton

Grantor, of Breckenridge, Stephens County,

State of Texas, for and in consideration of

Thirty-four Thousand and no/100----------DOLLARS,

GRANTS, CONVEYS AND WARRANTS TO City of Rapid City, a municipal corporation

, Grantee

of Rapid City P. O., the following described

real estate in the County of Pennington in the State of South Dakota:

The East Half (E½) of the Northeast Quarter (NE¼) of Section Twenty-five (25) Township One (1) North, Range Eight (8) East of Black Hills Meridian, Pennington County, South Dakota. EXEMPT FROM TRANSFER FEE

Subject to easements, restrictions and covenants of record and all public right of way and railraod right of way, and prior reservations of oil, gas and mineral rights of record.

Grantor hereby warrants that neither he nor any member of his family have ever claimed or occupied or intend to claim or occupy the above described premises or property as a homestead.

Dated this 3 day of January, 1973

W. W. Walton

W. W. Walton

ACKNOWLEDGMENT BY INDIVIDUAL

STATE OF SOUTH DAKOTA, COUNTY OF PENNINGTON-SS. 32252

RECORDED
INDEXED

FILED THIS 11 DAY OF Jan 1973 AT 2 O'CLOCK P M. BK. OR 174 PAGE 177

REGISTER OF DEEDS BY Patricia Dugger DEPUTY FEES $

STATE OF SOUTH DAKOTA,
County of Pennington

On this the 3rd day of January, 1973 before me, Louis K Freiberg, the undersigned officer, personally appeared W. W. Walton known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Louis K Freiberg
Notary Public
Title of Officer

My commission expires:

WARRANTY DEED—STATE FORM S1.1403A

BOOK 146 PAGE 708

ALFRED E. JONES AND MAVIS S. JONES

Husband and Wife

grantor s, of Rapid City, Pennington County,

State of South Dakota for and in consideration of

One Dollar and other valuable considerations DOLLARS

GRANT, CONVEY AND WARRANT TO City of Rapid City

grantee, of Rapid City, South Dakota P. O. the following described

real estate in the County of Pennington in the State of South Dakota:

1965

Northwest Quarter of the Northeast Quarter (NW¼NE¼) of Section Twenty-five (25), Township One (1) North, Range Eight (8) East, of the Black Hills Meridian, Pennington County, South Dakota, less the West Sixty-six (66) feet thereof.

A permanent thirty(30) foot easement with a construction easement of an additional thirty (30) feet for a pipe line North to South, across the West Half of the Southeast Quarter (W½SE¼) of Section Twenty-four (24), Township One (1) North, Range Eight (8) East, of the Black Hills Meridian, Pennington County, South Dakota, access road easement, if required, together with all water rights appertaining thereto.

Dated this 5 day of March, 1965.

Alfred E Jones

Mavis S. Jones

RECORDED
INDEXED 16300

STATE OF SOUTH DAKOTA, COUNTY OF PENNINGTON, ss.
FILED THIS 5 DAY OF April 1965 AT 10:50 O'CLOCK A.M. BOOK 146 PAGE 708
Lillian H. Holt REGISTER OF DEEDS, BY DEPUTY FEES $ 1.00

STATE OF SOUTH DAKOTA,
County of PENNINGTON } ss.

On this the 5th day of March 1965, before me,

W. F. Brady the undersigned officer, personally appeared

Alfred E. Jones and Mavis S. Jones, husband and wife, known to me or satisfactorily proven to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

W. F. Brady

Notary Public

My commission expires W. F. BRADY, NOTARY PUBLIC PENNINGTON COUNTY, S. DAK. MY COMM. EXPIRES OCT. 22, 1968 Title of Officer

NOTARY SOUTH DAKOTA

SOUTH DAKOTA LEGAL BLANKS

Jim Kecz

BEFORE THE PUBLIC UTILITIES COMMISSION

AUG 18 1993

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF BLACK HILLS POWER AND LIGHT COMPANY FOR APPROVAL OF PROPOSED SERVICE AGREEMENTS WITH RAPID CITY.	)))))	ORDER APPROVING CONTRACTS WITH DEVIATIONS EL93-021

On July 19, 1993, Black Hills Power and Light Company (BHP&L) filed with the Public Utilities Commission (Commission) two (2) Large Demand Curtailable (LDC) service agreements with the City of Rapid City and the Third Revised Sheet No. 1 for Section No. 4 of BHP&L's tariff (Summary List of Contracts with Deviation). According to BHP&L, "[the] agreements for two wastewater treatment plant electric accounts provide the City with the same level of incentive provided General Service Large customers considering LDC service." BHP&L requested that the Commission approve these contracts with deviations with an effective date of June 1, 1993.

At its regularly scheduled August 3, 1993, meeting, the Commission considered BHP&L's request for approval of the contracts with deviations and the associated tariff change. Commission Staff recommended approval.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-34A, specifically, 49-34A-4, 49-34A-6, 49-34A-8 and 49-34A-10. Further, the Commission finds that BHP&L's proposed tariff revision is both just and reasonable and shall be approved. As the Commission's final decision in this matter, it is therefore

ORDERED, that BHP&L's tariff revision regarding the service agreements (contracts with deviations) between BHP&L and Rapid City is hereby approved; and it is

FURTHER ORDERED, that this tariff revision shall be effective for services rendered on and after June 1, 1993, and it is

FURTHER ORDERED, that BHP&L shall submit an annual report on these contracts with deviations (contracts No. 10431 and 10432) as required by the Order Approving Contract with Deviations with Wharf Resources in Docket EL92-019.

Dated at Pierre, South Dakota, this 17th day of August, 1993.

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: Rebecca R. Zebolt

Date: 8/17/93

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

LASKA SCHOENFELDER, Chairman

KENNETH STOFFERAHN, Commissioner

JAMES A. BURG, Commissioner

1/3

Account Number 1.09.4181480.03

Contract No. 10432
Effective Date:
June 1, 1993

LARGE DEMAND CURTAILABLE SERVICE AGREEMENT

This Large Demand Curtailable Service Agreement ("Agreement") is entered into this 7th day of June, 1993, by and between Black Hills Power and Light Company ("Black Hills") and the City of Rapid City ("Customer").

1. PURCHASE AND SALE OF CURTAILABLE ELECTRIC ENERGY.

Black Hills shall supply and Customer shall take all electric power and energy required for its waste water treatment operation located in Pennington County, South Dakota, 6200 Anderson Road, Rapid City, South Dakota, (New Facility - East) except to the extent that Black Hills shall be entitled to curtail a supply of electric power and energy as set forth in this Agreement and the tariff filed with the South Dakota Public Utilities Commission, at which time customer shall curtail and/or generate electric power and energy required to meet its needs.

2. NATURE OF SERVICE.

Such power and energy delivered by Black Hills shall be three phase, alternating current, approximately 60 cycles at a nominal phase to phase voltage of 480 volts.

3. CURTAILABLE SERVICE.

The electric power and energy supplied by Black Hills to Customer shall be on a curtailable basis. Black Hills has filed with and received approval from the South Dakota Public Utilities

Commission, Rate No. LDC-1, Large Demand Curtailable Service. A copy of such rate is attached as Exhibit 1. Customer has elected to purchase all of its electric power and energy pursuant to that rate, or its successor. This Agreement is contingent upon approval by the South Dakota Public Utilities Commission of this Contract of Deviation.

Customer has elected notice Option A with the corresponding Curtailable Load Credit of Rate No. LDC-1. This option allows for no prior notification. Customer shall curtail its load to the Firm Service Capacity or pay the penalty within the rate upon 10 minutes notice. All references to "a year" in this Agreement or Rate LDC-1 shall be from the anniversary date of the initiation of service consistent with this Agreement.

4. CUSTOMER'S EQUIPMENT.

4.1 Point of Delivery. Customer shall install and maintain at its own expense all electrical facilities on its side of the point of delivery which are necessary for the proper reception of electric power and energy and for its use beyond that point. Customer's facilities shall be of the type and nature which shall not interfere with other service rendered by Black Hills to any other customer.

4.2 Generating Equipment. Customer shall also be responsible at its own risk and expense to furnish, install and maintain in good and safe working condition any generation equipment, machinery, or other apparatus which it deems necessary on the customer side of the interconnection point of electrical

power and energy, if any, sufficient to replace that electric power and energy as provided to Customer consistent with its arrangement to allow the curtailment of service.

4.3 Limitation to Generation. Customer agrees and acknowledges that the generation equipment, machinery and apparatus which it shall install for purposes of providing electric energy and power during those curtailment periods set forth in this Agreement and as allowed for under Rate LDC-1 shall be utilized only for purposes of providing generation of electric power and energy in the event Black Hills notifies Customer of a curtailment or during an interruption or suspension of service by Black Hills or during a failure in the distribution system or as a result of unstable power supply and shall not be used to provide electric power and energy during any other time period. The machinery, equipment and apparatus as installed by the customer shall be such to operate and run separated from interconnection with Black Hills' distribution system.

4.4 No Duty to Inspect. Black Hills shall have no responsibility to test and/or inspect Customer's equipment used for purposes of providing generation and Customer acknowledges and hereby releases Black Hills from any responsibility for any failures in Customer's electric facilities, machinery and/or apparatus.

4.5 Testing and Maintenance of Equipment. Testing shall be in compliance with the generator manufacturer's recommended full load exercising time frame for such equipment, or Customer's

standard operation procedure for such equipment, whichever is greater. Customer shall endeavor to coordinate its maintenance of such equipment to ensure that the same occurs during off peak periods for Black Hills. Customer shall be solely responsible for the maintenance of its generating equipment.

5. RATES.

Black Hills shall bill and Customer shall pay for all electric power and energy supplied hereunder at the rates and charges due and payable pursuant to the Black Hills' electric Rate No. LDC-1. Customer understands that the initial rates and terms set forth in this contract in Rate No. LDC-1 may be revised by Black Hills from time to time. Customer agrees that if Black Hills should during the term of this contract revise or eliminate any such rates or terms as set forth in Rate No. LDC-1 that such changes or revisions shall be applicable to Customer for the balance of the term of this Agreement. Customer acknowledges that its rate as set forth within Rate No. LDC-1 is subject to all terms and conditions of Rate No. LDC-1 except as modified by this Agreement and/or those terms set forth in the Contract of Deviation attached as Exhibit 2. The rate is subject to revision by the South Dakota Public Utilities Commission, but the rate shall not be eliminated during the duration of this contract.

6. NO LIABILITY FOR INTERRUPTIONS OR SUSPENSION OF SERVICE.

Black Hills shall endeavor to maintain adequate and continuous service. However, Black Hills does not guarantee or

otherwise ensure that the supply of electric energy or power will at all times be constant. Black Hills shall not be liable to Customer for any loss or damages occasioned by delay, interruption or suspension of service. Black Hills shall only be liable to Customer in the event of gross negligence causing such interruption. Black Hills shall not be liable for any lost profits or other consequential damages or expenses incurred by Customer as the result of any interruption or disruption of service.

In the event Black Hills is prevented from delivering electric service or any part thereof for any reason, Black Hills shall not be obligated to deliver power during said time and there will be a prorata reduction in Billing Capacity or similar charges provided in the rate schedule applicable.

7. COMMUNICATION.

Customer shall provide a designated telephone line so that Black Hills may notify them in the event of a curtailment request and/or a reconnect signal.

8. RIGHT OF WAY.

Customer shall provide to Black Hills, without any cost, a suitable location and right of way to Customer's premises for all necessary lines, equipment, or other appurtenant facilities. All such facilities, lines, or appurtenances as installed by Black Hills shall remain its property and Black Hills shall have all necessary rights to inspect, repair, remove, or construct additional facilities as necessary.

9. INDEMNIFICATION.

Black Hills shall not be liable for any loss, damage, or expense to property or persons as a result of injury or death as suffered by Customer, its employees, agents, or any third parties who are occupying Customer's property resulting from the operation of any electrical equipment or facilities located on Customer's side of the point of delivery. Customer agrees to indemnify and hold Black Hills harmless from any such loss, damage, injury, or death, or related expenses, including reasonable attorney's fees which Black Hills may incur.

10. FIRM SERVICE CAPACITY.

Customer has designated a Firm Service Capacity of zero kVA. During all periods of curtailment, Customer shall reduce its electric demand to or below the Firm Service Capacity at or before the time specified by Black Hills.

11. MATTERS OF DEVIATION.

Deviations, if any, under this Agreement are set forth on Exhibit 2 attached hereto and incorporated herein by this reference.

12. MISCELLANEOUS.

12.1 Assignment. Customer may assign its rights and obligations under this Agreement only with the written consent of Black Hills, which consent shall not be unreasonably withheld.

12.2 Notice. All notices under this Agreement, except those notices necessary for curtailment, which may be provided by

telephone, shall be in writing sent to each party to this Agreement at their respective address below:

Black Hills Power and Light Company
Attention: Rate Department
625 Ninth Street
P. O. Box 1400
Rapid City, SD 57709

City of Rapid City
300 Sixth Street
Rapid City, SD 57701

12.3 Entire Agreement and Modification. This Agreement constitutes the entire agreement between the parties and may be amended only by written agreement properly executed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands the date and year first written above.

BLACK HILLS POWER AND LIGHT COMPANY

By _____
Everett E. Hoyt, President
and Chief Operating Officer

CITY OF RAPID CITY

By _____
Its Council President

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA

SECTION NO. 3A
SECOND REVISED SHEET NO. 12
REPLACES FIRST REVISED SHEET NO. 12

BILLING CODES 22, 28, 32, AND 38

LARGE DEMAND CURTAILABLE SERVICE (LDC)

RATE No. LDC-1
Page 1 of 5

AVAILABLE

At points on the Company's existing secondary distribution lines supplied by its interconnected transmission system.

APPLICABLE

At the customer's election, to any General Service-Large customer's entire service requirements supplied at one point of delivery when the customer agrees to curtail a minimum designated load under the conditions of one of the following options:

	Minimum Prior Notification	Minimum Curtailment Length	Maximum Curtailment Length
Option A	None	6 hours	16 hours
Option B	1 hour	6 hours	16 hours
Option C	4 hours	6 hours	16 hours

Service is by Large Demand Curtailable Service Agreement only, and is not applicable for temporary, standby, supplementary, emergency, resale, shared, or incidental purposes.

CHARACTER OF SERVICE

Alternating current, 60 hertz, three phase, at a single standard utilization voltage most available to the location of the customer.

NET MONTHLY BILL

Rate

Capacity Charge
$9.25 per kVA of Billing Capacity

Energy Charge
All usage at 3.4¢ per kWh

DATE FILED: September 30, 1992

EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

Minimum

The Capacity Charge less Curtailable Load Credit

Curtailable Load Credit

The monthly bill shall be reduced according to the following schedule for the excess, if any, that Billing Capacity exceeds Firm Service Capacity.

Option A	-	$5.00 per kVA
Option B	-	$4.75 per kVA
Option C	-	$4.25 per kVA

Penalty for Non-Compliance

If at any time a customer fails to curtail as requested by the Company, a penalty equal to five (5) times the Capacity Charge per kVA for the maximum difference in kW that the maximum load during any curtailment period within the billing period exceeds the Firm Service Capacity. If more than one curtailment occurs during a billing period and the customer fully complies with at least one curtailment request and does not fully comply with at least one other curtailment request, the penalty for non-compliance will be reduced by multiplying it by the proportion of the total number of curtailments with which the customer failed to comply fully to the number of curtailments ordered.

DETERMINATION OF BILLING CAPACITY

The Billing Capacity in any month shall be the highest of the following:

a. The kilovolt-ampere (kVA) load during the fifteen-minute period of maximum use during the billing period; or
b. Eighty percent (80%) of the highest Billing Capacity in any of the preceding eleven (11) months; or
c. The Firm Service Capacity.

LARGE DEMAND CURTAILABLE SERVICE
(continued)

FIRM SERVICE CAPACITY

The customer shall initially designate by Electric Service Agreement a Firm Service Capacity of at least 500 kVA less than: (a) the customer's maximum actual Billing Capacity during the twelve billing periods immediately preceding the election of this rate for existing customers, or (b) maximum estimated Billing Capacity during the twelve billing periods following the election of this rate for new customers.

The Customer shall agree to reduce electric demand to or below the Firm Service Capacity at or before the time specified by the Company in any notice of curtailment. The Customer shall further agree not to create demands in excess of Firm Service Capacity for the duration of each curtailment period. The customer may increase electric demand after the end of the curtailment period as specified by the Company.

SUBSTATION OWNERSHIP DISCOUNT

Customers who furnish and maintain a transformer substation with controlling and protective equipment, with the exception of metering equipment, for the purpose of transforming service from the Company's transmission voltage (47,000 volts, and above) or primary distribution voltage (2,400 volts to 24,900 volts) to the customer's utilization voltages, shall receive a monthly credit of $0.25 per kVA of Billing Capacity for transmission service and $0.15 per kVA of Billing Capacity for primary distribution service.

FUEL AND PURCHASED POWER ADJUSTMENT

The above schedule of charges shall be adjusted in accordance with the Fuel and Purchased Power Adjustment tariff as set forth beginning on Sheet No. 31 through Sheet No. 42 which are made a part hereof by express reference as if set forth verbatim herein.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

PAYMENT

Net monthly bills are due and payable twenty (20) days from the date of the bill, and after that date the account becomes delinquent. A late payment charge of 1.5% on the current unpaid balance shall apply to delinquent accounts. An insufficient check charge of $5.00 shall apply for returned checks. If a bill is not paid, the Company shall have the right to suspend service, providing ten (10) days' written notice of such suspension has been given. When service is suspended for nonpayment of a bill, a Customer Service Charge will apply.

CONTRACT PERIOD

A period of not less than five (5) years and if not then terminated by at least one hundred eighty (180) days' prior written notice by either party, shall continue until so terminated. Where service is being initiated or enlarged and requires special investment on the part of the Company, a longer period may be required and shall be as stated in the Electric Service Agreement.

TERMS AND CONDITIONS

1. Service will be rendered under the Company's General Rules and Regulations.

2. Service provided hereunder shall be on a continuous basis. If service is discontinued and then resumed within twelve (12) months after service was first discontinued, the customer shall pay all charges that would have been billed if service had not been discontinued.

3. Curtailment periods will typically be for a minimum of six consecutive hours with the duration and frequency to be at the discretion of the Company. Daily curtailments will not exceed 16 hours total and total curtailment in any calendar year will not exceed 400 hours.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

TERMS AND CONDITIONS (continued)

4. The Company at its option may terminate the Large Demand Curtailable Service Agreement if the Customer has demonstrated an inability to curtail its loads to the Firm Service Capacity when requested by the Company.

5. General Service - Large customers with Billing Capacities which are not large enough to provide 500 KVA of curtailable load will be considered by the Company for LDC service on a case-by-case basis.

6. Curtailable service for Industrial Contract Service customers is available, however, the rates and conditions of service will be determined on a case-by-case basis and filed with the South Dakota Public Utilities Commission for review and approval.

TAX ADJUSTMENT

Bills computed under the above rate will be increased by the applicable proportionate part of any impost, assessment or charge imposed or levied by any governmental authority as a result of laws or ordinances enacted, which is assessed or levied on the basis of revenue for electric energy or service sold, and/or the volume of energy generated and sold.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 30, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

EXHIBIT 2

CONTRACT FOR DEVIATION

This Exhibit is attached and incorporated into an Agreement for Large Demand Curtailable Service between Black Hills Power and Light Company and the City of Rapid City.

1. CREDIT.

The City of Rapid City shall receive a credit equal to $2.00 per kVA, if any, that Billing Capacity exceeds Firm Service Capacity. This credit shall be in addition to that credit granted under the Curtailable Load Credit Option A as set forth in Rate No. LDC-1, or its successor.

2. PENALTY FOR NONCOMPLIANCE.

The City of Rapid City shall not be subject to the Penalty in Rate No. LDC-1 as a result of the first generation related failure during each contract year. The penalty for noncompliance, when imposed, shall be equal to five times the Capacity Charge per kVA, as provided for in Rate LDC-1.

The City of Rapid City shall be allowed a grace period of 14 days in which to restore its generation capabilities without incurring any additional penalty when such generator failure is the result of catastrophic failure and inability to generate electricity.

3. TERM.

The Contract Period shall run for three years from the date of Agreement and shall continue thereafter until terminated by a one year written notice of either party.

Dated the date and year first above written.

BLACK HILLS POWER AND LIGHT COMPANY

By _____
Everett E. Hoyt, President
and Chief Operating Officer

THE CITY OF RAPID CITY

By _____
Its MAYOR

6-7-93

ccount Number 1.09.4181470.01

Contract No. 10431
Effective Date:
June 1, 1993

LARGE DEMAND CURTAILABLE SERVICE AGREEMENT

This Large Demand Curtailable Service Agreement ("Agreement") is entered into this 7th day of June, 1993, by and between Black Hills Power and Light Company ("Black Hills") and the City of Rapid City ("Customer").

1. PURCHASE AND SALE OF CURTAILABLE ELECTRIC ENERGY.

Black Hills shall supply and Customer shall take all electric power and energy required for its waste water treatment operation located in Pennington County, South Dakota, 6200 Anderson Road, Rapid City, South Dakota, (Old Facility - West) except to the extent that Black Hills shall be entitled to curtail a supply of electric power and energy as set forth in this Agreement and the tariff filed with the South Dakota Public Utilities Commission, at which time customer shall curtail and/or generate electric power and energy required to meet its needs.

2. NATURE OF SERVICE.

Such power and energy delivered by Black Hills shall be three phase, alternating current, approximately 60 cycles at a nominal phase to phase voltage of 480 volts.

3. CURTAILABLE SERVICE.

The electric power and energy supplied by Black Hills to Customer shall be on a curtailable basis. Black Hills has filed with and received approval from the South Dakota Public Utilities

Commission, Rate No. LDC-1, Large Demand Curtailable Service. A copy of such rate is attached as Exhibit 1. Customer has elected to purchase all of its electric power and energy pursuant to that rate, or its successor. This Agreement is contingent upon approval by the South Dakota Public Utilities Commission of this Contract of Deviation.

Customer has elected notice Option A with the corresponding Curtailable Load Credit of Rate No. LDC-1. This option allows for no prior notification. Customer shall curtail its load to the Firm Service Capacity or pay the penalty within the rate upon 10 minutes notice. All references to "a year" in this Agreement or Rate LDC-1 shall be from the anniversary date of the initiation of service consistent with this Agreement.

4. CUSTOMER'S EQUIPMENT.

4.1 Point of Delivery. Customer shall install and maintain at its own expense all electrical facilities on its side of the point of delivery which are necessary for the proper reception of electric power and energy and for its use beyond that point. Customer's facilities shall be of the type and nature which shall not interfere with other service rendered by Black Hills to any other customer.

4.2 Generating Equipment. Customer shall also be responsible at its own risk and expense to furnish, install and maintain in good and safe working condition any generation equipment, machinery, or other apparatus which it deems necessary on the customer side of the interconnection point of electrical

power and energy, if any, sufficient to replace that electric power and energy as provided to Customer consistent with its arrangement to allow the curtailment of service.

4.3 Limitation to Generation. Customer agrees and acknowledges that the generation equipment, machinery and apparatus which it shall install for purposes of providing electric energy and power during those curtailment periods set forth in this Agreement and as allowed for under Rate LDC-1 shall be utilized only for purposes of providing generation of electric power and energy in the event Black Hills notifies Customer of a curtailment or during an interruption or suspension of service by Black Hills or during a failure in the distribution system or as a result of unstable power supply and shall not be used to provide electric power and energy during any other time period. The machinery, equipment and apparatus as installed by the customer shall be such to operate and run separated from interconnection with Black Hills' distribution system.

4.4 No Duty to Inspect. Black Hills shall have no responsibility to test and/or inspect Customer's equipment used for purposes of providing generation and Customer acknowledges and hereby releases Black Hills from any responsibility for any failures in Customer's electric facilities, machinery and/or apparatus.

4.5 Testing and Maintenance of Equipment. Testing shall be in compliance with the generator manufacturer's recommended full load exercising time frame for such equipment, or Customer's

standard operation procedure for such equipment, whichever is greater. Customer shall endeavor to coordinate its maintenance of such equipment to ensure that the same occurs during off peak periods for Black Hills. Customer shall be solely responsible for the maintenance of its generating equipment.

5. RATES.

Black Hills shall bill and Customer shall pay for all electric power and energy supplied hereunder at the rates and charges due and payable pursuant to the Black Hills' electric Rate No. LDC-1. Customer understands that the initial rates and terms set forth in this contract in Rate No. LDC-1 may be revised by Black Hills from time to time. Customer agrees that if Black Hills should during the term of this contract revise or eliminate any such rates or terms as set forth in Rate No. LDC-1 that such changes or revisions shall be applicable to Customer for the balance of the term of this Agreement. Customer acknowledges that its rate as set forth within Rate No. LDC-1 is subject to all terms and conditions of Rate No. LDC-1 except as modified by this Agreement and/or those terms set forth in the Contract of Deviation attached as Exhibit 2. The rate is subject to revision by the South Dakota Public Utilities Commission, but the rate shall not be eliminated during the duration of this contract.

6. NO LIABILITY FOR INTERRUPTIONS OR SUSPENSION OF SERVICE.

Black Hills shall endeavor to maintain adequate and continuous service. However, Black Hills does not guarantee or

otherwise ensure that the supply of electric energy or power will at all times be constant. Black Hills shall not be liable to Customer for any loss or damages occasioned by delay, interruption or suspension of service. Black Hills shall only be liable to Customer in the event of gross negligence causing such interruption. Black Hills shall not be liable for any lost profits or other consequential damages or expenses incurred by Customer as the result of any interruption or disruption of service.

In the event Black Hills is prevented from delivering electric service or any part thereof for any reason, Black Hills shall not be obligated to deliver power during said time and there will be a prorata reduction in Billing Capacity or similar charges provided in the rate schedule applicable.

7. COMMUNICATION.

Customer shall provide a designated telephone line so that Black Hills may notify them in the event of a curtailment request and/or a reconnect signal.

8. RIGHT OF WAY.

Customer shall provide to Black Hills, without any cost, a suitable location and right of way to Customer's premises for all necessary lines, equipment, or other appurtenant facilities. All such facilities, lines, or appurtenances as installed by Black Hills shall remain its property and Black Hills shall have all necessary rights to inspect, repair, remove, or construct additional facilities as necessary.

9. INDEMNIFICATION.

Black Hills shall not be liable for any loss, damage, or expense to property or persons as a result of injury or death as suffered by Customer, its employees, agents, or any third parties who are occupying Customer's property resulting from the operation of any electrical equipment or facilities located on Customer's side of the point of delivery. Customer agrees to indemnify and hold Black Hills harmless from any such loss, damage, injury, or death, or related expenses, including reasonable attorney's fees which Black Hills may incur.

10. FIRM SERVICE CAPACITY.

Customer has designated a Firm Service Capacity of zero kVA. During all periods of curtailment, Customer shall reduce its electric demand to or below the Firm Service Capacity at or before the time specified by Black Hills.

11. MATTERS OF DEVIATION.

Deviations, if any, under this Agreement are set forth on Exhibit 2 attached hereto and incorporated herein by this reference.

12. MISCELLANEOUS.

12.1 Assignment. Customer may assign its rights and obligations under this Agreement only with the written consent of Black Hills, which consent shall not be unreasonably withheld.

12.2 Notice. All notices under this Agreement, except those notices necessary for curtailment, which may be provided by

telephone, shall be in writing sent to each party to this Agreement at their respective address below:

Black Hills Power and Light Company
Attention: Rate Department
625 Ninth Street
P. O. Box 1400
Rapid City, SD 57709

City of Rapid City
300 Sixth Street
Rapid City, SD 57701

12.3 Entire Agreement and Modification. This Agreement constitutes the entire agreement between the parties and may be amended only by written agreement properly executed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands the date and year first written above.

BLACK HILLS POWER AND LIGHT COMPANY

By _____
Everett E. Hoyt, President
and Chief Operating Officer

CITY OF RAPID CITY

By _____
Its Council President

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA

SECTION NO. 3A
SECOND REVISED SHEET NO. 12
REPLACES FIRST REVISED SHEET NO. 12

BILLING CODES 22, 28, 32, AND 38

LARGE DEMAND CURTAILABLE SERVICE (LDC)

RATE No. LDC-1
Page 1 of 5

AVAILABLE

At points on the Company's existing secondary distribution lines supplied by its interconnected transmission system.

APPLICABLE

At the customer's election, to any General Service-Large customer's entire service requirements supplied at one point of delivery when the customer agrees to curtail a minimum designated load under the conditions of one of the following options:

	Minimum Prior Notification	Minimum Curtailment Length	Maximum Curtailment Length
Option A	None	6 hours	16 hours
Option B	1 hour	6 hours	16 hours
Option C	4 hours	6 hours	16 hours

Service is by Large Demand Curtailable Service Agreement only, and is not applicable for temporary, standby, supplementary, emergency, resale, shared, or incidental purposes.

CHARACTER OF SERVICE

Alternating current, 60 hertz, three phase, at a single standard utilization voltage most available to the location of the customer.

NET MONTHLY BILL

Rate

Capacity Charge
$9.25 per kVA of Billing Capacity

Energy Charge
All usage at 3.4¢ per kWh

DATE FILED: September 30, 1992

EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

Minimum

The Capacity Charge less Curtailable Load Credit

Curtailable Load Credit

The monthly bill shall be reduced according to the following schedule for the excess, if any, that Billing Capacity exceeds Firm Service Capacity.

Option A	-	$5.00 per kVA
Option B	-	$4.75 per kVA
Option C	-	$4.25 per kVA

Penalty for Non-Compliance

If at any time a customer fails to curtail as requested by the Company, a penalty equal to five (5) times the Capacity Charge per kVA for the maximum difference in kW that the maximum load during any curtailment period within the billing period exceeds the Firm Service Capacity. If more than one curtailment occurs during a billing period and the customer fully complies with at least one curtailment request and does not fully comply with at least one other curtailment request, the penalty for non-compliance will be reduced by multiplying it by the proportion of the total number of curtailments with which the customer failed to comply fully to the number of curtailments ordered.

DETERMINATION OF BILLING CAPACITY

The Billing Capacity in any month shall be the highest of the following:

a. The kilovolt-ampere (kVA) load during the fifteen-minute period of maximum use during the billing period; or
b. Eighty percent (80%) of the highest Billing Capacity in any of the preceding eleven (11) months; or
c. The Firm Service Capacity.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

FIRM SERVICE CAPACITY

The customer shall initially designate by Electric Service Agreement a Firm Service Capacity of at least 500 kVA less than: (a) the customer's maximum actual Billing Capacity during the twelve billing periods immediately preceding the election of this rate for existing customers, or (b) maximum estimated Billing Capacity during the twelve billing periods following the election of this rate for new customers.

The Customer shall agree to reduce electric demand to or below the Firm Service Capacity at or before the time specified by the Company in any notice of curtailment. The Customer shall further agree not to create demands in excess of Firm Service Capacity for the duration of each curtailment period. The customer may increase electric demand after the end of the curtailment period as specified by the Company.

SUBSTATION OWNERSHIP DISCOUNT

Customers who furnish and maintain a transformer substation with controlling and protective equipment, with the exception of metering equipment, for the purpose of transforming service from the Company's transmission voltage (47,000 volts, and above) or primary distribution voltage (2,400 volts to 24,900 volts) to the customer's utilization voltages, shall receive a monthly credit of $0.25 per kVA of Billing Capacity for transmission service and $0.15 per kVA of Billing Capacity for primary distribution service.

FUEL AND PURCHASED POWER ADJUSTMENT

The above schedule of charges shall be adjusted in accordance with the Fuel and Purchased Power Adjustment tariff as set forth beginning on Sheet No. 31 through Sheet No. 42 which are made a part hereof by express reference as if set forth verbatim herein.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

PAYMENT

Net monthly bills are due and payable twenty (20) days from the date of the bill, and after that date the account becomes delinquent. A late payment charge of 1.5% on the current unpaid balance shall apply to delinquent accounts. An insufficient check charge of $5.00 shall apply for returned checks. If a bill is not paid, the Company shall have the right to suspend service, providing ten (10) days' written notice of such suspension has been given. When service is suspended for nonpayment of a bill, a Customer Service Charge will apply.

CONTRACT PERIOD

A period of not less than five (5) years and if not then terminated by at least one hundred eighty (180) days' prior written notice by either party, shall continue until so terminated. Where service is being initiated or enlarged and requires special investment on the part of the Company, a longer period may be required and shall be as stated in the Electric Service Agreement.

TERMS AND CONDITIONS

1. Service will be rendered under the Company's General Rules and Regulations.

2. Service provided hereunder shall be on a continuous basis. If service is discontinued and then resumed within twelve (12) months after service was first discontinued, the customer shall pay all charges that would have been billed if service had not been discontinued.

3. Curtailment periods will typically be for a minimum of six consecutive hours with the duration and frequency to be at the discretion of the Company. Daily curtailments will not exceed 16 hours total and total curtailment in any calendar year will not exceed 400 hours.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

TERMS AND CONDITIONS (continued)

4. The Company at its option may terminate the Large Demand Curtailable Service Agreement if the Customer has demonstrated an inability to curtail its loads to the Firm Service Capacity when requested by the Company.

5. General Service - Large customers with Billing Capacities which are not large enough to provide 500 KVA of curtailable load will be considered by the Company for LDC service on a case-by-case basis.

6. Curtailable service for Industrial Contract Service customers is available, however, the rates and conditions of service will be determined on a case-by-case basis and filed with the South Dakota Public Utilities Commission for review and approval.

TAX ADJUSTMENT

Bills computed under the above rate will be increased by the applicable proportionate part of any impost, assessment or charge imposed or levied by any governmental authority as a result of laws or ordinances enacted, which is assessed or levied on the basis of revenue for electric energy or service sold, and/or the volume of energy generated and sold.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 30, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

EXHIBIT 2

CONTRACT FOR DEVIATION

This Exhibit is attached and incorporated into an Agreement for Large Demand Curtailable Service between Black Hills Power and Light Company and the City of Rapid City.

1. CREDIT.

The City of Rapid City shall receive a credit equal to $2.00 per kVA, if any, that Billing Capacity exceeds Firm Service Capacity. This credit shall be in addition to that credit granted under the Curtailable Load Credit Option A as set forth in Rate No. LDC-1, or its successor.

2. PENALTY FOR NONCOMPLIANCE.

The City of Rapid City shall not be subject to the Penalty in Rate No. LDC-1 as a result of the first generation related failure during each contract year. The penalty for noncompliance, when imposed, shall be equal to five times the Capacity Charge per kVA, as provided for in Rate LDC-1.

The City of Rapid City shall be allowed a grace period of 14 days in which to restore its generation capabilities without incurring any additional penalty when such generator failure is the result of catastrophic failure and inability to generate electricity.

3. TERM.

The Contract Period shall run for three years from the date of Agreement and shall continue thereafter until terminated by a one year written notice of either party.

Dated the date and year first above written.

BLACK HILLS POWER AND LIGHT COMPANY

By Everett E. Hoyt
Everett E. Hoyt, President
and Chief Operating Officer

THE CITY OF RAPID CITY

By Ed McLaughlin
Its MAYOR
6-7-93

Post-it® Fax Note 7671	Date	# of pages ▶ 7
To Linn Evans	From K. Cremer	
Co./Dept.	Co.	
Phone #	Phone # 773-3201	
Fax # 605/721-2550	Fax #	

AT A REGULAR SESSION of the Publ
State of So
in the City
2nd day of ____, ____

PRESENT: Commissioners Klinkel, Fischer and Stofferahn

IN THE MATTER OF THE PETITION)
FOR DECLARATORY RULING FILED)
BY CLAY-UNION ELECTRIC COR-)
PORATION.

ORDER FOR TEMPORARY SERVICE

(F-3292)

On the 1st day of March, 1979, Clay-Union Electric Corporation filed with this Commission its application to provide temporary single phase service to the Alumax Extrusions, Inc. facility. On the 2nd day of March, 1979, Northwestern Public Service Company filed its application for authority to provide temporary service with this Commission.

The Commission has carefully reviewed the pleadings and documentation provided by Clay-Union Electric and Northwestern Public Service Company. The Commission finds that Clay-Union Electric presently has a single phase line which with minor modification can be utilized to provide temporary single phase service to the Alumax facility. In light thereof, the Commission finds that Clay-Union Electric should provide temporary single phase service to that facility.

However, the Commission finds that Clay-Union Electric Corporation shall bear all expenses related to the provision of such temporary service. Further, the Commission finds that the granting to Clay-Union of the provision of temporary service to the Alumax facility shall in no manner prejudice or in any derrogate the rights of Clay-Union and Northwestern Public Service Company to provide permanent three-phase service to the Alumax facility.

The Commission finds that it is in the public interest to require Clay-Union to provide temporary service to the Alumax facility forthwith in order that Alumax may have its electrical needs met as soon as possible. It is therefore

ORDERED, that Clay-Union Electric Corporation be, and hereby is, ordered to provide temporary single phase service to the Alumax Extrusions facility immediately; and it is

FURTHER ORDERED, that the provision for temporary single phase service by Clay-Union Electric Corporation shall in no manner prejudice, affect, or derrogate any rights of Northwestern Public Service Company, Clay-Union Electric Corporation or Alumax Extrusions, Inc. as the same pertains to the provision of permanent three phase electrical service to the Alumax facility.

BY ORDER OF THE COMMISSION:

(OFFICIAL SEAL)

STEVE BLOMKE, Executive Secretary

AT A REGULAR SESSION of the Public Utilities Commission of the State of South Dakota, held in its offices, in the City of Pierre, the Capital, this 6th day of April, 1979.

PRESENT: Commissioners Klinkel and Stofferahn
Commissioner Fischer, Dissenting

IN THE MATTER OF THE PETITION FOR DECLARATORY RULING FILED BY CLAY-UNION ELECTRIC CORPORATION.	DECISION AND ORDER (F-3292)

Upon the basis of the evidentiary record and after review and consideration of the positions of the parties in this proceeding, the Commission hereby enters the following:

FINDINGS OF FACT

I.

Due to the urgency for resolution of this dispute and the need for an immediate decision, the Commission's Findings hereinafter set forth shall deal only with the fundamental and determinative issues in this proceeding.

SDCL 49-34A-42 states:

> "Each electric utility shall have the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975, and to each and every present and future customer in its assigned service area and no electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless such other electric utility consents thereto in writing; provided, that any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area."

The threshold issue which must be decided by the Commission in this proceeding is the meaning of the phrase "at each and every location" as used in SDCL 49-34A-42. There is no dis-

pute among the parties that Clay-Union Electric Corporation was serving a customer at a location prior to March 21, 1975 within the confines of Block One of Foss 2nd Addition of the North Half of Section 9, Township 93 North, Range 55 West of the Fifth P.M. in Yankton County, South Dakota. The sharply disputed issue is whether Clay-Union's service to that customer is at the same location where the Alumax Extrusions' manufacturing facility is presently being constructed.

The Commission finds that it is the same location, as that term is utilized in SDCL 49-34A-42, and that Clay-Union Electric Corporation should be permitted to provide permanent three-phrase electrical service to that location. The Commission finds that review of the various Exhibits proferred in this proceeding, and in particular Exhibit C, leads to and fully supports this determination. The Commission further finds that any other construction of the phrase "each and every location" would be unreasonable and unrealistic under the facts and circumstances of this case.

II.

The only remaining issue to be considered by the Commission is proper construction of the 1973 agreement set forth as part of Exhibit 2 in this proceeding and incorporated in the 1975 agreement. The 1973 agreement was approved by the Mediation Board by Order entered on the 10th day of January, 1974 and the 1975 agreement was approved by the Public Utilities Commission by Order entered on the 1st day of July, 1976. The relevant portion of the 1973 agreement states:

> "For purposes of clarification on Exhibit 1, it is agreed that the existing electric structures and service outlets serviced by Northwestern Public Service Company are designated by the red outline; that the blank lines designate the existing structures and service outlets currently serviced by Clay-Union Electric Corporation; that the dark green is the line designating the areas of service hereinafter of the respective parties to this agreement, and that neither party will extend their facilities or offer any new service in the designated area of the other party.
>
> It is agreed that each party shall continue to service existing structures and outlets that may be located in the designated areas of the other but that no new connections or hookups will hereinafter be made in the designated area of the other."

The Commission finds that Clay-Union Electric Corporation's right to serve the Alumax Extrusions facility at a pre-March 21, 1975 location does not abrogate or violate the 1973 or 1975 agreements entered into by and between Northwestern Public Service Company and Clay-Union Electric Corporation. The Commission finds that on the basis of the expert testimony presented and the express terms of the 1973 agreement above set forth, no violation thereof will occur by permitting Clay-Union Electric Corporation to provide permanent service to the Alumax Extrusions facility. Moreover, when viewed in conjunction with the facts and circumstances existent in the Mediation Board proceeding which culminated in that agreement entered into by and between Northwestern Public Service Company and Clay-Union Electric Corporation, provision of electrical service by Clay-Union to the Alumax Extrusions facility is both reasonable and fully supported.

III.

The Commission finds that both Northwestern Public Service Company and Clay-Union Electric Corporation have an adequate power supply to serve the Alumax Extrusions load. Further, the Commission finds that permitting either Northwestern Public Service Company or Clay-Union Electric Corporation to provide permanent electrical service to the Alumax Extrusions facility would promote the efficient and economical use and development of the electric system of either utility.

CONCLUSIONS OF LAW

I.

That the Commission has jurisdiction over the subject matter and parties to this proceeding.

II.

That the Commission's determination herein adjudicates the rights of the parties hereto regarding the dispute over the provision of permanent service to the Alumax Extrusions facility.

III.

That the Commission's determination herein is made pursuant to, and in accordance with, SDCL Chapters 1-26 and 49-34A. It is therefore

ORDERED, that Clay-Union Electric Corporation be, and the same hereby is, authorized and permitted to provide permanent electrical service to the Alumax Extrusions facility; and it is

FURTHER ORDERED, that all previous Orders of the Commission not inconsistent herewith be, and the same hereby are incorporated as if set forth in full herein.

BY ORDER OF COMMISSIONERS
KLINKEL AND STOFFERAHN:

COMMISSIONER FISCHER, DISSENTING:

STEVE BLOMEKE, Executive Secretary

(OFFICIAL SEAL)

DISSENT
DOCKET NO. F-3292
COMMISSIONER CHARLOTTE FISCHER

In 1948 Clay-Union Electric Corporation began serving a farm site. In 1978 the farm and land was sold and the buildings torn down by Alumax Extrusions, Inc. Alumax intends to use this land to construct a business operations center.

As shown on the various exhibits, the Alumax plant will be located totally within Northwestern Public Service Company's territorial boundaries, and for Clay-Union to serve Alumax a new three-phase line must be built by them extending at least 3,200 ft. within NWPS territory.

The exhibits also show that if any part of the Alumax building actually touches the former farm site's meter locations, it might be at the far north section of a loading dock of the building. Clearly, the building's vast majority of square footage exists apart from the service locations, outlets, or farm structures that used to be there and served by Clay-Union.

In 1973 Clay-Union Electric Corporation and Northwestern Public Service signed an agreement which was approved by the South Dakota Electric Mediation Board in 1974, as well as the Public Utilities Commission on the 1st of January, 1976, it being part of the requirements satisfying the 1975 territorial law in South Dakota designating and assigning electric utility boundaries.

The Mediation Board agreement's relevant parts are quoted in the majority's decision and order pointing out that both utilities agreed "existing electric structures and service outlets" shall be rights to each, and that "neither party will extend their facilities or offer any new service in the designated area of the other party."

Also in SDCL 49-34A-42 "each and every location" of a utility's service prior to March 21, 1975, shall be heretofore their right to serve.

The majority rests solely on interpreting SDCL 49-34A-42 "each and every location" to mean that the farm, regardless of having been torn down and a completely new building and different business and different owner, is the same location as it was in 1948, 1973, 1974, 1976, 1978 and 1979. I do not believe this matter to be that clear-cut, considering the relevant facts and weight of the evidence aside from a debate on the interpretation of the meaning of "location."

In fact, the facts of this case show that it is unreasonable and unrealistic to find that the farm served by Clay-Union is the same location of the Alumax building. Northwestern Public Service should be permitted to provide three-phase electric to Alumax.

Although both Clay-Union and NWPS are capable of serving Alumax, NWPS needs only to construct a short piece of the three-phase line, which will be totally within their assigned service area and will not duplicate Clay-Union's line, nor will NWPS have to cross Clay-Union's assigned service area. Whereas, Clay-Union must construct at least 3,200 feet of three-phase electric line service on/in NWPS's assigned service territory to get to the Alumax plant.

The majority's decision further fails to recognize the economic benefits of a more balanced load to the NWPS customers by allowing NWPS to serve a large industrial business that is located wholly within its assigned territory. One must recognize that although the same benefits would go to the Clay-Union customers, NWPS customers need greater load balance that Alumax could provide, and thus lessen all of NWPS's customers' rate burdens. Clay-Union customers presently enjoy benefits from federally funded hydro-power dams, whereas NWPS customers are not eligible for the cheaper hydro-generated electricity.

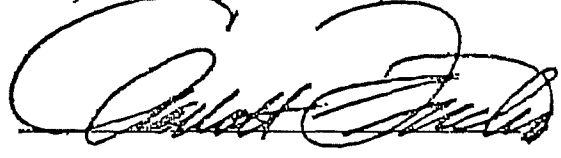
It is clear to me that the weight of the facts is great in favor of NWPS in that the customer is totally within NWPS territory, the 1973 Mediation Board Agreement said new customers shall be theirs if they are within their territory, the three-phase line construction needed for Alumax will not be great nor located in any other utility's territory but their own, and in that no duplication of lines could possibly result and NWPS customers will benefit. They cannot clearly say the farm and Alumax are the same location. The weight of the evidence and layout of the Alumax plant show that they can be nothing but different locations to which SDCL 49-34A-42 speaks.

We must remember that our judgments on the evidence and statutory guidelines must be fair and reasonable. To say anything but that Northwestern Public Service should serve Alumax, a completely new and different entity than that of the former Clay-Union-served farm, would appear to be unreasonable, unfair and counter to the end result envisioned by the territorial statutory provision to eliminate duplication and protect territorial rights of service.

Heretofore I believe the questions before us on territorial questions have been somewhat clear, but in this case, although I again believe it is clear given the weight of evidence and spirit of the agreements and law, the majority hangs onto the word "location" and SDCL 49-34A-42 without regard to any other matter, concern, fact, or end result.

If this decision stands the test of the courts, I shall not consider it a victory for Clay-Union or a defeat for Northwestern Public Service. Instead, this decision is a drastic blow to customers in private utility territories. Residential customers in these areas cannot whatsoever be assured that there are laws in South Dakota protecting and offering the hope and opportunity that their rates can be balanced by their company's ability to obtain industrial or large commercial loads. Eventually, if trends such as this decision represents are continued, a customer now in a private utility's territory will have to absorb all costs themselves, without benefit of the economic spread to other loads of a more balanced nature. Such loads as Alumax greatly helps the customers of NWPS because Alumax can help pick up the present costs.

Needless to say, the majority's decision strikes a serious blow to customers in Yankton, Mitchell, Huron, Chamberlain, Aberdeen, Webster, Redfield, etc.



CF:da
April 6, 1979

Is the Department of Public Safety authorized to require inspections of hot water supply boilers above the 140,000 BTU rating, when the ASME Code referred to in SDCL 34-29A-16 provides for the certification of hot water supply boilers with ratings in excess of 200,000 BTU's?

SDCL 34-29A-16 refers to the ASME Code in the sense that the Department of Public Safety *may* adopt such an existing codified publication and when so adopted shall constitute a part of the rules and regulations of the Department of Public Safety. There is nothing in SDCL 34-29A-16 which would require the Department of Public Safety to adopt the code or which would in any way limit the powers of the Department to set standards in addition to such code if indeed they were to adopt it. This being the case, it follows that the Department is authorized to pass Rule 61:08:01:01 Subdivision F which defines hot water supply boiler in a manner somewhat different than the ASME Code might define it. The Department of Public Safety is authorized to make a policy judgment in their rulemaking that 140,000 BTU's as opposed to 200,000 BTU's shall be the standard limit above which the provisions of their rules relating to inspections and certifications would apply.

Respectfully submitted,
WILLIAM J. JANKLOW
ATTORNEY GENERAL

WJJ:DOC:dk

July 29, 1975

Mr. Jack Weiland
Commissioner
Public Utilities Commission
Capitol Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 75-135

The applicability of SDCL 49-34A-42 (Section 38 of Senate Bill 261) to the proposed shredder facility located near Aberdeen, South Dakota

Dear Mr. Weiland:

You have requested an opinion from this office as to the applicability of

SDCL 49-34A-42 (Section 38 of Senate Bill 261) to the proposed shredder facility located near Aberdeen, South Dakota.

The factual situation presented is as follows:

> During the fall of 1974, Northwestern Public Service Company requested permission to install underground cable into the general area of the proposed shredder facility. The facility is located in the West One-Half of Southeast One-Quarter of Section 8, Township 123 North, Range 63 West. On this same parcel of property, within several hundred feet, is located the County owned Northern Alcohol and Drug Referral Center. Although activities in the Center have changed over the years, it has been served with power by Northwestern Public Service since about 1925.
>
> After some discussion, the County Commission on December 13, 1974 passed a motion allowing Northwestern Public Service Company to install a permanent underground cable. Cable was installed with the remainder to be placed when site plans were finalized.
>
> The Commission subsequently reviewed the motion giving Northwestern Public Service permission to install cable for the Shredder Facility. New Commissioners had taken office in the interim with new views and different conclusions as to the intent of the original motion. On January 14, 1975 it was decided by the new Commissioners that the original motion should not stand and that bids would be taken.
>
> On March 21, 1975 the Commission resolved to permit the contractor to choose the supplier for temporary electric service. Northwestern Public Service Company was chosen at that time and continues to presently serve the site.
>
> Specifications were prepared and bids opened May 2, 1975. Both companies presented proposals with Northern Electric being low bidder. Upon review of the proposals, it was noted that Northern Electric had not submitted surety of any kind. The Commission then chose to reject both bids, one for lack of surety and the other for lack of a fuel adjustment clause which had not been specified.
>
> Northern Electric has had its three phase over head line immediately in front of the new shredder facility for several years.

Based on the above facts the question presented is:

> (1) Is it necessary for the Brown County Commissioners to receive proposals on electric service to the shredder site, (2) is it

automatically Northwestern Public Service Company territory as of July 1, 1975, or (3) is the choice left to the consumer until territorial boundaries have been set?

SDCL 49-34A-42 provides:

> 49-34A-42. Electric utility's exclusive rights in assigned service area—Connecting facilities in another area.—*Each electric utility shall have the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975*, and to each and every present and future customer in its assigned service area and no electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless such other electric utility consents thereto in writing; provided, that any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

On the basis of the facts available, it appears that there is little argument that Northwestern Public Service Company was providing electric service to the shredder *location* as of March 21, 1975. SDCL 49-34A-42 cited above would appear to make that fact determinative of the questions presented. Although the Public Utilities Commission has not yet had time to finally certify territories the Public Utilities Commission cannot do other than what the statutes allow. SDCL 49-34A-42 has the legal effect of making March 21, 1975 the date at which certain territorial rights *are* established. As of the effective date of this law, the rights of the utility serving the shredder location to continue service to that location became fixed.

The answer to your first question therefore is NO, to your second question YES, and to your third question NO!

Respectfully submitted,
WILLIAM J. JANKLOW
ATTORNEY GENERAL

WJJ:DOC:dk

July 29, 1975

Mr. George Zacher
County Auditor
McPherson County
Leola, South Dakota 57456

OFFICIAL OPINION NO. 75-136

81

TABLE OF AUTHORITIES

Black Hills Power, Inc. Petition for Leave to Intervene and Brief in Resistance to West River Electric Association Inc.'s Petition for Declaratory Ruling EL02-003

STATUTES

1. SDCL § 1-26-17.1; ARSD § 20:10:01:15.02

2. SDCL § 31-26-5

3. SDCL § 36-16-16

4. SDCL § 47-21-75

5. SDCL § 49-34A-42

6. SDCL § 15-2-13(2)

7. 220 ILCS § 30/5

CASE LAW

8. Coles-Moultrie Electric Cooperative v. Illinois Commerce Commission, 394 N.E.2d 1068 (Ill. 1979)

9. County of Spink v. Heinold Hog Market, Inc., 299 N.W.2d 811 (SD 1980)

10. Freeman Community Hospital and Nursing Home v. Hutchinson County, 633 N.W.2d 179 (SD 2001)

11. Hammerquist v. Warburton, 458 N.W.2d 773 (SD 1990)

12. Matter of Certain Territorial Electric Boundaries v. Northwestern Public Service, 281 N.W.2d 72 (SD 1979)

13. Matter of Complaint of Northern States Power Company, 489 N.W.2d 365 (SD 1992)

14. Matter of Northwestern Public Service Company, 560 N.W.2d 925 (SD 1997)

15. Matter of the Petition for Declaratory Ruling Filed by Clay-Union Electric Corporation, 300 N.W.2d 58 (SD 1980)

SOUTH DAKOTA CODIFIED LAWS
TITLE 1. STATE AFFAIRS AND GOVERNMENT
CHAPTER 1-26. ADMINISTRATIVE PROCEDURE AND RULES

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Current through the 76th Legislative Assembly (2001)

1-26-17.1 Intervention in contested case by person with pecuniary interests.

A person who is not an original party to a contested case and whose pecuniary interests would be directly and immediately affected by an agency's order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made.

Source: SL 1978, ch 13, § 5.

<General Materials (GM) - References, Annotations, or Tables>

See also: In re Application of Union Carbide Corp. (1981) 308 NW 2d 753.

S D C L § 1-26-17.1

SD ST § 1-26-17.1

END OF DOCUMENT

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General Authority: SDCL 49-1-11(2), 49-34A-4(6).

Law Implemented: SDCL 49-1-11(2), 49-13-1, 49-13-4, 49-34A-4(6).

20:10:01:15.01. Burden in complaint proceeding. In a complaint proceeding, the complainant has the burden of going forward with presentation of evidence unless otherwise ordered by the commission. The complainant has the burden of proof as to factual allegations which form the basis of the complaint, and the respondent has the burden of proof with respect to affirmative defenses.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:16, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11, 49-34A-4.

Law Implemented: SDCL 49-34A-61, 49-44-16.

20:10:01:15.02. Intervention. A person who is not an original party to a proceeding before the commission and who claims an interest in a pending proceeding may petition the commission for leave to intervene. An original and ten copies of a petition to intervene shall be filed with the commission within the time specified in the commission's order establishing time for intervention. A petition to intervene which is not timely filed with the commission may not be granted by the commission unless the denial of the petition is shown to be detrimental to the public interest or to be likely to result in a miscarriage of justice.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:02, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 25 SDR 89, effective December 27, 1998.

General Authority: SDCL 49-1-11(2).

Law Implemented: SDCL 1-26-17.1, 49-34A-13.1.

20:10:01:15.03. Contents of petition to intervene. A petition to intervene shall set out clearly and concisely the facts supporting the petitioner's alleged interest in the proceeding and, to the extent known, the position of the petitioner in the proceeding. The petition shall also show service upon all parties to the proceeding.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:03, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 1-26-17.1, 49-34A-13.1.

Cross-Reference: Manner of service, § 20:10:01:22.03.

20:10:01:15.04. Answer to petition to intervene. A party to a proceeding may file an answer to a petition to intervene on or before the date, if any, set for hearing upon the petition or on or before the date set for hearing upon the complaint, whichever is earlier, but in no event may a party have more than 15 days in which to file an answer to a petition to intervene. The answer shall show service of copies thereof upon all parties to the proceeding.

Source: 2 SDR 56, effective February 2, 1976; transferred from § 20:10:14:04, 12 SDR 85, effective November 24, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986.

General Authority: SDCL 49-1-11.

Law Implemented: SDCL 1-26-17.1, 49-34A-13.1.

20:10:01:15.05. Commission action on petition to intervene. As soon as practicable after the expiration of the time for

SOUTH DAKOTA CODIFIED LAWS
TITLE 31. HIGHWAYS AND BRIDGES
CHAPTER 31-26. UTILITY LINES ALONG AND ACROSS HIGHWAYS

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Current through the 76th Legislative Assembly (2001)

31-26-5 Lines erected in accordance with bureau of standards Code.

The grantee under § 31-26-1 shall construct and maintain said poles, wires, and line in accordance with the National Electrical Safety Code adopted by the bureau of standards of the United States department of commerce.

Source: SDC 1939, § 28.1001 (4) as enacted by SL 1939, ch 108; 1953, ch 149, § 1; 1953, ch 150.

<General Materials (GM) - References, Annotations, or Tables>

S D C L § 31-26-5

SD ST § 31-26-5

END OF DOCUMENT

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SOUTH DAKOTA CODIFIED LAWS
TITLE 36. PROFESSIONS AND OCCUPATIONS
CHAPTER 36-16. ELECTRICIANS AND ELECTRICAL CONTRACTORS

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Current through the 76th Legislative Assembly (2001)

36-16-16 Persons exempt from license requirement.

The following persons are not required to hold an electrician's license:

(1) Employees of utilities engaged in the manufacture and distribution of electrical energy, when engaged in work directly pertaining to the manufacture and distribution of electrical energy. This exemption shall terminate at the first point of service attachment, except for the installing or testing of electric meters and measuring devices and the maintenance of their service;

(2) Employees of telephone, telegraph, radio and television communication services and pipelines or persons or companies when engaged in work pertaining directly to such services, provided such work is designed, supervised or installed by a person qualified in the work being done;

(3) Electrical work and equipment in mines, ships, railways, rolling stock or automotive equipment, and in packing plants supervised and regulated by the department of agriculture;

(4) Replacement of lamps and connection of portable electrical devices to suitable receptacles which have been permanently installed;

(5) Radio and appliance service repair departments;

(6) Maintenance on oil burners and space heaters where installation of same has been effected by a Class B or journeyman electrician in accordance with this chapter;

(7) Architects, designers and engineers engaged in the planning and laying out of electrical work;

(8) Employees of electrical utilities engaged in the installation and maintenance of utility street lighting, traffic signal devices or electric utility-owned security lights; or

(9) Employees of alarm and communications companies or services when wiring an alarm or communications system when the system is classified as power limited class 2 or class 3 signaling circuits, power limited fire protective signaling circuits, class 2 or class 3 alarm circuits, or communications circuits or systems, as covered by articles 725, 760, 770, 800, 810, 820 of the National Electrical Code as it was approved by the American National Standards Institute and in effect on January 1, 1989.

Source: SL 1963, ch 216, § 12; 1965, ch 152, § 1; 1986, ch 315, § 5; 1988, ch

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302; 1989, ch 327; 1991, ch 308, § 6.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Cross-References.

Disaster workers exempt from licensing requirements in emergency, § 33-15- 39.

S D C L § 36-16-16

SD ST § 36-16-16

END OF DOCUMENT

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SOUTH DAKOTA CODIFIED LAWS
TITLE 47. CORPORATIONS
CHAPTER 47-21. RURAL ELECTRIC COOPERATIVES

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Current through the 76th Legislative Assembly (2001)

47-21-75 Construction standards -- Minimum vertical clearance.

Construction of electric lines by a cooperative shall, as a minimum requirement, comply with the standards of the national electrical safety code in effect at the time of such construction; provided, however, that where Y- connected circuits with neutral conductors effectively grounded throughout their length are used in the construction or reconstruction of electrical distribution or transmission lines, minimum vertical clearance of wires or neutral conductors over ground or rails shall be determined by the voltage between the wires and the ground, if such voltage does not exceed fifteen thousand volts.

Source: SL 1947, ch 33, § 28; 1951, ch 21; SDC Supp 1960, § 11.2228.

<General Materials (GM) - References, Annotations, or Tables>

See also: Lovell v. Oahe Elec. Coop. (1986) 382 NW 2d 396.

S D C L § 47-21-75

SD ST § 47-21-75

END OF DOCUMENT

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49-34A-42. Electric utility's exclusive rights in assigned service area -- Connecting facilities in another area. Each electric utility has the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975, and to each and every present and future customer in its assigned service area. No electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless such other electric utility consents thereto in writing and the agreement is approved by the commission consistent with § 49-34A-55. However, any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area.

The commission shall have the jurisdiction to enforce the assigned service areas established by § § 49-34A-42 to 49-34A-44, inclusive, and § § 49-34A-48 to 49-34A-59, inclusive.

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SOUTH DAKOTA CODIFIED LAWS
TITLE 15. CIVIL PROCEDURE
CHAPTER 15-2. LIMITATION OF ACTIONS GENERALLY

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Current through the 76th Legislative Assembly (2001)

15-2-13 Contract obligation or liability -- Statutory liability -- Trespass -- Personal property -- Injury to noncontract rights -- Fraud -- Setting aside corporate instrument.

Except where, in special cases, a different limitation is prescribed b y statute, the following civil actions other than for the recovery of real property can be commenced only within six years after the cause of action shall have accrued:

(1) An action upon a contract, obligation, or liability, express or implied, excepting those mentioned in § § 15-2-6 to 15-2-8, inclusive, and subdivisions 15-2-15 (3) and (4);

(2) An action upon a liability created by statute other than a penalty or forfeiture; excepting those mentioned in subdivisions 15-2-15 (3) and (4);

(3) An action for trespass upon real property;

(4) An action for taking, detaining, or injuring any goods or chattels, including actions for specific recovery of personal property;

(5) An action for criminal conversation or for any other injury to the rights of another not arising on contract and not otherwise specifically enumerated in § § 15-2-6 to 15-2-17, inclusive;

(6) An action for relief on the ground of fraud, in cases which heretofore were solely cognizable by the court of chancery;

(7) An action to set aside any instrument executed in the name of a corporation on the ground that the corporate charter had expired at the time of the execution of such instrument.

Source: SDC 1939, § 33.0232 (4); SL 1941, ch 151; 1945, ch 144; 1945, ch 145, § 1; 1947, ch 153, § 2; 1953, ch 198, § 1.

<General Materials (GM) - References, Annotations, or Tables>

NOTES, REFERENCES, AND ANNOTATIONS

Commission Note.

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Formerly cited as IL ST CH 111 2/3 ¶ 405

WEST'S SMITH-HURD ILLINOIS COMPILED STATUTES ANNOTATED
CHAPTER 220. UTILITIES
ACT 30. ELECTRIC SUPPLIER ACT

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Current through P.A. 92-300, apv. 8/9/2001

30/5. Furnishing service; new lines

§ 5. Each electric supplier is entitled, except as otherwise provided in this Act or (in the case of public utilities) the Public Utilities Act, [FN1] to (a) furnish service to customers at locations which it is serving on the effective date of this Act, (b) furnish service to customers or premises which it is not now serving but which it had agreed to serve under contracts in existence on the effective date of this Act, and (c) resume service to any premises to which it has discontinued service in the preceding 12 months and on which are still located the supplier's service facilities.

Except as otherwise provided in this Act or (in the case of public utilities) the Public Utilities Act, no electric supplier may construct new lines, or extend existing lines, to furnish electric service to a customer or his premises which another electric supplier is entitled to serve, as provided in this Section, except with the written consent of such other electric supplier subject to the approval of the Commission as to such consent, if required.

This Section does not deprive an electric supplier of any right to furnish permanent service under a contract existing on the effective date of this Act to premises receiving temporary service from another supplier on the effective date of this Act.

Nothing in this Section prevents a generation and transmission electric cooperative from furnishing service to its member distribution electric cooperatives which are not incorporated municipalities.

CREDIT(S)

2000 Main Volume

Laws 1965, p. 1206, § 5, eff. July 2, 1965.

FORMER REVISED STATUTES CITATION

2000 Main Volume

Formerly Ill.Rev.Stat.1991, ch. 111 2/3 , ¶ 405.

[FN1] 220 ILCS 5/1-101 et seq.

<General Materials (GM) - References, Annotations, or Tables>

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LIBRARY REFERENCES

Electricity 8.1(3).
WESTLAW Topic No. 145.
C.J.S. Electricity § 10(2).

NOTES OF DECISIONS

In general 1
Eminent domain 6
Furnish service 3
Nature of service 2
Same customer 4
Scope of service 2
Territorial rights 5

1. In general

Commerce Commission's findings that utility was not serving any customer within proposed service area on effective date of Electric Supplier Act (¶ 401 et seq. of former chapter 111 2/3) but that public interest required that utility rather than cooperative furnish proposed electrical service to area surrounding coal mine were not against manifest weight of the evidence. Rural Elec. Convenience Co-op. Co. v. Illinois Commerce Commission, 1979, 25 Ill.Dec. 794, 75 Ill.2d 142, 387 N.E.2d 670.

2. Scope of service

Provisions of the Electric Supplier Act (¶ 401 et seq. of former chapter 111 2/3) authorize a utility that is serving the premises to continue serving such premises and do not purport to impose a limitation on future service that the services supplied be for the same purpose. Western Illinois Elec. Coop. v. Illinois Commerce Commission, App. 4 Dist.1979, 24 Ill.Dec. 382, 67 Ill.App.3d 603, 385 N.E.2d 149.

Any electric utility serving an area may continue to serve that area and is not limited to rendering the service for such purposes as service was being rendered on the effective date of the Electric Supplier Act (¶ 401 et seq. of former chapter 111 2/3). Western Illinois Elec. Coop. v. Illinois Commerce Commission, App. 4 Dist.1979, 24 Ill.Dec. 382, 67 Ill.App.3d 603, 385 N.E.2d 149.

Commerce Commission was in error in construing Electric Supplier Act (¶ 401 et seq. of former chapter 111 2/3) to require approval by city as a condition precedent for electric utility servicing annexed area to continue supplying power to premises in area. Western Illinois Elec. Coop. v. Illinois Commerce Commission, App. 4 Dist.1979, 24 Ill.Dec. 382, 67 Ill.App.3d 603, 385 N.E.2d 149.

3. Furnish service

Where electric cooperative was furnishing service to portion of 100 acre tract of land on effective date of Electric Supplier Act, cooperative was entitled to furnish service to portion of that tract which, after division of larger tract, was annexed to city, even though electric cooperative's franchise with city was not exclusive. Central Illinois Public

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Service Co. v. Illinois Commerce Com'n, App. 4 Dist.1991, 157 Ill.Dec. 82, 213 Ill.App.3d 254, 571 N.E.2d 1101, appeal denied 162 Ill.Dec. 483, 141 Ill.2d 537, 580 N.E.2d 109.

Where entire tract was owned by same individuals, and where land was not platted or subdivided nor was it divided by any public road or natural geographic feature, property constituted a single "location" under this paragraph providing that each electric supplier is entitled to furnish service to customers at locations which it is serving on effective date of the Act. Coles-Moultrie Elec. Co-op. v. Illinois Commerce Commission, App. 4 Dist.1979, 31 Ill.Dec. 750, 76 Ill.App.3d 165, 394 N.E.2d 1068.

While ¶ 408 of former chapter 111 2/3 set forth criteria for the Illinois Commerce Commission to consider in resolving a dispute between suppliers over a service area, it cannot be read as dispositive of right given under this paragraph providing that each supplier is entitled to furnish service to customers at locations which it is serving on effective day of the Act for a supplier to continue to serve locations it was serving on effective date of Act. Coles-Moultrie Elec. Co-op. v. Illinois Commerce Commission, App. 4 Dist.1979, 31 Ill.Dec. 750, 76 Ill.App.3d 165, 394 N.E.2d 1068.

Under the Electric Supplier Act (¶ 401 et seq. of former chapter 111 2/3) providing that each electric supplier is entitled to furnish service to customers at locations, in order to constitute a separate location, there must be some feature of the area in question which was centered apart from the surrounding parcels such as a public road, a body of water, or a legal division. Coles-Moultrie Elec. Co-op. v. Illinois Commerce Commission, App. 4 Dist.1979, 31 Ill.Dec. 750, 76 Ill.App.3d 165, 394 N.E.2d 1068.

4. Same customer

Fact that electric company had supplied farm with 15 amp-240 volt electric service on tract now comprising coal mine, which would require service from 34.5 KV lines and at least 700 times amount of power required by farm, did not give company right to provide electric service to mine as same customer at same location within intent of Electric Supplier Act (¶ 401 et seq. of former chapter 111 2/3). Rural Elec. Convenience Co-op. Co. v. Illinois Commerce Com'n, App. 4 Dist.1983, 73 Ill.Dec. 951, 118 Ill.App.3d 647, 454 N.E.2d 1200.

Under this paragraph, farm buildings served by low voltage distribution lines and coal mine requiring 34.5 KV line could not be equated as same customer at same location within intent of such provision. Rural Elec. Convenience Co- op. Co. v. Illinois Commerce Commission, App. 4 Dist.1977, 14 Ill.Dec. 90, 56 Ill.App.3d 281, 371 N.E.2d 1143, vacated on other grounds 25 Ill.Dec. 794, 75 Ill.2d 142, 387 N.E.2d 670.

5. Territorial rights

City, which operated municipal power plant, could validly contract with owner of tract of land recently annexed to city to be exclusive source of electricity for that tract, though power company had been providing service to tract since relevant date in this paragraph. Central Illinois Light Co. v. City of Springfield, App. 4 Dist.1987, 112 Ill.Dec. 939, 161 Ill.App.3d 364, 514 N.E.2d 602, appeal denied 117 Ill.Dec. 223, 118 Ill.2d 541, 520 N.E.2d 384.

6. Eminent domain

This paragraph did not confer upon power company the right of eminent domain to condemn right-of-way so power company could extend its line to connect with relay station, where by its own terms the legislation did not become

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effective until after the company sought condemnation. Illinois Power Co. v. Walter, App.1966, 75 Ill.App.2d 432, 220 N.E.2d 755.

220 I.L.C.S. 30/5

IL ST CH 220 § 30/5

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C

Appellate Court of Illinois, Fourth District.

COLES-MOULTRIE ELECTRIC COOPERATIVE, a corporation, Plaintiff- Appellee,
v.
ILLINOIS COMMERCE COMMISSION, an Administrative Agency, and Central Illinois Public Service Company, a corporation, Defendants-Appellants.

No. 15416.

Sept. 17, 1979.

The Illinois Commerce Commission and public service company appealed decision of the Circuit Court, Cumberland County, James R. Watson, P. J., in administrative review. The Appellate Court, Mills, J., held that property constituted single "location" under section of Electric Supplier Act providing that each electric supplier is entitled to furnish service to customers at locations which it is serving on effective date of the Act.

Affirmed.

West Headnotes

[1] **Electricity** 8.1(2.1)
145k8.1(2.1) Most Cited Cases
(Formerly 145k8.1(2), 145k4)

Under the Electric Supplier Act providing that each electric supplier is entitled to furnish service to customers at locations, in order to constitute a separate location, there must be some feature of the area in question which was centered apart from the surrounding parcels such as a public road, a body of water, or a legal division. S.H.A. ch. 111 2/3 , § § 405, 408.

[2] **Electricity** 8.1(2.1)
145k8.1(2.1) Most Cited Cases
(Formerly 145k8.1(2), 145k4)

Where entire tract was owned by same individuals, and where land was not platted or subdivided nor was it divided by any public road or natural geographic feature, property constituted a single "location" under section of the Electric Supplier Act providing that each electric supplier is entitled to furnish service to customers at locations which it is serving on effective date of the Act. S.H.A. ch. 111 2/3 , § § 405, 408.

[3] **Electricity** 8.1(4)
145k8.1(4) Most Cited Cases
(Formerly 145k4)

While section of the Electric Supplier Act set forth criteria for the Illinois Commerce Commission to consider in resolving a dispute between suppliers over a service area, it cannot be read as dispositive of right given under section of Act providing that each supplier is entitled to furnish service to customers at locations which it is serving on effective day of the Act for a supplier to continue to serve locations it was serving on effective date of Act. S.H.A. ch. 111 2/3 , § § 405, 408.

***165 **1068 ***750** Nafziger & Otten, Elmer Nafziger, Springfield, William J. Scott, Atty. Gen., Hercules F. Bolos, Special Asst. Atty. Gen., Thomas J. Russell, Asst. Atty. Gen., Chicago, for defendants-appellants.

Sims, Grabb & Bennett, Mattoon, Albert J. Cross, Springfield, Jon W. DeMoss, Springfield, for plaintiff-appellee.

MILLS, Justice:

The issue here: What does the term "Locations " mean as used in the Electric Supplier Act?

The Illinois Commerce Commission and Central Illinois Public Service Company appeal a decision of the circuit court in administrative review. The central question is which of two electric suppliers Coles-***166** Moultrie Electric Cooperative or CIPS are entitled to render electrical services under the Electric Supplier Act (Ill.Rev.Stat.1977, ch. 1112/3, pars. 401-416) to 19 residences.

The Commission opted for CIPS.

The circuit court reversed.

The lower court was right.

We affirm.

The relevant facts are undisputed. Since December 10, 1955, Richard and Ruth Mae Coen have continuously owned a 70 acre tract in Cumberland County, adjoining Lake Mattoon. Coles-Moultrie has been ****1069 ***751** providing electrical services to two Coen residences on the southern portion of the

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tract since 1947. On July 2, 1965 (the effective date under the Act), CIPS had one line transversing the northern portion of the property, but was not providing any services.

In June or July of 1971, CIPS extended its line to provide services to 19 residences on the property. Coles-Moultrie instituted proceedings with the Commission claiming it had a right to serve the customers in question.

On October 16, 1974, the Commission entered its order finding that since April 15, 1972, CIPS had connected 19 trailers or seasonal structures on the property and that two distinct physical areas were involved, one contiguous to the line of CIPS and the other contiguous to the Coles-Moultrie line. It was also determined that section 5 of the Act was inapplicable and that CIPS had the right under section 8 to serve the customers.

Upon Coles-Moultrie's complaint in administrative review, the circuit court in an articulate, well-grounded memorandum opinion determined that the Commission's finding of two contiguous physical areas was against the manifest weight of the evidence. In so doing, the court noted that the evidence clearly illustrated that the entire area was owned by the Coens, had not been platted or subdivided, and was not physically divided by any public road or natural geographic feature.

Our reading of the Act reveals that one of its express purposes was to avoid duplication of facilities. In order to achieve this end, the Act contemplates a system whereby electric suppliers will enter into agreements to divide the service areas. In passing the Act, however, the legislature was careful to protect the rights of the suppliers as they existed on the effective date of the Act. Section 5 provides:

> "Each electric supplier is entitled, * * *, to (a) furnish service to customers at Locations which it is serving on the effective date of this Act, * * *." (Emphasis ours.) Ill.Rev.Stat.1977, ch. 1112/3, par. 405.

The quintessence of the instant dispute is the meaning to be given to ***167** the term "locations." The Commission urges a restrictive interpretation which would result in the two Coen residences constituting separate "locations" from the 19 seasonal structures. This limited reading would equate locations with "points of delivery" which is used elsewhere in section 3.12 of the Act.

The evidence here clearly establishes that the Coen property constitutes a single location. While ownership of the property is not the conclusive determining factor, the fact that the entire tract is owned by the same individuals is highly persuasive. Additionally, as the circuit court noted, the land was not platted or subdivided nor was it divided by any public road or natural geographic feature.

[1][2] In order to constitute a separate location, there must be some feature of the area in question which would set it apart from the surrounding parcels. A public road, a body of water, or a legal division (such as platting or subdividing the land) all could serve to distinguish one location from the surrounding area. In this case there was none.

Recently, in Western Ill. Elec. Coop v. Commerce Comm. (1979), 67 Ill.App.3d 603, 24 Ill.Dec. 382, 385 N.E.2d 149, we had an occasion to discuss the relationship between section 5 and section 14 of the Act. Our opinion there clearly indicates that section 5 of the Act is not to be read in a restrictive manner.

In an attempt to avoid the application of section 5 to this case, the Commission and CIPS further argue that whenever there is a dispute under the Act, section 8 governs. We cannot agree.

[3] While it is true that section 8 of the Act sets forth criteria for the Commission to consider in resolving a dispute between suppliers over a service area, it cannot be read as dispositive of the right given under section 5 for a supplier to continue to serve locations it was servicing on the effective ****1070 ***752** date of the Act. The Act mandates that the Commission make an initial determination under section 5. Only after it has been determined that neither supplier has a right under section 5 to provide services is the Commission free to consult section 8. It was not permitted to resort to section 8 in the case at bench.

The Commission was wrong, the circuit court was correct to reverse, and we affirm.

Affirmed.

REARDON, P. J., and CRAVEN, J., concur.

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C

Supreme Court of South Dakota.

COUNTY OF SPINK, State of South Dakota,
Plaintiff and Appellee,
v.
HEINOLD HOG MARKET, INC., a Corporation,
Defendant and Appellant.

No. 13020.

Considered on Briefs Sept. 11, 1980.
Decided Dec. 23, 1980.

Action was brought against taxpayer for personal property taxes assessed against cattle located on farm. The Third Judicial Circuit Court, Spink County, Vernon C. Evans, J., entered judgment, and appeal was taken. The Supreme Court, Wuest, Circuit Judge, held that: (1) personal property taxes on cattle located on ranch could not properly be assessed against taxpayer where the taxpayer was not owner of the cattle but held only security interest in them, and (2) nonownership defense to assessment of property taxes could be asserted by taxpayer without first applying for abatement or paying under protest and bringing suit.

Reversed.

West Headnotes

[1] **Taxation** 81
371k81 Most Cited Cases

Personal property taxes on cattle located on ranch could not properly be assessed against taxpayer where the taxpayer was not owner of the cattle but held only security interest in them. SDCL 10-5-1 et seq., 10-6-1 et seq., 10-6-8.

[2] **Taxation** 57
371k57 Most Cited Cases

Obligation to pay taxes is purely statutory creation, and taxes can be levied, assessed, and collected only in method provided by express statute. SDCL 10-5-1 et seq., 10-6-1 et seq.

[3] **Taxation** 587
371k587 Most Cited Cases

Nonownership defense to assessment of property taxes could be asserted by taxpayer without first applying for abatement or paying under protest and bringing suit. SDCL 10-5-1 et seq., 10-6-1 et seq., 10-6-2.1, 10- 6-8, 10-18-1, 10-27-2.

***811** Russell H. Battey of Williams & Gellhaus, Aberdeen, for plaintiff and appellee.

Raymond M. Schutz of Siegel, Barnett, Schutz, O'Keefe, Jewett & King, Aberdeen, for defendant and appellant.

WUEST, Circuit Judge.

This is an action against appellant, Heinold Hog Market, Inc., for personal property taxes assessed in 1974 against 2,049 head of cattle located on the Jim Weems farm in Belle Plaine Township, Spink County, South Dakota. Mr. Weems informed the Belle Plaine Township Board that the cattle were owned by Missouri Slope Feedlot, Inc. The Belle Plaine Township Board sent a 1974 personal property tax return to Missouri Slope Feedlot, Inc., and the Spink County Director of Equalization did likewise. Missouri Slope Feedlot, Inc., wrote the Director of Equalization acknowledging receipt of the return, but advised that the cattle were owned by the Arizona National Cattle Company and asked that the assessment records be changed to show the correct owner. The Director of Equalization then wrote to the Arizona National Cattle Company, which advised that all expenses, including taxes on the cattle, were to be paid by Lyle Zeltwanger, c/o Heinold Cattle Market, Box 375, Kouts, Indiana 46347, and that arrangements should be made with Mr. Zeltwanger for payment of the taxes, or that they should be deducted from the sale proceeds. The Director of Equalization then sent a self-listing personal property return by certified mail to Mr. Zeltwanger. An unsigned return showing 2,049 cattle in feedlots was returned to the Director of Equalization. The Director of Equalization did not know who put the number on the return, but assumed it was Mr. Zeltwanger since he apparently mailed it to her office. Although the personal property return shows "Lyle Zeltwanger, c/o Heinold Cattle Market," and the distress warrant of the County Treasurer, "Lyle Zeltwanger c/o Heinold Cattle Market," appellant's actual legal designation is Heinold Hog Market, Inc. Mr. Zeltwanger acted as a cattle buyer ***812** for appellant. The evidence received at trial establishes that appellant, a Delaware Corporation of Kouts, Indiana, had a security agreement covering the cattle in question, which were actually owned by the Arizona Vegas Corporation, a Nevada Corporation,

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which acted through its agent, Arizona National Cattle Company. The Arizona Vegas Corporation by the Arizona National Cattle Company had executed its note in the amount of $1,322,400 to appellant. According to the terms of the note, the proceeds of the sale of the cattle were to be used to pay off the note.

The trial court held that the taxes were properly assessed against appellant, notwithstanding the fact that appellant was not the owner of the cattle but held only a security interest. We reverse.

There are two issues urged upon us for decision:

1. Whether the tax assessment was proper against appellant.

2. Whether the defense of nonownership could be asserted by appellant without first applying for an abatement under SDCL 10-18-1 or paying under protest and bringing suit pursuant to SDCL 10-27-2.

[1] As to the first issue, we conclude that under the statutes then existing [FN1] this property should not have been assessed against appellant, who did not own the same.

FN1. Personal property taxes were repealed by 1978 S.D. Sess. Laws ch. 72 and ch. 73.

[2] The obligation to pay taxes is purely a statutory creation, and taxes can be levied, assessed, and collected only in the method provided by express statute. South Dakota had no statute authorizing the assessment of a security interest. The statutes then in force continually referred to "owner" when referring to the assessment of personal property. SDCL ch. 10-5 and ch. 10-6. [FN2] The Attorney General of this state has consistently ruled that all property is taxable as to its ownership and value as of the assessment date. 1943-44 A.G.R. 341. Although an Attorney General's opinion does not have the legal effect of a judicial decision, it provides the administrative agencies guidance on legal issues until those issues are ruled upon by a court or the law is changed by the Legislature.

FN2. We note SDCL 10-6-8 required reporting of personal property held in a person's possession, and officers of corporations were required to report for the corporation.

In view of the fact that the Legislature has consistently used the term "owner" and the administrative agencies pursuant to the Attorney General's opinion have used ownership as a criterion for assessment for many years, we are persuaded that ownership of personal property was necessary for a county to recover personal property taxes under the provisions of SDCL 10-22-53.

[3] The second issue, whether appellant could assert the defense of nonownership because it had not applied for an abatement, was decided by this Court in Moody County v. Cable, 82 S.D. 537, 150 N.W.2d 193 (1967). As pointed out in that case, SDCL 10-22-57 (formerly SDC 57.1027) provides in part that "(t)he defendant may set up by way of answer any defense which he may have to the collection of the taxes."

The judgment is reversed.

All the Justices concur.

WUEST, Circuit Judge, sitting for FOSHEIM, J., disqualified.

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H

Supreme Court of South Dakota.

FREEMAN COMMUNITY HOSPITAL AND NURSING HOME, Appellant,
v.
HUTCHINSON COUNTY; Jerome Hoff, Auditor; Donna Zeeb, Director of Equalization; Scott Schleske, Commissioner; Gillas Stern, Commissioner, Russell A. Leonard, Commissioner, et al., Appellees.

No. 21656.

Argued May 30, 2001.
Decided Aug. 22, 2001.
Rehearing Denied Sept. 11, 2001.

Community hospital sought judicial review of decision of county board of equalization denying tax exempt status for congregate living facility owned and operated by hospital. The Circuit Court, First Judicial Circuit, Hutchinson County, Kathleen K. Caldwell, J., affirmed. Hospital appealed. The Supreme Court, Miller, C.J., held that: (1) stipulated facts established that facility had the ability to provide healthcare, as required to qualify for tax-exempt status; (2) hospital provided a balanced-nutrition food service program to occupants, as required for tax-exempt status; (3) hospital's ownership of facility and its leasing of facility's units to occupants did not violate prohibition against having any of its assets available to private interests; and (4) hospital was not required to show that it relieved a governmental burden to qualify for property tax exemption.

Reversed.

Sabers, J., filed dissenting opinion.

West Headnotes

[1] Taxation 251.1
371k251.1 Most Cited Cases

Whether a taxing statute creates an exemption under a given set of facts is a question of law.

[2] Statutes 188
361k188 Most Cited Cases

In effecting the purpose of a statute, courts give the words in the statutes their reasonable, natural, and practical meaning.

[3] Taxation 251.1
371k251.1 Most Cited Cases

In order for hospital-owned congregate living facility to qualify for tax- exempt status, the burden was on hospital to show that facility had the ability to provide healthcare. SDCL 10-4-9.3.

[4] Taxation 241.2
371k241.2 Most Cited Cases

Stipulated facts established that hospital-owned congregate living facility had the ability to provide healthcare, as required to qualify for tax-exempt status, even though the services offered were no different from healthcare services available to community at large; nursing staff and attending physician determined the medical condition status of the occupants, programs such as health screening, special diets, emergency call system, wellness workshops were available, and hospital and other community-based health programs were available to provide assistance to occupants in daily living activities. SDCL 10-4-9.3.

[5] Taxation 241.2
371k241.2 Most Cited Cases

By providing occupants of congregate living facility, as part of their monthly rent, a daily breakfast in compliance with federal guidelines and by making lunch and dinner available through hospital's dietary department or a community-based program, hospital provided a balanced-nutrition food service program to occupants, as required to qualify for tax-exempt status, even though the program available was also available in community at large. SDCL 10-4- 9.3.

[6] Taxation 241.2
371k241.2 Most Cited Cases

Hospital's articles of incorporation, providing for distribution of assets upon dissolution to one or more exempt purposes, a similar exempt organization, or the federal or state government, were sufficient to satisfy requirements for a tax-exempt nonprofit organization under Internal Revenue Code, and thus, hospital's ownership of congregate living facility and its leasing of facility's units to occupants did not violate prohibition against having any of its assets available to private interests, for purposes of facility's qualification for tax-exempt status. 26 U.S.C.A. §

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501(c)(3); SDCL 10- 4-9.3.

[7] **Taxation 204(2)**
371k204(2) Most Cited Cases

Although the Supreme Court strictly construes laws exempting property from taxation in favor of the taxing power, it will not contrive a strained construction; rather, it must give a reasonable, natural, and practical construction to effectuate the reason for which the exemption was created.

[8] **Taxation 241.2**
371k241.2 Most Cited Cases

Hospital was not required to show that it relieved a governmental burden to qualify for property tax exemption for its congregate living facility. SDCL 10-4-9.3.

[9] **Statutes 212.1**
361k212.1 Most Cited Cases

Courts must assume that the legislature, in enacting a provision, had in mind previously enacted statutes relating to the same subject.

*181 Jeremiah D. Murphy, Jeffrey C. Clapper of Boyce, Murphy, McDowell & Greenfield, Sioux Falls, SD; Don A. Bierle of Bierle & Michels, Yankton, SD, Attorneys for appellant.

Timothy R. Whalen, Lake Andes, SD, Attorneys for appellees.

Lisa Z. Rothschadl, Hutchinson County State's Attorney, Tyndall, SD, Attorney pro tem.

MILLER, Chief Justice

**1 In this appeal we hold that a congregate living facility owned and operated by a community hospital is entitled to tax-exempt status.

FACTS

**2 In 1996, Freeman Community Hospital and Nursing Home (Hospital), a 501(c)(3) non-profit organization which is licensed under SDCL 34-12, built a ten-unit living facility in Freeman, South Dakota. The facility, known as Walnut Street Village (WSV), is located one-half block from the hospital. It intended the property to qualify for tax-exempt status as a congregate living facility under South Dakota law. WSV houses ten elderly people whose ages mostly range in the eighties. Under a residency agreement, occupants lease the living quarters, which include a full kitchen and two wheelchair accessible bathrooms. WSV also provides breakfast everyday at no additional charge and residents have access to two more meals for a nominal fee through either Hospital or Meals-on-Wheels. Occupants' phones are connected by speed dial to Hospital's nurse station for use in case of medical emergency or maintenance needs.

**3 In 1997, Hospital applied to the Hutchinson County Board of Equalization for tax-exempt status for WSV. The Board denied tax-exempt status in April 1998 and Hospital appealed. On appeal, the circuit court affirmed. We reverse.

STANDARD OF REVIEW

[1][2] **4 Whether a taxing statute creates an exemption under a given set of facts is a question of law. *See Robinson & Muenster Assoc., Inc. v. South Dakota Dep't of Revenue*, 1999 SD 132, ¶ 7, 601 N.W.2d 610, 612. In effecting the purpose of a statute, we give the words in the statutes their " 'reasonable, natural, and practical meaning.' " *Id.* (citing *Matter of Sales & Use Tax Refund Request of Media One, Inc.*, 1997 SD 17, ¶ 9, 559 N.W.2d 875, 877; *National Food Corp. v. Aurora Cty. Bd. of Comm'rs*, 537 N.W.2d 564, 566 (S.D.1995); *Thermoset Plastics, Inc. v. Department of Revenue*, 473 N.W.2d 136, 138-39 (S.D.1991)). We construe statutes granting tax exemptions in favor of the taxing power and we give no deference to the conclusions of the taxing authority or the circuit court when reviewing a question of law. *Department of Revenue v. Sanborn Tel. Coop.*, 455 N.W.2d 223, 225 (S.D.1990) (quoting *Midcontinent Broad. Co. v. Revenue Dep't*, 424 N.W.2d 153, 154 (S.D.1988)).

*182 DECISION

5 1. WSV qualifies for tax-exempt status.

**6 The parties dispute whether Hospital has shown that WSV satisfies the requirements for tax-exempt status under SDCL 10-4-9.3. The statute provides:

> Property owned by any corporation, organization or society and used primarily for human health care and health care related purposes is exempt from taxation. Such corporation, organization or society must be nonprofit and recognized as an exempt organization under section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and in effect on January 1, 1986, and may not have any of its assets available to any

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private interest. Such property may be a hospital, sanitarium, orphanage, mental health center or adjustment training center regulated under chapter 27A-5, asylum, home, resort, congregate housing or camp. *Congregate housing is health care related if it is an assisted, independent group-living environment operated by a health care facility licensed under chapter 34-12 which offers residential accommodations and supporting services primarily for persons at least sixty-two years of age or disabled as defined under chapter 10-6A. Supporting services must include the ability to provide health care and must include a food service which provides a balanced nutrition program.* Such health care facility must admit all persons for treatment consistent with the facility's ability to provide medical services required by the patient until such facility is filled to its ordinary capacity and must conform to all regulations of and permit inspections by the South Dakota Department of Health.

SDCL 10-4-9.3 (emphasis added). County stipulated that WSV meets all the statutory requirements except: (1) the ability to provide healthcare; (2) a food service which provides a balanced nutritional program; and (3) Hospital assets are not available to private interests. It is important to remember that a congregate living facility is intended to provide an *independent* living environment for elderly citizens with some assistance. SDCL 10-4-9.3.

**7 *a. Health care*

[3][4] **8 Under SDCL 10-4-9.3, a congregate living facility must have "the ability to provide healthcare" in order to qualify for tax-exempt status. The burden is on the Hospital to show that it has the ability to provide healthcare. Interestingly, the parties stipulated to the following facts:

11. The nursing staff and attending physician determine the medical condition status and ability of the occupant during the term of occupancy and in the event of emergency.

13. Alternative programs such as independent home health care services or similar services offered to occupants are as follows:

(a) Health screening
(b) Special diets provided and monitored
(c) Household services
(d) Social Service/activity programs
(e) Emergency call system, including response assessment and appropriate follow-up action
(f) Wellness education material and workshops

14. More intensive services provided for a long duration of time are available through community based health programs. The Freeman Community Hospital Health Agency is available to provide assistance in daily living activities, *183 i.e., bathing, grooming, transferring and other models of activity required to maintain independence. These activities supplement the services provided by the Staff and are arranged for by the facility.

The stipulated facts provide ample support for Hospital's assertion that it has the ability to provide health care to WSV occupants. In fact, we find it curious that County would stipulate to these facts and then argue that Hospital is not able to provide health care.

**9 County argues that the services offered to WSV occupants are no different than health care services available in the community at large. Hospital agrees that this is true, but it correctly points out that the statute does not require it to offer unique or exclusive healthcare. We agree. The statute requires that Hospital have the ability to provide healthcare. County stipulated to facts indicating Hospital has such ability. Thus, giving the words in the statute a reasonable, natural and practical meaning, Hospital has sustained its burden of showing it has the ability to provide healthcare. [FN*]

FN* Furthermore, congregate living facilities are the only property to which the tax exemption is available that are not subject to state licensing. A congregate living facility would be subject to licensure if it had a doctor or nurse as a full time staff member.

**10 *b. Food service*

[5] **11 In 1988, two years after it adopted SDCL 10-4-9.3, the legislature amended the statute. Originally, it required congregate living facilities to provide a "full" food service; however, the 1988 amendment, among other changes, removed the word "full." The legislature's removal of the word "full" as it modifies food service indicates its desire to ease compliance with this requirement by not requiring a full food service be provided.

**12 The parties do not dispute the facts concerning food service. WSV occupants have available to them, every day of the year, a breakfast prepared under the supervision of dietary management to comply with federal guidelines. The breakfast is included in the monthly rent. Two more daily meals are also available to residents through Meals-on-

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Wheels or through Hospital's dietary department. Additionally, WSV has the ability to provide for special needs diets and has done so on at least one occasion. Through its daily breakfast and the availability of lunch and dinner everyday, we conclude that Hospital's food service provides a balanced nutrition program to occupants, as contemplated by the statute.

****13** County, once again, argues that the balanced nutrition program available to WSV occupants is available in the community at large. Hospital contends that this is irrelevant under the statute. We agree. The statute does not require that the food service be unique or different from what is available in the community.

****14** *c. Assets*

****15** County's final argument concerning fulfillment of the statutory requirements asserts that Hospital's financing of WSV permits private interests in Hospital's assets. County bases this argument on the language prohibiting private interests in any of Hospital's assets. As Hospital notes, the language is merely a reflection of one of the requirements in the Internal Revenue Code for qualifying as an exempt organization under 501(c)(3). 26 USC § 501(c)(3).

[6][7] ****16** Although County stipulated that Hospital is a 501(c)(3) exempt organization as required under the statute, it attempts to parlay the language concerning ***184** private interest into a prohibition against the Hospital leasing the WSV units to the occupants. Given the statutory language defining qualified congregate housing as that "which offers residential accommodations," we find the County's argument lacks merit. SDCL 10-4- 9.3. Hospital asserts that its articles of incorporation were amended in 1966 to provide for the distribution of assets upon dissolution to: (1) one or more exempt purposes; (2) a similar exempt organization; or (3) the Federal or State government. Hospital argues this fulfills the purpose of the statutory language in the Internal Revenue Code and our statute. We agree. Although we strictly construe "laws exempting property from taxation" in favor of the taxing power, we will not contrive a strained construction. *Application of Veith*, 261 N.W.2d 424, 426 (S.D.1978) (citations omitted). Rather, we must "give a reasonable, natural, and practical construction to effectuate" the reason for which the exemption was created. *Id.*

****17 2. Hospital does not need to show it relieves a governmental burden.**

[8][9] ****18** "[W]e must assume that the legislature, in enacting a provision, had in mind previously enacted statutes relating to the same subject." *Meyerink v. Northwestern Public Svc. Co.*, 391 N.W.2d 180, 184 (S.D.1986). County argues that Hospital must show it is relieving a governmental burden as is required under SDCL 10-4-9.1 and SDCL 10-4- 9.2. This argument completely lacks merit for two reasons.

****19** First, before 1986, SDCL 10-4-9 provided a broad tax exemption for " 'property belonging to any charitable, benevolent, or religious society....' " *Lutherans Outdoors in South Dakota, Inc. v. South Dakota State Bd. of Equalization*, 475 N.W.2d 140, 141 (S.D.1991). In 1986, the legislature amended SDCL 10-4-9 limiting its application to only property owned a religious society. At the same session, the legislature created 10-4- 9.1, 10-4-9.2 and 10-4-9.3. Section 9.1 governs tax-exempt status for public charities and section 9.2 governs tax-exempt status for benevolent organizations. Each requires its subject entity to relieve a governmental burden as one condition to qualify for the property tax exemption. Section 9.3 governs tax-exempt status for nonprofit corporations, such as Hospital. Importantly, section 9.3 does not require a nonprofit corporation to relieve a governmental burden. Had the legislature intended to place that requirement on nonprofit corporations it would have done so, but it did not.

****20** Second, when the legislature amended section 9.3 in 1988, it did not add the requirement that nonprofit corporations relieve a governmental burden. This is reflective of its intent.

****21** County's argument lacks merit and we hold that Hospital need not relieve a governmental burden to qualify for property tax exemption under the present statutory scheme.

****22** Reversed.

****23** AMUNDSON, KONENKAMP, and GILBERTSON, Justices, concur.

****24** SABERS, Justice, dissents.

SABERS, Justice (dissenting).

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**25 I agree that it is not necessary for this congregate living facility (CLF) to show it relieves a governmental burden, but I do not agree that it has shown that it has the *ability* to provide the necessary supporting services of:

1) health care, and
2) "food service which provides a balanced nutritional program."

*185 Quite simply, it has only shown that its parent (Hospital) has those abilities. It is not enough to merely make these required services *available* part-time to the residents of the CLF to qualify for tax-exempt status. The requirements of SDCL 10-4-9.3 are mandatory and unforgiving and there is no tax exemption for almost complying or complying in part.

**26 The majority opinion gives lip service to the rule that we will strictly construe "laws exempting property from taxation in favor of the taxing power" and then violates the rule by "contriv[ing] a strained construction." *Application of Veith*, 261 N.W.2d at 426. The "supporting services" required by SDCL 10-4-9.3 include the *ability* to provide health care and also a balanced nutritional food program. This means that CFL must be able to provide health care and a balanced nutritional food program all the time, even if all these services are not always used by all residents all the time. It certainly does not mean mere *availability* within the community at large.

**27 The majority opinion determines that County has stipulated itself out of court. Nonsense. The stipulated facts do not satisfy CLF's burden, instead, they provide an overview of the uncontroverted services CLF makes "available" and then the courts determine if they are sufficient for tax exemption. They are not. Neither the evidence presented, nor the stipulation, satisfies these statutory requirements.

**28 The health care services offered at CLF are unremarkable at best. The "health screening" provided by CLF consists of a form listing whom to contact in case of an emergency, a physician's name, and whether the resident requires a cane, walker, etc. County offered expert testimony that indicated this is not the typical health screening process, generally a health screening would include such things as blood pressure checks, cholesterol and blood sugar screens. The "household services" referenced in the stipulation includes such things as snow removal, window washing and general yard work. None of which help establish CLF's claim to gain tax-exempt status.

**29 The "emergency call system" provided by CLF includes nothing more than a programmed telephone set for the hospital. This system puts a resident in contact with an on-call nurse who then determines if 911 should be called. This emergency call system can also be used to summon maintenance for nonemergency repairs, this may be convenient but it is not enough to satisfy the statute. Is this really what the legislature envisioned when it attempted to attract safe, caring and responsive facilities for our older citizens through the tax-exempt scheme? The stipulation acknowledges only that the parent (Hospital) makes available the types of services required to satisfy the requirements of SDCL 10-4-9.3. The majority opinion misreads Hospital's *availability* as the equivalent of CLF's *ability*.

**30 Additionally, the stipulation provides that the CLF offers "special diets." What this really means is that CLF tenants are provided one meal, breakfast. All other meals can only be obtained through the meals-on-wheels service or at Hospital. Obviously, these same services are available at local cafes or restaurants. Once again, Hospital, not CLF, makes available the services that CLF claims it has the ability to provide. The statute clearly requires that CLF have the ability to provide "a balanced nutritional program." Even the CLF expert testified that a balanced breakfast is not a balanced nutritional program. Basically, CLF has the ability to provide less than one-third of its requirement. The majority opinion determines this is sufficient under the statute. *186 I do not. Because CLF has not met the stringent requirements, the general rule in SDCL 10-4-1 requiring property to be subject to taxation should control.

**31 Therefore, I dissent.

**32 We should affirm the circuit court in all respects.

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C

Supreme Court of South Dakota.

Paul F. HAMMERQUIST; Lowell L. Porter; and Lavina R. Porter, Plaintiffs and Appellees,
v.
John M. WARBURTON, Defendant and Appellant.

No. 16806.

Considered on Briefs May 22, 1990.
Decided July 11, 1990.

Landlord appealed from an order of the Circuit Court of the Seventh Judicial Circuit, Pennington County, John K. Konenkamp, J., which granted homeowners' application for permanent injunction prohibiting landlord from utilizing his home as two-family dwelling. The Supreme Court, Morgan, J., held that: (1) restrictive covenant found in contract for deed did not merge into warranty deed, and (2) homeowners did not waive their rights to enforce restrictive covenant.

Affirmed.

West Headnotes

[1] **Deeds** 94
120k94 Most Cited Cases

Restrictive covenant found in contract for deed did not merge into warranty deed, inasmuch as restrictive covenant was not integral part of conveyance of title and quantity of land, and original parties intended that contract provisions would not merge into deed.

[2] **Covenants** 103(3)
108k103(3) Most Cited Cases

Homeowners did not waive their right to enforce restrictive covenant where homeowners had notice of violation and repeatedly expressed their opposition to defendant's use of property, defendant had constructive notice of covenant because contract containing restrictive covenant was properly filed, proximity of violation was very close, violation was permanent and both parties had invested substantial money in their property.

[3] **Estoppel** 56
156k56 Most Cited Cases

Doctrine of waiver is applicable where one in possession of any right, whether conferred by law or by contract, and with full knowledge of material facts, does or forebears doing of something inconsistent with exercise of that right.

[4] **Estoppel** 52.10(3)
156k52.10(3) Most Cited Cases

Defense of waiver must be proved by showing of clear, unequivocal and decisive acts to show relinquishment of existing rights.

*773 William A. May of Costello, Porter, Hill, Heisterkamp & Bushnell, Rapid City, for plaintiffs and appellees.

Wayne F. Gilbert of Banks, Johnson, Johnson, Colbath & Huffman, Rapid City, for defendant and appellant.

MORGAN, Justice.

John M. Warburton (Warburton) appeals an order granting a permanent injunction against his utilizing his home as a two-family dwelling. We affirm.

This is a case about whether a restrictive covenant contained in a contract for deed runs with the land. To fully understand this litigation, it is necessary to retrace the creation of the restrictive covenant.

On October 30, 1970, Paul F. Hammerquist (Hammerquist), sold Tract P to William G. Porter (Porter) on a contract for deed. Paragraph 10 D of the contract provided:

> It is agreed that Tract P and the additional homesites to be platted out of the above-described meadows area shall not be further subdivided and shall be restricted to one (1) family dwelling only, provided that each lot or tract may be *774 permitted to construct upon said homesite a guest home for guests of the owner of the building site which shall be restricted to nonpermanent use and will not be rented out for commercial purposes.

Hammerquist's father's deed to the land contained a related covenant: "That no building of any kind except a residence and a private garage shall be erected on any lot...." When Hammerquist sold Tract P to Porter, he had the restrictive covenant inserted in the contract for deed to maintain the neighborhood's single-family residential usage and unique character. All the dwellings in the vicinity have been single-

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family homes. The homes are in the Black Hills on wooded lots surrounding a mountain meadow. The nearby cliffs and hills retain remnants of a wooden mining flume built by Chinese laborers almost a century ago.

When the contract price was paid, Hammerquist gave a warranty deed to Porter, which was filed with the register of deeds on February 3, 1971. The deed neither mentioned the restrictive covenant nor made reference to the contract. The contract for deed itself was later filed on April 20, 1971.

Porter sold the property to another and it changed hands a few times before Warburton made an offer to purchase it. At the time Warburton became interested in buying Tract P, the property was in foreclosure through First Federal Savings and Loan (First Federal). The house has 3,500 square feet, with four bedrooms, two bathrooms, and two kitchens. Warburton told the realtor that he could not afford to live in it without some help from a tenant. Warburton planned to seal off a portion of the home and rent it to third parties. Yet, the property was in an area zoned "low density residential," prohibiting two-family residences. The realtor suggested that he ask for a Conditional Use Permit (CUP) from the Pennington County Planning Commission (Planning Commission). Warburton submitted a written offer to First Federal on March 3, 1983, which was accepted on the same day. The offer had the following condition:

> This offer is contingent upon a 'special use permit' by Pennington County. This contingency is to be accomplished by April 1, 1983.

Before the Planning Commission heard his request, Warburton sent registered letters to all the surrounding owners telling them of his application and the time for the hearing before the Planning Commission. He also introduced himself to neighbors and explained what he was intending to do. Warburton met with Hammerquist who expressed concerns about the prospect of too many short- lived tenants and Warburton possibly being an absentee landlord.

The Planning Commission met on April 11, 1983. Warburton explained his reason for requesting the exception to the zoning ordinance. Hammerquist and Porter also appeared and expressed their concerns. Hammerquist feared Warburton would become an absentee landlord with two families renting the home. Porter warned the commission that if Warburton were permitted to rent out a part of the home it may establish a precedent permitting a change in the quality of the neighborhood. Neither Porter nor Hammerquist mentioned a restrictive covenant applicable to Tract P. Warburton assured the Planning Commission that he would not be an absentee landlord and that he intended to live in the home while having a small family rent the lower level. Warburton said that unless he could share expenses with someone else, he would not be able to afford the monthly mortgage, tax and insurance payments.

Despite the neighbors' concerns, the Planning Commission recommended to the County Commission that Warburton's request be granted. On April 12, 1983, the County Commission approved Warburton's CUP with a review in two years.

Two years later, on April 8, 1985, the Planning Commission reviewed Warburton's CUP. Once again Hammerquist and Porter appeared and expressed their concerns. Porter told the Planning Commission that Warburton was living in one unit and three to four young men were occupying ***775** the other. This use of the property was causing traffic problems, dogs were running loose, and tenants were holding loud parties, possibly without Warburton's knowledge. Both Porter and Hammerquist felt the area should continue with single-family residential zoning and the CUP should end. Warburton was not present at this meeting, so the Planning Commission postponed its decision to give him an opportunity to respond.

The Planning Commission met again on April 22, 1985, and at that time Warburton explained that he lived alone on the upper story of the home and had one tenant living in the lower story. The minutes of the Planning Commission reflect in part:

> Warburton continued that he had explained to the Commission two years ago when the CUP request was first heard that his plan to buy the home in question was contingent upon his being allowed to use the home as a two-family dwelling as the house is simply too large for one individual. He stated that since he has purchased the house he has removed the spiral staircase which had connected the upper and lower floors of the house and sealed the opening. Warburton also noted that one of the primary concerns expressed by land owners in the area when the CUP was first heard was that he (Warburton) would move out of the home, rent out the two units and act as an 'absentee landlord.' He emphasized that the upper story of his home has been and will continue to be his permanent residence, and he also noted although at the time the CUP was first granted he had anticipated

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Cal.Rptr. 381, 551 P.2d 1213 (1976), is distinguishable because the house buyer purchased the home before any restrictive covenant was filed; therefore, he took without notice of the restrictive covenant. Here, the covenant was filed years before Warburton purchased the property and he is charged with notice.

The case of *Shoney's Inc. v. Cooke*, 291 S.C. 307, 312-13, 353 S.E.2d 300, 304 (1987), is simply a minority position that imposes an extremely harsh criterion on what may be a collateral agreement. Under *Shoney's* rationale, any agreement that could be in the deed, including all use restrictions, would be merged. Under this inflexible doctrine, not only would the restrictive covenant prohibiting one-family dwellings be merged, but Warburton's easement drive to his property along with the easement to Rapid Creek as well. This is not the law in this state, and we do not see any ***778** wisdom in changing to this harsh rule. Therefore, we do not find that the trial court erred in denying Warburton's motion for summary judgment on the theory of merger.

[2] Next, we examine Warburton's second issue concerning waiver. Warburton argues that even if the restrictive covenant survived merger, Hammerquist and Porter have waived the right to enforce the covenant by inaction and failing to enforce the covenant. We disagree.

[3] The doctrine of waiver is applicable where one in possession of any right, whether conferred by law or by contract, and with a full knowledge of the material facts, does or forebears the doing of something inconsistent with the exercise of the right. To support the defense of waiver, there must be a showing of a clear, unequivocal and decisive act or acts showing an intention to relinquish the existing right. *Subsurfco, Inc. v. B-Y Water Dist.*, 337 N.W.2d 448, 456 (S.D.1983). The test for whether there is waiver of a restrictive covenant was succinctly set out in *Vaughn v. Eggleston*, 334 N.W.2d 870 (S.D.1983) *reh'g denied* (July 18, 1983).

> The criteria for determining this includes whether those seeking to enforce the covenants had notice of the violation and the period of time in which no action was taken; the extent and kind of violation; the proximity of the violationsto those who complain of them; any affirmative approval of the same; whether such violations are temporary or permanent in nature; and the amount of investment involved.

Id. at 873 (citations omitted). Using those six criteria, we examine the facts before us.

First, Porter and Hammerquist had notice of the violation in 1983 when Warburton applied for the Conditional Use Permit. Though five years passed before a lawsuit was filed, throughout this period they expressed their opposition to Warburton's use of the property as a multi-family dwelling. These objections were done primarily at Planning Commission meetings. However, Hammerquist did inform Warburton in August, 1987, at the Knecht Home Center in Rapid City, that he planned to enforce the covenant.

The trial court rightly did not find the length of time dispositive. During this time period, Hammerquist and Porter were attempting to resolve the problem short of filing a lawsuit. We will not penalize them for attempting to solve their problem out of court. *Mt. Baker Park Club v. Colcock*, 45 Wash.2d 467, 472, 275 P.2d 733, 736 (1954) (reasonable delay in filing suit not fatal to enforcement of building restriction, where delay due to desire to procure compliance by means other than litigation). Moreover, Mr. Hammerquist's health problems (emphysema and stroke) were a factor in his not being able to immediately pursue the lawsuit.

Also, though the trial court was correct in finding that Warburton did not have actual knowledge until 1985, by law he is charged with knowledge from 1983 because the contract containing the restrictive covenant was properly filed. As was made clear in *Lunstra:*

> The constructive notice furnished by a recorded instrument, so far as every material fact recited therein is concerned, is equally as conclusive as would be actual notice acquired by a personal examination of the recorded instrument or actual notice acquired by or through other means.

442 N.W.2d at 450. *See also South Shore Home Ass'n v. Holland Holiday's*, 219 Kan. 744, 750, 549 P.2d 1035, 1042 (1976) (person who takes land with notice of restrictions on it, will not be permitted to act in violation thereof).

Second, the extent and kind of violation is that Warburton used the home as a two-family dwelling the entire five-year period. The violation manifested itself in the other family (tenants or guests) allowing dogs to run free, trespassing on plaintiffs' property and creating a danger by hunting in this residential area.

Third, the proximity of the violation is very close. Hammerquist's property surrounds Warburton's

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property on three *779 sides. As alluded to above, Warburton's guests or tenants have trespassed on plaintiffs' property.

Fourth, there has never been approval of Warburton's use of his house. Hammerquist and Porter have complained at almost every opportunity about it, including the period of time before Warburton purchased the home, when the CUP was requested. Though the restriction was not specifically mentioned until 1985, plaintiffs plainly made their opposition known.

Fifth, the violation is permanent. It will continue, since Warburton cannot afford to make the house payments unless he has tenants.

Sixth, both parties have invested substantial money in their properties. Therefore, the trial court did not find this dispositive.

[4] Warburton is correct in arguing that the parties do not really contest the factual findings made by the trial court and that it is the trial court's legal conclusion as to waiver that he claims are in error. We do not find the trial court's findings as to waiver were clearly erroneous. Nor, given the standard that the defense of waiver must be proved by a showing of clear, unequivocal and decisive acts to show relinquishment of existing rights, that the trial court erred as a matter of law in holding there was not a waiver of rights.

We affirm.

All the Justices concur.

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H

Supreme Court of South Dakota.

In the Matter of Establishing CERTAIN TERRITORIAL ELECTRIC BOUNDARIES Within the State of South Dakota (ABERDEEN CITY VICINITY) (F-3111). NORTHERN ELECTRIC COOPERATIVE, INC., & Brown County, South Dakota, Appellants,
v.
NORTHWESTERN PUBLIC SERVICE COMPANY, Respondent.

Nos. 12327, 12328.

Argued Jan. 18, 1979.
Decided June 21, 1979.

The Public Utilities Commission assigned most of 50-square-mile service area to rural electric cooperative, and electric utility appealed. The Circuit Court, Sixth Judicial Circuit, Hughes County, Robert A. Miller, J., reversed and directed Commission to assign disputed area in accordance with its opinion, and appeal was taken. The Supreme Court, Fosheim, J., held that: (1) franchise rights conferred upon utility by the State are subject to control by the legislature; (2) designation of boundary lines as part of allocation system is regulatory procedure that Utilities accept as part of franchise and is not within purview of constitutional provisions forbidding taking of private property without compensation; and (3) having determined that the electric lines were intertwined in the entire disputed area, Public Utilities Commission was required to determine service boundaries according to the statutory guidelines.

Affirmed as modified.

Wollman, C. J., filed an opinion concurring in part and dissenting in part.

West Headnotes

[1] **Electricity** 8.1(3)
145k8.1(3) Most Cited Cases
(Formerly 145k4)

Franchise rights conferred upon utility by the state are subject to control by the legislature, and thus statutory rights granted rural electric cooperative to compete for customers within three-mile area of municipality did not constitute irrevocable franchises. SDCL 49-41-7, 49-41-8, Sess.Laws 1965, c. 254; Const. art. 6, § 12.

[2] **Eminent Domain** 2(1.1)
148k2(1.1) Most Cited Cases

Designation of boundary lines, as part of allocation system, is regulatory procedure that utilities accept as part of the franchise, and is not within purview of constitutional provisions forbidding taking of private property without compensation, and thus statute giving utilities additional right to exclusively serve customers within their assigned service area, following repeal of statutes which granted utilities right to compete for customers within three-mile area of any municipality, did not constitute exercise of power of eminent domain without compensation. SDCL 49-34A-4, 49-34A- 42; SDCL 49-41-7, 49-41-8, Sess.Laws 1965, c. 254; U.S.C.A.Const. Amends. 5, 14.

[3] **Electricity** 8.1(1)
145k8.1(1) Most Cited Cases
(Formerly 145k4)

Pioneering method by utility should be favorably considered, but it must be balanced with adequacy and dependability of utility's existing distribution lines to provide dependable, high quality retail electric service; it is the province of the Public Utilities Commission to make these determinations and in making that determination, the Commission must apply statutory definitions including "electric lines" and "electric service." SDCL 49-34A-1, 49-34A-44.

[4] **Statutes** 207
361k207 Most Cited Cases

It is duty of Supreme Court to reconcile any apparent contradiction in statute and to give effect, if possible, to all provisions under consideration, construing them together to make them harmonious and workable.

[5] **Electricity** 8.1(3)
145k8.1(3) Most Cited Cases
(Formerly 145k4)

Exclusive rights statutory provision, as well as equidistant concept, must yield to boundary determinations according to guidelines of statute which provides that in those areas where existing electric lines of two or more electric utilities are so intertwined that the equidistant concept cannot be applied, Public Utilities Commission shall determine

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boundaries of assigned service areas for electric utilities involved, and thus, having determined that electric lines were intertwined in entire disputed area, Public Utilities Commission was required to determine service boundaries for electric utility and rural electric cooperative according to the statutory guidelines. SDCL 49-34A-42, 49-34A-44.

[6] Electricity 8.1(4)
145k8.1(4) Most Cited Cases
(Formerly 145k4)

Remand was necessary in case involving assignment of approximately 50-square- mile territory for electric service for reconsideration by the Public Utilities Commission, which in assigning area to utility should balance "length of time" provision as a priority with other statutory guidelines, which should confine its consideration to territory in dispute to exclusion of concerns outside disputed territory, and which in considering "reasonable opportunity for future growth" should not consider highly remote and speculative factors. SDCL 1- 26-36(1, 2), 49-34A-44, 49-34A-44(2).

[7] Electricity 8.1(2.1)
145k8.1(2.1) Most Cited Cases
(Formerly 145k8.1(2), 145k4)

Service to shredder facility, like that to all other parts of disputed area over which intertwining electric lines had been found to exist, had to be determined according to statutory guidelines and, in that regard, Public Utilities Commission might have to consider whether shredder facility was a large new customer which could be served by a supplier from outside assigned area. SDCL 49-34A-42 to 49-34A-44, 49-34A-56.

*73 C. W. Hyde, Aberdeen, for appellant Northern Elec. Cooperative, Inc. (# 12327).

Michael T. Hogan, of Maloney, Kolker, Fritz, Hogan & Johnson, Aberdeen, for appellant Brown County (# 12328); Dennis Maloney, of Maloney, Kolker, Fritz, Hogan & Johnson, Aberdeen, on the brief.

M. D. Lewis, Huron, Ray M. Schutz, of Siegel, Barnett, Schutz, O'Keefe, Jewett & King, Aberdeen, for respondent Northwestern Public Service Co.; Alan D. Dietrich, Huron, on the brief.

*74 Judith K. Meierhenry, of Meierhenry, DeVany, Kruger & Meierhenry, Vermillion, for respondent Public Utilities Commission; Ben Stead, Asst. Atty. Gen., Pierre, on the brief.

FOSHEIM, Justice.

This case involves the assignment of approximately a fifty-square-mile territory in the Aberdeen vicinity for electric service pursuant to the provisions of SDCL 49-34A.

The Public Utilities Commission (PUC) assigned most of the area to Northern Electric Cooperative, Inc. (NEC). Northwestern Public Service Company (NWPS) appealed that determination to the circuit court. The trial court reversed and directed the PUC to assign the disputed area in accordance with its opinion. NEC appeals from that decision. The circuit court also assigned a shredder facility, which belongs to Brown County, to the NWPS area. Brown County appeals from that decision.

Appellant NEC is a rural electric cooperative and respondent NWPS is an investor-owned electric utility. NWPS began serving customers in the Aberdeen vicinity in the early 1920s. NEC began operations in 1945 and extended its lines into Brown County and surrounding counties. In 1975, the PUC ordered a hearing to determine which areas the two utilities should serve pursuant to SDCL 49-34A-42 through 44. At this hearing the PUC received evidence from both parties, from its own staff, and from an engineering consulting firm hired by the PUC. NWPS claimed that under these statutes it had the right to serve all customers it was serving on March 21, 1975. It also claimed that use of the equidistant concept, SDCL 49-34A-43, would give it certain areas within the disputed territory. NEC claimed that the lines of the two utilities were so intertwined within the entire disputed territory that the equidistant concept could not reasonably be applied, and that the five conditions listed in SDCL 49-34A-44 should be used to determine the service areas. NWPS argued that the disputed territory should be divided into smaller areas each of which should be evaluated as to how the lines were intertwined.

The PUC accepted the NEC contention. The parties presented evidence concerning the five criteria set out in SDCL 49-34A-44:

(1) The proximity of existing distribution lines to such assigned territory, including the length of time such lines have been in existence;

(2) The adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service;

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(3) The elimination and prevention of duplication of distribution lines and facilities supplying such territory;
(4) The willingness and good faith intent of the electric utility to provide adequate and dependable electric service in the areas to be assigned;
(5) That a reasonable opportunity for future growth within the contested area is afforded each electric utility.

NWPS's evidence tended to show that it had electric lines in existence for a longer period of time than NEC in much of the disputed territory and that its lines were closer to portions of the territory. NWPS's evidence also indicated it could adequately and dependably serve these areas, that construction of lines by NEC would duplicate NWPS's lines already in place, and that in order to have a reasonable chance for growth in the area NWPS would have to receive more of the disputed territory than the PUC gave it. NEC's evidence on these criteria indicated that its lines were newer than those of NWPS and thus more reliable. NEC disputes the priority of time interpretation of the circuit court as to the first criterion of SDCL 49-34A-44 and contends that the length of time lines have been in existence should give preference to newer rather than older lines, since new lines are more dependable.

On the duplication question, NEC presented evidence that NWPS's lines might need upgrading, which NEC lines would not require. NEC considers such upgrading to be unnecessary duplication. On the fifth criterion, that reasonable opportunity ***75** for future growth be afforded each utility, NEC claims that because of its heavy loads in the summer it will be unable to adequately balance its load without a significant amount of the disputed territory.

[1] On appeal NEC contends the legislature granted it a right to compete for new customers within three miles of Aberdeen by its enactment of SDCL 49-41-7 and 8 (repealed by Sess.L.1975, ch. 283, s 59), and that such a right is a franchise or "franchise-like" grant protected by the constitution. NEC argues that because it is a franchise, the privilege cannot be constitutionally taken away. As we recently stated in In re Establishing Territorial Boundaries (Mitchell area), S.D., 281 N.W.2d 65 (1979), the legislature is without power to grant irrevocable franchises because of S.D.Const. art. VI, s 12. It is settled law that when such a constitutional provision exists any special privilege or franchise granted by the legislature is taken subject to the power to revoke. Bienville Water Supply Co. v. Mobile, 186 U.S. 212, 22 S.Ct. 820, 46 L.Ed. 1132 (1920); Hamilton Gaslight & Coke Co. v. City of Hamilton, 146 U.S. 258, 13 S.Ct. 90, 36 L.Ed. 963 (1892). We came to a similar conclusion, under art. VI, s 12, in City of Lead v. Gas & Fuel Co., 44 S.D. 510, 184 N.W. 244 (1921). We now reaffirm that franchise rights conferred upon a utility by the state are subject to control by the legislature. See also Missouri River Telephone Co. v. City of Mitchell, 22 S.D. 191, 116 N.W. 67 (1908). The rights granted NEC under SDCL 49-41-7 and 8 are not irrevocable franchises.

[2] NEC also contends that SDCL 49-34A operates to exercise the power of eminent domain without compensation. We do not agree. The repealed statutes, SDCL 49-41-7 and 8, granted utilities only the right to compete for customers within a three-mile area of a municipality. They did not give NEC or any other utility an exclusive grant. The revised statute, SDCL 49-34A, gave the utilities the additional right to exclusively serve customers within their assigned service areas. SDCL 49-34A-42. Legislative history reveals that all the electric utilities wanted an allocation system. This may be considered in determining the structure and scheme of the act. State v. Douglas, 70 S.D. 203, 16 N.W.2d 489 (1944). In order for the legislature to grant exclusive franchises, it was necessary to assign boundaries. It delegated that responsibility to the PUC subject to well-defined guidelines. SDCL 49-34A was not designed to take away any utilities' service area. Where two utilities served the same area, however, and had intertwining lines, it was necessary to set a boundary as a regulatory measure. Public utility companies unquestionably take franchises subject to regulations by the legislature and the PUC. SDCL 49-34A-4.

The delineation between "taking" and "regulating" is discussed in City of Milbank v. Dakota Central Telephone Co., 37 S.D. 504, 159 N.W. 99 (1916). In that case the board of railroad commissioners ordered a telephone company giving long-distance telephone service to connect its lines with a local exchange so that the local exchange could transmit and receive long-distance calls. The former company contended the ordered connection would deprive it of its property without due process of law. It further argued that to require it to connect its exchange with that of the local company was an exercise of the power of eminent domain without compensation as prohibited by our constitution. Our decision stated:

> We are satisfied that the connecting of telephone exchanges, in order to facilitate the transmission of messages, and therefore advance the purpose for which the public service franchises are granted, is not an exercise of the power of eminent domain, but is entirely analogous to the power exercised by

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the Railroad Commission in ordering connecting switches between competing lines of railway; that, instead of being an exercise of power of eminent domain, it is a mere regulation of a public service corporation, if not under an implied power resulting from the nature of the franchise enjoyed by the corporation, then under the police powers of the state.

*76 City of Milbank, 37 S.D. at 507, 159 N.W. at 100.

We conclude that designation of boundary lines, as part of an allocation system, is a regulatory procedure that utility companies accept as part of the franchise, and is not within the purview of constitutional provisions forbidding the taking of private property without compensation. Chicago & N. W. Ry. Co. v. Dougherty, 39 S.D. 147, 163 N.W. 715 (1917).[FN1]

FN1. See also State v. Iowa Telephone Co., 175 Iowa 607, 154 N.W. 678 (1915).

This brings us to NEC's last contention, that the circuit court incorrectly applied SDCL 49-34A-44 to the facts as they appeared in this case. SDCL 49-34A-44 provides that in those areas where, on March 21, 1975, the existing electric lines of two or more electric utilities were so intertwined that the equidistant concept could not be applied, the commission shall, after hearing, determine the boundary of the assigned service areas for the electric utilities involved. The PUC determined that the NEC and NWPS lines were so intertwined that the equidistant concept could not reasonably be applied. Having made that determination, the PUC was required to assign service areas guided by the criteria of SDCL 49-34A-44.

[3] The trial court held that the guideline in SDCL 49-34A-44(1) "including the length of time such lines have been in existence," conferred a seniority consideration upon the longer existing NWPS lines. NEC argues that the meaning of the statute is to give newer lines priority because they are better equipped to serve the customer. All of the guidelines must be read together. When the disputed part of condition (1) is read with the other criteria we see a legislative intent that pioneering investment should be favorably considered, but that it must be balanced with the adequacy and dependability of existing distribution lines to provide dependable, high quality retail electric service. It is the province of the PUC to make these determinations. In making that determination, the PUC must apply the definitions found in SDCL 49-34A-1 including "electric lines" [FN2] and "electric service." [FN3] Haas v. Independent School Dist. No. 1 of Yankton, 69 S.D. 303, 9 N.W.2d 707 (1943).

FN2. (5) "Electric line," any line for conducting electric energy at a design voltage of twenty-five thousand volts phase to phase or less and used for distributing electric energy directly to customers; SDCL 49- 34A-1.

FN3. (6) "Electric service," electric service furnished to a customer for ultimate consumption, but not including wholesale electric service furnished by an electric utility to another electric utility for resale; SDCL 49-34A-1.

[4][5] SDCL 49-34A-42 and 44, when read separately, seem contradictory. Obviously, the PUC cannot set boundaries under the guidelines of SDCL 49-34A-44 without disrupting rights to serve customers that may have vested under SDCL 49-34A-42. It is our duty to reconcile any such apparent contradiction and to give effect, if possible, to all of the provisions under consideration, construing them together to make them harmonious and workable. North Central Investment Co. v. Vander Vorste, 81 S.D. 340, 135 N.W.2d 23 (1965). This requires that the exclusive rights provision of SDCL 49-34A- 42, as well as the equidistant concept of SDCL 49-34A-43, must yield to a boundary determination according to the guidelines of SDCL 49-34A-44, whenever the PUC finds that the utilities' lines are intertwined. Having determined that the electric lines were intertwined in the entire disputed area, the PUC was required to determine service boundaries according to the SDCL 49-34A-44 guidelines.

[6] We do not intimate what the findings of the PUC should be. Our only concern is that the Commission's discretion be exercised under the established rules of law, State v. Richards, 61 S.D. 28, 245 N.W. 901 (1932), which require that the PUC lend credence to the guidelines established in the statute, Valley State Bank of Canton v. Farmers State, 87 S.D. 614, 213 N.W.2d 459 (1973), and that its findings be supported by substantial evidence upon the whole record, *77 City of Brookings v. Dept. of Environ. Prot., 274 N.W.2d 887 (S.D.1979); Application of Ed Phillips and Sons Company, 86 S.D. 326, 195 N.W.2d 400 (1972).[FN4] The

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conclusions and decision of the PUC were in some measure based on evidence, inferences and findings in excess of its authority. SDCL 1-26-36(1) and (2).

FN4. We note that SDCL 1-26-36 has been amended, effective July 1, 1978. The standard for review of sufficiency of the evidence was changed from "unsupported by substantial evidence on the whole record" to "clearly erroneous." See Huffman v. Bd. of Ed. of Mobridge Ind. Sch. Dist., etc., 265 N.W.2d 262 (S.D.1978).

We conclude the matter should be remanded to the PUC for reconsideration in the following respects:

(1) In determining the utility to which an area should be assigned "the length of time" provision is to be balanced as a priority with the other guidelines found in 49-34A-44 and particularly subparagraph (2) thereof.

(2) The statutory language indicates that in making assignment determinations the PUC should confine its consideration to the territory in dispute according to the guidelines, to the exclusion of concerns outside the disputed territory.

(3) Consideration of the "reasonable opportunity for future growth" condition, found in SDCL 49-34A-44(5), should not involve highly remote and speculative factors such as the PUC finding regarding the estimated energy needs by 1983 for irrigation in the Oahe project.

[7] The appeal of Brown County shows that on March 21, 1975, NWPS was providing electric service to the contractor constructing a shredder facility on the site for Brown County. Brown County's brief acknowledges that the county authorized NWPS to provide such service, but denied any approval for NWPS to provide service for the shredder operation. The PUC assigned the facility to NEC. The circuit court reversed and assigned it to NWPS. The argument centers around whether there was an exclusive right vested in either electric utility based on service to a customer on March 21, 1975. Since we take the view that a determination of intertwining lines creates exceptions to SDCL 49-34A-42 and 43, it follows that service to the shredder facility, like that to all other parts of the disputed area, must be determined according to the guidelines in SDCL 49-34A-44. In this regard, we note that the PUC may have to consider whether the shredder facility is a large new customer as defined by SDCL 49-34A-56.

The order of the trial court is affirmed insofar as it remands the matter back to the PUC, but is modified insofar as it directs the PUC to assign disputed territory. Such assignment shall be made by the PUC, based on its findings, in accordance with this decision.

WOLLMAN, C. J., concurs in part and dissents in part.

MORGAN and HENDERSON, JJ., and YOUNG, Circuit Judge, concur.

YOUNG, Circuit Judge, sitting for DUNN, J., disqualified.

WOLLMAN, Chief Justice (concurring in part and dissenting in part).

I agree with the majority opinion insofar as it affirms the trial court's judgment that the matter must be remanded to the Public Utilities Commission for a redetermination of the service boundaries.

I do not agree, however, that the exclusive rights provision of SDCL 49- 34A-42 must yield to the guidelines of SDCL 49-34A-44. The issue was not raised in the assignment of errors nor was it discussed in appellants' brief.

The application of the equidistant concept set forth in SDCL 49-34A-43 is made subject to the explicit exception set forth in SDCL 49-34A-44. I see no such specific exception vis-a-vis the exclusive right concept set forth in SDCL 49-34A-42, nor do I see any compelling reason to hold that the exclusive right concept cannot exist with ***78** the concepts set forth in SDCL 49-34A-44. Under the facts of this case I see no particular conflict between the two concepts, and therefore I would not hold that the exclusive right concept must fall.

SDCL 49-34A-42 speaks in terms of "serving a customer." I see no express or implied exceptions based upon the nature of the customer or the extent or duration of the service provided prior to March 21, 1975. The holding in Willrodt v. Northwestern Public Service Company, S.D., 281 N.W.2d 65, is to the effect that consumer preference is irrelevant under the assignment of service areas statutes.

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Accordingly, I would affirm the trial court's decision in this regard.

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C

Supreme Court of South Dakota.

In the Matter of the Complaint of NORTHERN STATES POWER COMPANY Against Sioux Valley Empire Electric Association for Provision of Electric Service to Myrl and Roy's Paving.

No. 17793.

Argued May 26, 1992.
Decided July 29, 1992.

Electric association appealed from order of the Circuit Court, Sixth Judicial Circuit, Hughes County, Steven L. Zinter, J., affirming decision of Public Utilities Commission in favor of competing power company. The Supreme Court, Amundson, J., held that: (1) Commission did not err in finding that electric association was extending or rendering electric service in competitor's territory, and (2) it was within Commissioner's discretion to adopt majority load test (MLT) to determine whether electric association or competitor should serve customer's electrical needs.

Affirmed.

West Headnotes

[1] **Administrative Law and Procedure** 683
15Ak683 Most Cited Cases

Supreme Court reviews record of administrative agencies in same manner as circuit court. SDCL 1-26-37.

[2] **Electricity** 8.1(4)
145k8.1(4) Most Cited Cases

Where circuit court affirmed Public Utilities Commission's findings of fact and conclusions of law in their entirety, Supreme Court's review was of the agency's findings and conclusions. SDCL 1-26-37.

[3] **Administrative Law and Procedure** 796
15Ak796 Most Cited Cases

Conclusions of administrative agency are given no deference on appeal and are freely reviewable. SDCL 1-26-36.

[4] **Public Utilities** 194
317Ak194 Most Cited Cases

Supreme Court reviewing decision of Public Utilities Commission does not substitute its judgment for the Commission on weight of evidence pertaining to questions of fact unless the Commission's decision is clearly erroneous, or is arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion. SDCL 1-26-36.

[5] **Administrative Law and Procedure** 815
15Ak815 Most Cited Cases

Supreme Court will not reverse agency decision unless court is left with definite and firm conviction that mistake has been committed. SDCL 1-26-36.

[6] **Electricity** 8.1(3)
145k8.1(3) Most Cited Cases

Although customer of electric association was not an "electric utility" as defined by statute, electric association was rendering or extending service in competitor's territory even though it was the customer that extended the line into the competitor's territory. SDCL 1-26-36, 49-34A-42.

[7] **Electricity** 8.1(3)
145k8.1(3) Most Cited Cases

Electric association's customer did not have right to choose its electric service provider with result that its provider was extending or rendering electric service in competitor's territory. SDCL 1-26-36, 1-26-37.

[8] **Electricity** 8.1(4)
145k8.1(4) Most Cited Cases

Policy decision to adopt majority load test (MLT) to determine which of two power companies should serve a customer's electrical needs was within Public Utilities Commission's area of expertise and therefore within the Commissioner's discretion. SDCL 49-34A-1 et seq., 49-34A-42, 49-34A- 43.

***366** Alan F. Glover of Denholm, Glover & Britzman, Brookings, for appellant Sioux Valley Empire Elec. Ass'n.

Warren May of May, Adam, Gerdes & Thompson, Pierre, for appellee Northern States Power Co.

Mark Barnett, Atty. Gen., Douglas Eidahl, Asst.

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Atty. Gen., Pierre, for appellee South Dakota Public Utilities Com'n.

AMUNDSON, Justice.

Sioux Valley Empire Electric Association, Inc. (Sioux Valley) appeals from trial court's order affirming the decision of the Public Utilities Commission (PUC) in favor of Northern States Power Company (NSP). We affirm.

FACTS

Myrl and Roy's Paving (Company) is a construction company which operates a quarry located in the southeast quarter of Section 27, Township 101 North, Range 48 West, Minnehaha County, South Dakota. The southeast quarter of Section 27 is divided in half by the 16th line. The area designated as the north half of the southeast quarter of Section 27 is NSP's exclusive assigned electric service territory. The area designated as the south half of the southeast quarter of Section 27 is Sioux Valley's exclusive assigned electric service territory. The record indicates that the 16th line, running east and west separating NSP's assigned service area from Sioux Valley's assigned service area, ran through the approximate center of Company's quarry operation. Based on the present location of Company's equipment, the evidence established that fifty-nine percent of the ***367** electric load was to be consumed in NSP's territory, and forty-one percent was to be consumed in Sioux Valley's territory. This establishment of exclusive territory was by agreement between NSP and Sioux Valley dated January 19, 1976, and approved by PUC in accordance with SDCL 49-34A-43.

Company conducts its construction operation through the use of movable machinery and equipment, and the record reveals that at the present time, Company contemplates moving its operation entirely into Sioux Valley's territory at some time in the not too distant future.

In 1985, Sioux Valley constructed a single phase electric distribution line within its assigned service area to provide electricity to an office trailer used by Company's predecessor, Higman Sand and Gravel. Sioux Valley transferred the account to Company in 1989. Company subsequently determined that single phase service was not adequate to operate all of its equipment and thus utilized its own portable oil-fired electric generator to provide the equivalent of three-phase electric service for its equipment.

In August, 1990, Company representatives while shopping for a three-phase power source from a utility, contacted both NSP and Sioux Valley in regards to providing same to the quarry site. NSP made two separate proposals to Company: First, to build four and one-half miles of three-phase at an estimated cost of $216,000 and a minimum annual fee of $60,000 to Company for five years; or, second, to provide service from NSP's site in Rowena, South Dakota. NSP subsequently evaluated the first proposal and determined no annual fee would be necessary. Sioux Valley proposed construction of three- phase service for approximately $57,000, with no annual fee to Company. Company then accepted Sioux Valley's bid and entered into a service agreement with Sioux Valley.

Under the terms of this agreement, Company was to extend a private line from its electrical trailer, which currently is on the 16th line, to a newly constructed transformer in Sioux Valley's territory. Then, instead of using the electrical trailer to distribute electricity to all the machinery in the quarry, Company would distribute all the electricity through the transformer in Sioux Valley's territory. Thus, while all the same equipment and electric needs remained in NSP's territory, Company moved its connection point so all of the electricity would flow through Company's newly constructed private line connected to the newly located transformer in Sioux Valley's territory.

On March 11, 1991, NSP filed a petition with the PUC, alleging that Sioux Valley was rendering electric service to Company in NSP's exclusive territory. Sioux Valley denied NSP's allegations and a contested case hearing was held before the PUC on April 12, 1991. PUC found in favor of NSP and awarded it the exclusive right to serve Company, with Chairman James Burg (Burg) dissenting.

Sioux Valley appealed PUC's decision to trial court. Trial court heard oral arguments on October 3, 1991, and made its ruling from the bench affirming PUC's decision. Sioux Valley appeals.

ISSUES

1. Whether PUC and trial court erred in finding that Sioux Valley was extending or rendering electric service in NSP's territory?
2. Whether PUC and trial court erred in awarding

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NSP the exclusive right to serve Company?

STANDARD OF REVIEW

[1][2] This court reviews the record of administrative agencies in the same manner as the circuit court. SDCL 1-26-37; *Appeal of Hendrickson's Health Care,* 462 N.W.2d 655 (S.D.1990); *Peery v. Department of Agriculture,* 402 N.W.2d 695 (S.D.1987); *Application of Northwestern Bell Tel. Co.,* 382 N.W.2d 413 (S.D.1986). Since the circuit court affirmed PUC's findings of fact and conclusions of law in their entirety, our review is of the agency's findings and conclusions. *Matter of Midwest Motor Exp., Inc., Bismarck,* 431 N.W.2d 160 (S.D.1988).

***368** [3][4][5] Conclusions of law are given no deference on appeal and are freely reviewable. SDCL 1-26-36; *Hendrickson's,* 462 N.W.2d at 656; *Karras v. State, Dept. of Revenue,* 441 N.W.2d 678 (S.D.1989); *Sharp v. Sharp,* 422 N.W.2d 443 (S.D.1988). Questions of fact, however, are given greater deference. SDCL 1-26-36. This court does not substitute its judgment for PUC's on the weight of evidence pertaining to questions of fact unless PUC's decision is clearly erroneous, or is arbitrary, capricious, or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. *Finck v. Northwest School Dist. No. 52-3,* 417 N.W.2d 875 (S.D.1988); *Permann v. Dept. of Labor, Unemp. Ins. D.,* 411 N.W.2d 113 (S.D.1987); *Appeal of Templeton,* 403 N.W.2d 398 (S.D.1987); *Anderson v. Western Dakota Insurors,* 393 N.W.2d 87 (S.D.1986). We will not reverse an agency decision unless we are left with a definite and firm conviction that a mistake has been committed. *Finck,* 417 N.W.2d at 878; *Matter of Midwest,* 431 N.W.2d at 162; *Dakota Harvestore v. S.D. Dept. of Revenue,* 331 N.W.2d 828 (S.D.1983); *Fraser v. Water Rights Commission, Etc.,* 294 N.W.2d 784 (S.D.1980). With these standards of review in mind, we address PUC's findings and conclusions.

ANALYSIS

1. *Extending or Rendering Service*

In its findings of fact, PUC determined the following:

> Sioux Valley intends to render electric service, or is rendering electric service, at retail to power the machinery and equipment within the North Half of the Southeast Quarter of Section 27, Township 101 North, Range 48 West, Minnehaha County, South Dakota, which heretofore has been determined by the [PUC] to be an exclusive service area of NSP.

Sioux Valley argues that this finding should be overturned because it is clearly erroneous. Sioux Valley maintains that it is not extending or rendering service into NSP's territory because it was Company that extended the line into NSP territory, and SDCL 49-34A-42 does not prohibit a *customer* from extending its own lines into another electric utility's territory. SDCL 49-34A-42 provides as follows:

> Each electric utility has the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975, and to each and every present and future customer in its assigned service area. *No electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless such other electric utility consents thereto in writing and the agreement is approved by the commission consistent with § 49-34A-55.* However, any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area ... (Emphasis added.)

Thus, Sioux Valley argues that since it was Company that extended the line and Company is not an "electric utility," there is no violation of the statute.

[6] While it is clear from the definition contained at SDCL 49-34A-1 [FN1] that Company is not an "electric utility," there is nothing in our statutes which defines "render or extend." Thus, as a matter of statutory construction, we must determine whether Sioux Valley's actions caused it to "render or extend" service in NSP's territory within the meaning of SDCL 49- 34A-42. This court has previously stated:

> FN1. SDCL 49-34A-1(7) provides:
> (7) "Electric utility," any person operating, maintaining or controlling in this state, equipment or facilities for providing electric service to or for the public including facilities owned by a municipality[.]

> A primary rule of statutory construction is that words and phrases be given their plain meaning and effect. *Board of Regents v. Carter,* 89 S.D. 40, 228 N.W.2d 621 (1975); SDCL 2-14-1. Moreover, in construing a statute, our main objective is to ascertain and give effect ***369** to the

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intention of the legislature. *Western Surety Co. v. Mydland*, 85 S.D. 172, 179 N.W.2d 3 (1970). This intent is best ascertainable from the statutory language. Argo Oil Corporation v. Lathrop, *76 S.D. 70, 72 N.W.2d 431 (1955)*.

Norgeot v. State, 334 N.W.2d 501, 503 (S.D.1983). Further, this court has stated that legislative intent may be derived from language in the statute as well as from other enactments relating to the same subject which may modify or limit the effect of the scope of the statute at issue. *Nelson v. School Bd. of Hill City, S.D.*, 459 N.W.2d 451 (S.D.1990).

Applying these rules to the facts of this case, we believe the PUC and trial court properly concluded Sioux Valley was rendering or extending service in NSP's territory.

The record reveals that under Sioux Valley's arrangement with Company, Sioux Valley would bring its service to a transformer located in Sioux Valley territory, nearly to the 16th line. Company would then extend its own private line from the transformer into NSP territory. While the record indicates that it is industry practice to treat the point of connection as the point of delivery of service, there is no question that the electricity provided by Sioux Valley will flow into NSP's exclusive service area. Without Sioux Valley's generation and transmission of electricity to its transformer, Company would be unable to provide electricity to its equipment in NSP's territory. Accordingly, it seems clear that since the ultimate provider of the electric service is Sioux Valley, it is the party rendering or extending the service.

There are no statutes or previous cases which specifically instruct that the manner in which electricity is consumed is a factor for consideration to assess whether a party is rendering or extending service. However, SDCL 49-34A-1(6) defines "Electric service" as "electric service furnished to a customer for *ultimate consumption*, but not including wholesale electric service furnished by an electric utility to another electric utility for resale [.]" (Emphasis added.) In reading SDCL 49-34A-1(6) in conjunction with SDCL 49-34A-42, ultimate consumption may be considered by the PUC as a factor in determining whether a party is rendering or extending electric service. *See Hartpence v. Youth Forestry Camp*, 325 N.W.2d 292 (S.D.1982).

Since the legislature prohibited electric utilities from rendering or extending service in another utility's territory, we think it plain that an electric utility should not be allowed to use a "middle-man," private line, or artificial point of delivery to accomplish the prohibited conduct. Trial court in its oral decision stated:

> I don't believe that Sioux Valley's claim to serve this customer would be well founded in this case because although I do not find that they employed deception in this case, I do believe--and I'm saying this with a smile on my face--they did cleverly use a legal--well artifice may be too strong of a word--legal loophole[.]

We agree with trial court's analysis of the factual scenario, and accordingly hold trial court and PUC correctly concluded Sioux Valley was rendering or extending service within NSP's territory in violation of SDCL 49-34A-42.

[7] Sioux Valley additionally suggests that based on the intersection of the 16th line with Company's property, Company should be allowed to choose its electric service provider. We addressed a similar argument in *Willrodt v. Northwestern Public Service Co.*, 281 N.W.2d 65, 72 (S.D.1979), wherein we stated: " 'An individual has no organic, economic or political right to service by a particular utility merely because he deems it advantageous to himself.' " (Quoting *Storey v. Mayo*, 217 So.2d 304, 307-8 (Fla.1968)).

SDCL ch. 49-34A establishes the means by which electric utilities service various territories within this state. There is nothing in SDCL ch. 49-34A or previous caselaw which would allow Company to choose its electric provider and, we conclude in fact, that the method which Sioux Valley and Company employed in this case circumvents SDCL 49-34A-42. Accordingly, we affirm trial court and PUC's determination ***370** that Sioux Valley was rendering or extending service in NSP's territory.

2. *Exclusive Service*

[8] There is no statutory provision which would allow both NSP and Sioux Valley to service Company; thus, PUC applied a majority load test (MLT) to determine whether NSP or Sioux Valley should serve Company's electrical needs. Sioux Valley argues PUC has no statutory authority which would allow it to adopt the MLT.

PUC is vested with authority to regulate public utilities in this state by SDCL ch. 49-34A. The agreement between NSP and Sioux Valley, which

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established their exclusive territories, was approved by PUC pursuant to SDCL 49-34A-43, which provides in part as follows:

> ... The Commission shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected and will promote the efficient and economical use and development of the electric systems of the contracting electric utilities.

PUC therefore was delegated considerable discretion in attaining these laudable statutory goals. [FN2] Sioux Valley is correct in arguing that there is no specific statute which controls a situation where a customer's property straddles two exclusive service territories. That being the case, PUC was required to establish a policy to be implemented in its regulation of these public utilities in such a factual situation. In performing its delegated duties, PUC employed the MLT as a test to enable it to determine which utility should service a particular customer when there is a contest between providers. The record reflects that under the MLT, the utility which is assigned the territory where the majority of the customers' electric load is, services the customer's entire load. The record also reflects that under the MLT the point of connection must be in the serving utility's territory.

> FN2. PUC was obviously cognizant of these goals as evidenced by its following conclusions:
> (5) Electric utility customers in South Dakota do not have the right to choose their electrical supplier on the basis of lower rates. Customer preference, if controlling, would defeat the orderly assignment of service areas. If customers were allowed to choose their electric utility, especially large industrial customers like Myrl and Roy's Paving, the remaining customers who have no choice would be required to cover the revenue shortfall through higher electric rates. A customer with a mobile load may, as a practical matter, choose its electric provider if it relocates its equipment to the company's territory of its choice. Further, any customer may relocate its electrical needs and thereby select the electric company of its choice. However, under the record as established in this case, the majority of Myrl and Roy's electric power is currently consumed in NSP's assigned service area and therefore, NSP has the exclusive right to serve the entire load. The Commission will not speculate as to how Myrl and Roy's load will change in the future and when a majority of the load will be in Sioux Valley's assigned area.
> ....
> (7) To allow both utilities to serve the customer's respective load on their side of the line would lead to unnecessary duplication of facilities, and would be an inefficient and uneconomical use of the electrical systems of the two companies. SDCL 49-34A-43 and 49-34A-44 prohibit such a result.

Trial court concluded the policy decision to adopt the MLT in this case was purely within PUC's area of expertise and, therefore, within PUC's discretion. We agree. This court has previously stated that the PUC is deemed to be an administrative tribunal with expertise. *Application of Jack Rabbit Lines, Inc.*, 283 N.W.2d 402 (S.D.1979). Thus, we think it appropriate in a situation such as this where there is no specific statute relating to a unique set of facts or prior decisions, for the PUC to consider, for this court to defer to the PUC's expertise in matters which lie within its particular field of knowledge.

SDCL ch. 49-34A evidences a legislative intent for PUC to have broad inherent authority in matters involving utilities in this state. Giving the appropriate deference to PUC's expertise and special knowledge in the field of electric utilities, we cannot conclude that PUC's determination to adopt the MLT in this case was clearly erroneous. *Finck, supra.*

*371 We feel constrained to point out what we have not held. This decision does not hold that the MLT test is required in every contested territorial case. PUC may conclude under a different set of facts that a different test, such as point of use test or point of delivery test, is more appropriate for consideration and application to a subsequent case. We are simply holding that under the facts of this case, PUC did not err or abuse its discretion in using the MLT test. Accordingly, the decision of the trial court and PUC to award NSP exclusive service is affirmed.

MILLER, C.J., and WUEST, HENDERSON and SABERS, JJ., concur.

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C

Supreme Court of South Dakota.

In the Matter of the Petition for Declaratory Ruling of NORTHWESTERN PUBLIC SERVICE COMPANY with Regard to Electric Service to Hub City.

Nos. 19520, 19528.

Argued Sept. 11, 1996.
Decided April 2, 1997.

Rural electric cooperative sought review of Public Utilities Commission (PUC) ruling authorizing electric utility to replace cooperative as supplier of electricity to manufacturer's successor. The Circuit Court, Fifth Judicial Circuit, Jack R. Von Wald, J., overturned decision. Commission and utility appealed. The Supreme Court, Timm, Circuit Judge, held that: (1) after cooperative was assigned and service area was extended based on manufacturer's petition, manufacturer and its successors did not retain right to be assigned to utility's service area upon Commission's determination of changed circumstances; (2) Commission's declaratory ruling fell outside scope of its implied powers; and (3) Commission exceeded its statutory authority by interpreting and enforcing contract between cooperative and cooperative's customer.

Affirmed.

West Headnotes

[1] **Statutes** 188
361k188 Most Cited Cases

Intent of legislature is derived from plain, ordinary, and popular meaning of statutory language.

[2] **Statutes** 206
361k206 Most Cited Cases

Statutes are to be read in pari materia.

[3] **Statutes** 212.3
361k212.3 Most Cited Cases

[3] **Statutes** 212.7
361k212.7 Most Cited Cases

It is presumed that legislature intended provisions of act to be consistent and harmonious; it is also presumed that legislature did not intend absurd or unreasonable result.

[4] **Electricity** 8.1(2.1)
145k8.1(2.1) Most Cited Cases

Policy underlying South Dakota Territorial Integrity Act was elimination of duplication and wasteful spending in all segments of electric utility industry. SDCL 49-34A-1 et seq.

[5] **Electricity** 8.1(3)
145k8.1(3) Most Cited Cases

After rural electric cooperative was assigned and service area was extended based on manufacturer's petition relating to foundry addition, manufacturer and its successors did not retain right to be assigned to electric utility's service area upon Public Utility Commission's (PUC) determination of changed circumstances. SDCL 49-34A-56.

[6] **Constitutional Law** 62(2)
92k62(2) Most Cited Cases

Where legislature prescribes standard of guidance for administrative agency to follow, necessary implied authority may also be delegated to agency to carry out specific purposes prescribed and to exercise appropriate administrative power to regulate and control.

[7] **Electricity** 8.1(4)
145k8.1(4) Most Cited Cases

Public Utilities Commission's (PUC) declaratory ruling authorizing electric utility to replace rural electric cooperative as electric supplier to manufacturer's successor fell outside scope of Commission's implied powers; no statutory provision existed for change of electric provider due to change of ownership, change in customer preference, reduction in load, offering of a lower rate by another utility, or expiration of service agreement between utility and customer, and Commission could not show that permitting change of providers for any of the forgoing reasons advanced purpose of South Dakota Territorial Integrity Act. SDCL 49-34A-1 et seq.

[8] **Administrative Law and Procedure** 305
15Ak305 Most Cited Cases

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While expertise of administrative agency is recognized, agency must lend credence to guidelines established in statutes.

[9] Public Utilities 146
317Ak146 Most Cited Cases

Public Utilities Commission (PUC) is not a court, and cannot exercise purely judicial functions.

[10] Electricity 11(4)
145k11(4) Most Cited Cases

Public Utilities Commission (PUC) exceeded its statutory authority by interpreting and enforcing contract between rural electric cooperative and cooperative's customer. SDCL 49-34A-4.

*926 Mark Barnett, Attorney General, Karen Cremer, Special Assistant Attorney General, Pierre, for appellant, Public Utilities Commission.

Susan Anderson Bachman, Alan D. Dietrich, Huron, for appellant, Northwestern Public Service.

Harvey A. Oliver, Jr. of Richards and Oliver, Aberdeen, for appellee, Northern Electric Cooperative.

TIMM, Circuit Judge.

**1 On January 3, 1995, the Public Utilities Commission (PUC) authorized Northwestern Public Service Company (NWPS) to replace Northern Electric Cooperative (NEC) as supplier of electricity to Hub City, Inc. NEC appealed to the circuit court, Fifth Judicial Circuit. There, the PUC's decision was overturned. The PUC and NWPS appeal to this Court. Here, the circuit court is affirmed.

BACKGROUND

**2 In 1977 Safeguard Automotive Corporation (Safeguard) operated a manufacturing plant in the Aberdeen Industrial Park. The plant was located in the assigned service area of NWPS. Its electrical needs were served by that utility.

**3 That same year a division of Safeguard, Safeguard Metal Casting (Division), planned to build an addition, a foundry, onto the manufacturing plant. The foundry too would be within the assigned service area of NWPS. However, due to a rate advantage offered by NEC, Division petitioned the PUC for relief from its obligation to take service from NWPS.

**4 Division's petition was based on SDCL 49-34A-56, the new customer, new location, large load provision of the South Dakota Territorial Integrity Act. NWPS intervened in opposition. After hearing, the PUC issued an order and decision assigning NEC as the foundry's electric supplier.

**5 On December 21, 1977, an "Agreement For Electric Service" (Agreement) was entered into obligating Division to purchase a minimum of 2000 kilowatts of electric power per month from NEC at a specified rate. The term of the agreement was set at five years. After that time, either party could terminate the agreement by giving twelve month's written notice.

**6 In 1986 Division's foundry ceased operations. The physical plant was converted to use as a warehouse. In 1989 Safeguard's successor, Hub City, Inc. (Hub City) purchased the foundry site from Division. It continued to be used as a warehouse until 1993 when Hub City began to move in some of its production processes.

*927 **7 In June 1993 Hub City informed NEC that it wanted to be served electricity by one supplier, NWPS, at the manufacturing plant and foundry addition, and asked NEC to coordinate with NWPS to accomplish single utility service. The cost of electricity from NWPS would be below the cost incurred through NEC. In March 1994 Hub City notified NEC to end electric service to the foundry site as of June.

**8 In May 1994 NWPS petitioned the PUC for a declaratory ruling framing the issue this way:

9 **Should Hub City be allowed to terminate the former Safeguard Metal Casting Division electric service agreement with Northern Electric Cooperative, Inc., and receive electric service from Northwestern Public Service Company for its total plant?

**10 NEC intervened. The case was submitted on stipulated facts and affidavits (regarding the intent of the parties to the Agreement). The PUC decided in favor of NWPS, concluding that a switch in suppliers was justified by "significant changes in circumstances," and that the agreement provided Division (and its successor, Hub City) a contractual right to terminate NEC as its electric supplier.

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**11 On appeal to circuit court, the PUC's decision was reversed. First, the circuit court read certain provisions of SDCL 49-34A to grant NEC an exclusive right to serve the Hub City site, which right could only be disturbed upon determination by the PUC that NEC could no longer provide adequate service. Since it was uncontested that NEC could provide adequate service, the Court concluded that the PUC made a mistake of law by applying a "significant change in circumstances" test in determining whether NEC could be replaced by NWPS as Hub City's supplier. Second, the circuit court concluded that the PUC lacked authority to interpret or enforce a contract in a dispute between a consumer and a rural electric cooperative.

**12 NWPS and the PUC appeal.

ISSUES

**13 The issues are (1) whether the PUC predicated its decision on a mistake of law, and (2) whether the PUC acted in excess of its authority. These are issues of law fully reviewable without deference to legal conclusions drawn by either the PUC or the circuit court. *See* Egemo v. Flores, 470 N.W.2d 817 (S.D.1991); *Permann v. Dept. of Labor*, 411 N.W.2d 113 (S.D.1987).

MISTAKE OF LAW

[1][2][3] **14 The resolution of the first issue turns on the legislative intent of various provisions of Chapter 49-34A of the South Dakota Codified Laws. In reading these statutes we are guided by certain familiar rules. The intent of the legislature is "derived from the plain, ordinary and popular meaning of statutory language." *Whalen v. Whalen*, 490 N.W.2d 276, 280 (S.D.1992). Statutes are to be read in pari materia. *Simpson v. Tobin*, 367 N.W.2d 757 (S.D.1985). It is presumed that the legislature intended provisions of an act to be consistent and harmonious. *State v. Chaney*, 261 N.W.2d 674 (S.D.1978). It is also presumed that the legislature did not intend an absurd or unreasonable result. *Applications of Black Hills Power and Light Co.*, 298 N.W.2d 799 (S.D.1980).

[4] **15 In 1975 the legislature enacted the "South Dakota Territorial Integrity Act" (Act), now codified at Chapter 49-34A. The policy underlying the Act was "elimination of duplication and wasteful spending in all segments of the electric utility industry." *Matter of Certain Territorial Elec. Boundaries (Mitchell Area)*, 281 N.W.2d 65, 70 (S.D.1979). To accomplish that end, exclusive territories designated "assigned service areas," were established for each utility. *See Matter of Clay-Union Elec. Corp.*, 300 N.W.2d 58, 60 (S.D.1980). To ensure the integrity of a territory, the legislature granted each utility the exclusive right to "provide electric service at retail ... to each and every present and future customer in its assigned service area." SDCL 49-34A-42.

*928 **16 The Act contains several provisions whereby electrical consumers may have their provider changed. SDCL 49-34A-38 through 49-34A-59. Reference is made to these provisions as establishing assigned service areas within which the new provider has exclusive service rights at SDCL 49-34A-1(1) and SDCL 49-34A-42. SDCL 49-34A-1(1) defines "assigned service area" as "the geographical area in which the *boundaries are established as provided in* § § 49-34A-42 to 49-34A-44, inclusive, and *§ § 49-34A-48 to 49-34A-59, inclusive.*" (emphasis added) The last paragraph of SDCL 49-34A-42, the "exclusive right" provision of the Act, states that "The commission shall have the jurisdiction to enforce the *assigned service areas established by* § § 49-34A-42 to 49-34A-44, inclusive, and *§ § 49-34A-48 to 49-34A-59, inclusive.*" (emphasis added)

**17 In 1977 Hub City's predecessor availed itself of one of these provisions, SDCL 49-34A-56. It elected to seek authorization from the PUC to receive electric service from NEC rather than NWPS, the utility within whose assigned service area it would have been located. SDCL 49-34A-56 provides:

> Notwithstanding the establishment of assigned service areas for electric utilities provided for in § § 49-34A-43 and 49-34A-44, new customers at new locations which develop after March 21, 1975, located outside municipalities as the boundaries thereof existed on March 21, 1975, and who require electric service with a contracted minimum demand of two thousand kilowatts or more shall not be obligated to take electric service from the electric utility having the assigned service area where the customer is located if, after notice and hearing, the public utilities commission so determines after consideration of the following factors:
> (1) The electric service requirements of the load to be served;
> (2) The availability of an adequate power supply;
> (3) The development or improvement of the electric system of the utility seeking to provide the

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electric service, including the economic factors relating thereto;
(4) The proximity of adequate facilities from which electric service of the type required may be delivered;
(5) The preference of the customer;
(6) Any and all pertinent factors affecting the ability of the utility to furnish adequate electric service to fulfill customers' requirements.

[5] **18 The PUC and NWPS focus on this statute and suggest that after NEC was assigned and service extended, Division and its successors retained a right to be assigned to the service area of NWPS upon the PUC's determination of changed circumstances. We disagree.

**19 By reading SDCL 49-34A-56 in pari materia with SDCL 49-34A-1(1) and SDCL 49-34A-42, it is clear that the PUC's action in 1977 established the Hub City location as part of the assigned service area of NEC. Concomitantly, NEC acquired the exclusive right to provide retail electric service at that location.

**20 The "retained right" alluded to by the PUC and NWPS is illusive when reading SDCL 49-34A-56. There is no express language establishing such a right in the customer. Nor does that provision yield such a right when read in conjunction with other provisions of the Act. The plain language of the statute indicates the legislature intended it to do nothing more than provide a new large load customer at a new location an option to be exercised prior to receipt of service. The successful exercise of the option does not beget another option.

**21 To subscribe to the "retained right" theory of the PUC and NWPS would be to ascribe an intent to the legislature contrary to the policy underlying the Act. The result: duplication of services and wasteful spending, the precise evils the Act was designed to avoid. In this case NEC lines would be stranded. NWPS would incur the expense of extending lines to the site. The change *929 would cost NWPS $5,400 and waste NEC's capital investment of $80,065. Ultimately these costs would be passed on to the customers of the utilities. We do not believe the legislature intended such a result and decline to read SDCL 49-34A-56 in the manner suggested by the PUC and NWPS.

**22 The PUC and NWPS also assert that the PUC may authorize a change in electrical providers pursuant to its implied powers where there is a change of circumstances.

[6] **23 This Court has recognized that the PUC has certain implied powers. In the *Matter of Northern States Power Co.*, 489 N.W.2d 365 (S.D.1992). Where the legislature prescribes a standard of guidance for the administrative agency to follow, the necessary implied authority may also be delegated to the administrative agency to carry out the specific purposes prescribed and to exercise the appropriate administrative power to regulate and control. In re *Application of Kohlman*, 263 N.W.2d 674, 678 (S.D.1978).

**24 The standard of guidance under SDCL 49-34A is the "elimination of duplication and wasteful spending in all segments of the electric utility industry." *Matter of Certain Territorial Boundaries (Mitchell Area)*, 281 N.W.2d at 70. To that end, the legislature created a system of exclusive territories which could only be changed under certain specified conditions consistent with the intent of the Act. *See* SDCL 49-34A-48 through 59.

[7] **25 The PUC's declaratory ruling in this case falls outside the scope of its implied powers. First, the conditions which exist in this case are not in SDCL 49-34A as a basis for a change of provider. There is no provision for change of provider where there's been a change of ownership, or the customer changes its preference, or there's a load reduction, or where another utility offers a lower rate, or where a service agreement between a utility and a customer expires. Second, the PUC cannot show that permitting a change of providers for any of the forgoing reasons advances the purpose of the Act. As previously noted, the result is the opposite.

**26 The circuit court is affirmed on this issue.

EXCESS AUTHORITY

**27 The second issue concerns whether the PUC exceeded its authority by interpreting and enforcing the electric service agreement between Hub City and NEC.

**28 There are two types of electric utilities involved in this case. NEC is a rural electric cooperative. NWPS is a public utility. Chapter 49-34A provides that the PUC has different authority over each type of utility. A "public utility" is defined as:

any person operating, maintaining or controlling in this state equipment or facilities for the purpose of providing gas or electric service to or for the public

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> in whole or in part,.... However, the term does not apply to an electric or gas utility owned by a municipality, political subdivision, or agency of the state of South Dakota or any other state or a rural electric cooperative as defined in § 47-21-1 for the purposes of § § 49-34A-2 to 49-34A-4, inclusive, § § 49-34A-6 to 49-34A-41, inclusive, and § 49-34A-62[.]

SDCL 49-34A-1(12)(emphasis added). Therefore, while the PUC has authority over the NEC for determining whether its service is adequate or to make territorial assignments, it has no authority over NEC with regard to rates (SDCL 49-34A-6 to 49-34A-26, inclusive). NEC's agreement with its customer is one regarding the service provided and the rate. There is no allegation that the service is inadequate and the PUC has no authority to make any determination as to rates. The PUC based its ruling on the termination clause included in that agreement. This would appear to be a contract dispute between NEC and Hub City's successor in interest and clearly beyond the PUC's authority.

[8] ****29** "While the expertise of the administrative agency is recognized, the agency ***930** must lend credence to the guidelines established in the statutes." *Matter of Certain Territorial Electric Boundaries (Mitchell Area)*, 281 N.W.2d at 69. *See also Matter of Certain Territorial Elec. Boundaries (Aberdeen)*, 281 N.W.2d 72, 76 (S.D.1979); *Williams Electric Co-op. v. Montana-Dakota Util. Co.*, 79 N.W.2d 508, 517 (N.D.1956). The PUC's authority is outlined in Chapter 49-34A:

> The commission shall regulate to the extent provided in this chapter every public utility as defined herein. The commission may promulgate rules pursuant to chapter 1-26 in furtherance of the purposes of this chapter concerning:
> (1) Procedures and requirements for applications for rate and tariff changes;
> (2) Requirements for gas and electric utilities to maintain and make available to the public and the commission records and information;
> (3) Requirements and procedures regarding customer billings and meter readings;
> (4) Requirements regarding availability of meter tests;
> (5) Requirements regarding billing adjustments for meter errors;
> (6) Procedures and requirements for handling customer disputes and complaints;
> (7) Procedures and requirements regarding temporary service, changes in location of service and service interruptions;
> (8) Standards and procedures to ensure nondiscriminatory credit policies:
> (9) Procedures, requirements and record-keeping guidelines regarding deposit policies;
> (10) Procedure, requirements and record-keeping guidelines regarding customer refunds;
> (11) Policies for refusal of gas or electric service;
> (12) Policies for disconnection and transfer of gas and electric service;
> (13) Customer payment plans for delinquent bills; and
> (14) Requirements regarding advertising.

SDCL 49-34A-4. Even though this statute only applies to the PUC's relationship with public utilities, not rural cooperatives, it does not include contract interpretation as an authority or power of the PUC.

[9][10] ****30** The PUC is not a court, and cannot exercise purely judicial functions. *Application of Dakota Transportation, Inc.*, 67 S.D. 221, 291 N.W. 589, 594 (1940). As the North Dakota Court has stated,

> As a general rule administrative agencies, boards, and commissions cannot consider, or adjudicate, contractual rights and obligations between parties. Hence they cannot pass on the validity of, or enforce, nor can administrative agencies, boards, or commissions change or annul contracts, except where they have been granted power by organic or valid statutory enactment to do so.

Williams Elec. Coop., 79 N.W.2d at 517. The PUC has exceeded its statutory authority by interpreting and enforcing the contract between a rural cooperative, NEC, and its customer. *See* In the Matter of the *Application of City of White*, 294 N.W.2d 433 (S.D.1980) (holding that the PUC has no authority to determine the amount of compensation due an electric utility for service contracts). The circuit court is affirmed on this issue as well.

****31** MILLER, C.J., and SABERS, AMUNDSON and KONENKAMP, JJ., concur.

****32** TIMM, Circuit Judge, for GILBERTSON, J., disqualified.

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C

Supreme Court of South Dakota.

In the Matter of the Petition for Declaratory Ruling Filed for CLAY-UNION ELECTRIC CORPORATION.

No. 12919.

Argued April 22, 1980.
Decided Dec. 30, 1980.

The Public Utilities Commission awarded rural electric cooperative right to provide retail electric service to new aluminum plant. The Circuit Court, Sixth Judicial Circuit, Hughes County, Robert A. Miller, J., reversed declaratory ruling, and cooperative appealed. The Supreme Court, Young, Circuit Judge, held that under terms of contract between cooperative and another electric utility, which provided that each utility could continue to service existing structures and utilities, but that no new connections or hookups would be allowed in other utility's designated service area, aluminum plant was not existing structure nor outlet but was a new structure and a new outlet, and thus ruling that cooperative had right to provide retail electric service to aluminum plant was clearly erroneous.

Trial court's order affirmed.

West Headnotes

[1] **Administrative Law and Procedure** 785
15Ak785 Most Cited Cases

[1] **Administrative Law and Procedure** 796
15Ak796 Most Cited Cases

In reviewing actions of any agency, it is duty of Supreme Court to decide whether law has been correctly applied and whether agency's findings are clearly erroneous.

[2] **Administrative Law and Procedure** 785
15Ak785 Most Cited Cases

In reviewing sufficiency of evidence, Supreme Court does not sit as trial de novo of agency but limits its review to whether findings and decision of agency are clearly erroneous. SDCL 1-26-36(5).

[3] **Electricity** 8.1(4)
145k8.1(4) Most Cited Cases

Review by Supreme Court of declaratory ruling of Public Utilities Commission awarding rural electric cooperative right to provide retail electric service to aluminum plant was same as that conducted by circuit court without presumption of correctness as to the lower court's findings.

[4] **Electricity** 8.1(2.1)
145k8.1(2.1) Most Cited Cases
(Formerly 145k8.1(2))

Statutory protection of existing service rights is subordinate to legislative intent to allow electric utilities, with consent of Public Utilities Commission, to agree by contract to designated service areas and customers to be served. SDCL 49-34A-42.

[5] **Electricity** 8.1(3)
145k8.1(3) Most Cited Cases

Under terms of contract between rural electric cooperative and another public utility, which provided that each utility could continue to service existing structures located in other utility's designated exclusive area but could not make any new connections or hookups in such area, aluminum plant, which was located in designated exclusive service area of utility on property previously served by cooperative, and which required new service line, was not existing structure or outlet but was a new structure and a new outlet, and thus cooperative did not have right under parties' contract to provide retail electric service to plant. SDCL 49-34A-42, 49-34A-43, 49-34A-44.

*59 Theodore J. Dolney, Vermillion, and Vincent J. Protsch, Howard, for appellant Clay-Union Electric Corp.

Merle D. Lewis, Huron, for appellee Northwestern Public Service Co.; Alan D. Dietrich, Huron, on brief.

Leo P. Flynn, Milbank, for amicus curiae S.D. Rural Electric Association.

YOUNG, Circuit Judge.

This appeal arises from an order of the circuit court that reversed a declaratory ruling of the Public Utilities Commission (PUC) awarding Clay Union Electric Corporation (CUEC) the right to provide

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retail electric service to Alumax Extrusions Inc. (Alumax) near Yankton, South Dakota. CUEC appeals from that order. We affirm.

Appellant CUEC is a rural electric cooperative. Appellee Northwestern Public Service Company (NWPS) is an investor-owned electric utility. Both utilities provide electric service at retail in Yankton County, South Dakota. Prior to 1973, the parties were involved in several legal disputes concerning service rights to an area immediately east of the city of Yankton, South Dakota. Pursuant to a resolution of the South Dakota Electric Mediation Board, the utilities entered into an agreement establishing designated exclusive service areas within the disputed territory. Boundary delineation between these designated exclusive areas was established by maps and by legal description. Each utility was granted the right to continue to service "existing structures and outlets" but "no new connections or hookups" could be made ***60** within the designated service areas of the other utility.

In 1975, the South Dakota Legislature enacted SDCL ch. 49-34A, granting the PUC the authority to establish exclusive service areas for every utility throughout the state. SDCL 49-34A-4. These territorial boundaries could be established by the PUC in several ways. Under 49-34A-42 each electric utility had the exclusive right to provide electric service at retail "at each and every location where it is serving a customer as of March 21, 1975, and to each and every present and future customer in its assigned service area ...." The determination of the assigned service areas was set out in SDCL 49-34A-43 and SDCL 49-34A-44. Under SDCL 49-34A-43, two methods for determination of the boundaries were possible. First, boundaries of assigned areas outside of incorporated municipalities, "shall be a line equidistant between the electric lines of adjacent electric utilities as they existed on March 21, 1975" subject to specific modifications due to either natural or physical barriers, to "contracts provided for in this section," or to orders entered before July 1, 1975, by the electric mediation board. The second method provided in SDCL 49-34A-43 is as follows:

> Contracts between electric utilities, which are executed on or before July 1, 1976, designating service areas and customers to be served by the electric utilities approved by the commission shall be valid and enforceable and shall be incorporated into the appropriate assigned service areas. The commission shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected and will promote the efficient and economical use and development of the electric systems of the contracting electric utilities.

Finally, under SDCL 49-34A-44, guidelines are set out which enable the PUC to assign specific service areas in those territories in which service is intertwined. CUEC and NWPS chose the second method and renegotiated their 1973 agreement in which they had established exclusive service areas. The PUC, following the guidelines set out in SDCL 49-34A-43, approved the 1975 contract.

The 1973 agreement and the 1975 contract allow CUEC to continue to service the existing structures and outlets of the Foss farmhouse in Block 1 of Foss' 2nd Addition, Yankton County, South Dakota, which is located within NWPS' designated exclusive area. CUEC continued to serve the farmhouse and later a trailer house located on this property. In October 1978, Alumax purchased Block 1 and Block 2 of Foss' 2nd Addition, the latter of which is also located within NWPS' designated service area. The trailer and farmhouse were removed and an aluminum plant was constructed on this property. NWPS claimed that because this location was within its designated exclusive service area and because the aluminum plant constituted a new structure, a new outlet, and a new connection or hookup, it was entitled to service the plant. CUEC claimed that SDCL 49-34A-42 gave it the authority to serve the entire location and not merely a customer. CUEC further claimed that it was continuing to serve an existing structure and outlet and that the Alumax plant was not a new connection or hookup.

The PUC found in favor of CUEC, primarily on the basis that the language in SDCL 49-34A-42 states, "Each electric utility shall have the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975, and to each and every present and future customer in its assigned service area ...." The PUC concluded that from the evidence presented a finding could be made that the Alumax plant site constituted the same location as the farmhouse and the trailer, and that CUEC's right to service the Alumax Extrusions facility at this location did not abrogate or violate the 1973 or 1975 agreements.

[1][2][3] In reviewing the actions of any agency it is our duty to decide whether the ***61** law has been correctly applied and whether the agency's findings are clearly erroneous. South Dakota Public Utilities Commission v. Otter Tail, 291 N.W.2d 291 (S.D.1980); Matter of Certain Territorial Elec.

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Boundaries, Etc., (Mitchell Area), 281 N.W.2d 65 (S.D.1979). [FN*] In reviewing the sufficiency of the evidence we do not sit as a trial de novo of the agency but limit our review to whether the findings and decision of that agency are clearly erroneous. SDCL 1-26-36(5); Huffman v. Bd. of Ed. of Mobridge Ind. Sch. Dist., Etc., 265 N.W.2d 262 (S.D.1978). The review by this Court is the same as that conducted by the circuit court without a presumption of correctness as to the lower court's findings. South Dakota Public Utilities Commission v. Otter Tail, supra; Application of Mont.-Dak. Util. Co., Etc., 278 N.W.2d 189 (S.D.1979); Piper v. Neighborhood Youth Corps, 90 S.D. 443, 241 N.W.2d 868 (1976).

FN* We note that the "clearly erroneous" standard of review is applicable to this case inasmuch as the order in question was entered after July 1, 1978. See South Dakota Public Utilities Commission v. Otter Tail, supra, 291 N.W.2d at 293, n. 2.

The PUC was presented with substantial evidence that the terms "structure," "outlet," "connection" and "hookup" had narrow and specific meanings within the field of utility services. The uncontradicted testimony of the expert witnesses overwhelmingly showed that the term "structure" related to a building or facility containing electrical utilization equipment; that "outlet" related to a point in the wiring systems; and that "connection" or "hookup" referred to the physical attachment of the wire service. The evidence also points to the fact that the electric service provided by CUEC to the farmhouse and trailer located in Block 1 of Foss' 2nd Addition, Yankton County, South Dakota, consisted of a single-phase, 240 volt electric service. Electric service that would be required by the Alumax plant is a 277-480 volt, three-phase, four-wire service. For CUEC to provide such service, it would be necessary for the utility to construct a new service line to the Foss 2nd Addition on its nearest existing similar service line. At the minimum, such service would require 3,200 feet of line to be constructed by CUEC to the Alumax plant. NWPS, however, has an existing three-phase distribution and transmission line approximately 300 feet west of the proposed plant site. In addition, NWPS has four substations within close vicinity to the plant to provide such electric service.

Notwithstanding the above-cited evidence, the PUC concluded as a "finding of fact" that:

> Clay-Union Electric Corporation's right to serve the Alumax Extrusions facility at a pre-March 21, 1975 location does not abrogate or violate the 1973 or 1975 agreements entered into by and between Northwestern Public Service Company and Clay-Union Electric Corporation. The Commission finds that on the basis of the expert testimony presented and the express terms of the 1973 agreement above set forth, no violation thereof will occur by permitting Clay- Union Electric Corporation to provide permanent service to the Alumax Extrusions facility....

Reviewing the above evidence as a whole, this Court finds that the conclusion reached by the PUC is clearly erroneous in light of the entire evidence in the record.

CUEC contends, however, that SDCL 49-34A-42 and its predecessor, SDCL 49-41-7, reflect a legislative intent to protect exclusive service rights, not merely to a customer, but to a legally described area surrounding that customer. In particular, CUEC contends that the legislative change of the word "structures" in SDCL 49-41-7 to "location" in SDCL 49-34A-42 requires a more expansive interpretation of the reserved rights. As we recently discussed in Matter of Certain Territorial Elec. Boundaries, Etc., (Aberdeen Vicinity), 281 N.W.2d 72 (S.D.1979), the legislative intent in enacting SDCL ch. 49-34A was to prevent this very type of service dispute by allocating each utility an exclusive franchise within specific boundaries. SDCL 49-34A-4. Such designation of boundaries is a necessary regulatory measure to which all new territories are subject. By the terms of this ***62** statute the Legislature provided two specific types of protection. First, it assured that each utility would be granted all future service rights within its designated service area; and second, it protected individual service existing at the time the franchise was granted.

[4] In Matter of Certain Territorial Elec. Boundaries, Etc., (Aberdeen Vicinity), supra, we discussed the dichotomy which appeared in the statutory language of SDCL ch. 49-34A.

> Obviously, the PUC cannot set boundaries under guidelines of SDCL 49-34A- 44 without disrupting rights to serve customers that may have vested under SDCL 49-34A-42. It is our duty to reconcile any such apparent contradiction and to give effect, if possible, to all of the provisions under consideration, construing them together to make them harmonious and workable. North Central Investment Co. v. Vander Vorste, 81 S.D. 340, 135 N.W.2d 23 (1965). This requires that the exclusive rights provision of SDCL 49-34A-42, as well as the

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equidistant concept of SDCL 49-34A-43, must yield to a boundary determination according to the guidelines of SDCL 49-34A-44, whenever the PUC finds that the utilities' lines are intertwined. Id. at 76.

The protection of existing service rights in SDCL 49-34A-42 is subordinate to the legislative intent to allow the utilities, with the consent of the PUC, to agree by contract to designated service areas and customers to be served. By the terms of the 1973 and 1975 agreements, the parties contractually limited services within the designated area of the other to existing structures and outlets, and provided that there be no new connections or hookups within the designated area of the other. This agreement took away the right the utilities had under SDCL 49-34A-42 where they were allowed to serve present and future customers in the assigned service area.

[5] The contract between the parties is controlling in this case. The contract outlines the areas and the limitation of service, and the parties are bound by these limitations. Each utility could continue to service existing structures and utilities, but no new connections or hookups. Under the terms of the parties' agreement, Alumax is not an existing structure nor outlet but is a new structure and a new outlet. After construing the terms of this contract, we conclude that the PUC's decision was clearly erroneous and that the trial court's order reversing that decision should be affirmed.

The order appealed from is affirmed.

WOLLMAN, C. J., and HENDERSON and FOSHEIM, JJ., and WUEST, Circuit Judge, concur.

YOUNG, Circuit Judge, sitting for DUNN, J., disqualified.

WUEST, Circuit Judge, sitting for MORGAN, J., disqualified.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF WEST RIVER ELECTRIC ASSOCIATION, INC. FOR A DECLARATORY RULING REGARDING SERVICE TERRITORY RIGHTS CONCERNING BLACK HILLS POWER, INC. AND WEST RIVER ELECTRIC ASSOCIATION, INC.	))))))	**ORDER FOR AND NOTICE OF HEARING AND ORDER GRANTING INTERVENTION** **EL02-003**

On February 21, 2002, the South Dakota Public Utilities Commission ("Commission") received a Petition for Declaratory Ruling from West River Electric Association, Inc. (WREA) requesting the Commission to make declaratory rulings as to: (i) whether Black Hills Power, Inc. (BHP) is rendering or has extended service within WREA's territory in violation of SDCL § 49-34A-42; and (ii) whether WREA has the right to provide future electrical service to the Rapid City Waste Water Treatment Facility (the sewer plant) located within WREA's assigned service area.

The Commission has jurisdiction over this matter pursuant to SDCL 49-34A-4 and 49-34A-59 and ARSD 20:10:01:34 and 20:10:01:35.

On February 25, 2002, WREA filed its agreement to an extension of the fifteen-day hearing requirement of SDCL 49-34A-59 to thirty (30) days, as provided in ARSD 20:10:01:35. The Commission originally scheduled the petition for hearing on March 21, 2002. On March 7, 2002, prior to formal order and notice of hearing, BHP filed a request to reschedule the hearing to which WREA had previously agreed.

A hearing on WREA's Petition for Declaratory Ruling will accordingly be held on April 18, 2002, beginning at 1:00 p.m. CDT in Room 464 of the Capitol Building in Pierre, South Dakota.

The deadline for intervention fixed by the Commission was March 15, 2002. On March 11, 2002, BHP filed a Petition to Intervene, and the Commission considered BHP's Petition at its regular meeting on March 28, 2002. No one appeared in opposition to the Petition to Intervene. Finding that WREA, in its original filing, had requested that "the Commission formally serve BHP with a copy of the Petition at such time as the Commission may set the matter for hearing" and that the relief sought by WREA would obviously have a direct and immediate effect on BHP's pecuniary interest in continuing to provide electric service to the sewer plant, the Commission voted unanimously to grant intervention to BHP.

In addition to the two questions set forth in the first paragraph above, the Petition further states that WREA "is entitled to a declaratory ruling that BHP has illegally extended its service within WREA's designated service area and that WREA is entitled to provide all future service to the sewer plant." The particular statutes and rules involved include

SDCL 49-34A-42 through 49-34A-44, inclusive, and 49-34A-59 and ARSD 20:10:01:34 and 20:10:01:35.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All persons testifying will be subject to cross-examination. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights will be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of this hearing, the Commission may determine: (i) whether WREA has the right to provide the service to the sewer plant installed by BHP in 1985 or 1986; (ii) whether such installation of service by BHP constituted an unlawful rendering or extension of service under SDCL 49-34A-42; and (iii) WREA's and BHP's respective rights to provide future electrical service to the sewer plant. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing on this matter will be held on April 18, 2002, at 1:00 p.m. CDT in Room 464 of the Capitol Building in Pierre, South Dakota. It is further

ORDERED, that the Petition to Intervene of Black Hills Power, Inc. is granted and that BHP is admitted as a party of record in this docket.

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 4th day of April, 2002.

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: Delaine Kolbo

Date: 4/5/02

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

Robert K. Sahr

ROBERT K. SAHR, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF WEST RIVER ELECTRIC ASSOCIATION, INC. FOR A DECLARATORY RULING REGARDING SERVICE TERRITORY RIGHTS CONCERNING BLACK HILLS POWER, INC. AND WEST RIVER ELECTRIC ASSOCIATION, INC.	)	**ORDER CANCELLING HEARING** **EL02-003**

On February 21, 2002, the South Dakota Public Utilities Commission ("Commission") received a Petition for Declaratory Ruling from West River Electric Association, Inc. (WREA) requesting the Commission to make declaratory rulings as to: (i) whether Black Hills Power, Inc. (BHP) is rendering or has extended service within WREA's territory in violation of SDCL § 49-34A-42; and (ii) whether WREA has the right to provide future electrical service to the Rapid City Waste Water Treatment Facility (the sewer plant) located within WREA's assigned service area.

On February 25, 2002, WREA filed its agreement to an extension of the fifteen-day hearing requirement of SDCL 49-34A-59 to thirty (30) days, as provided in ARSD 20:10:01:35. The Commission originally scheduled the petition for hearing on March 21, 2002. On March 7, 2002, prior to formal order and notice of hearing, BHP filed a request to reschedule the hearing to which WREA had previously agreed. On March 11, 2002, the Commission received a petition to intervene from BHP. At its regularly scheduled meeting on March 28, 2002, the Commission granted BHP's petition to intervene

The Commission has jurisdiction over this matter pursuant to SDCL 49-34A-4 and 49-34A-59 and ARSD 20:10:01:34 and 20:10:01:35.

By order dated April 4, 2002, a hearing was scheduled for April 18, 2002, beginning at 1:00 p.m. CDT in Room 464 of the Capitol Building in Pierre, South Dakota. The parties have requested that the hearing be cancelled. It is therefore

ORDERED, that the hearing scheduled for April 18, 2002, is cancelled and a new hearing shall be set at a later time.

Dated at Pierre, South Dakota, this 17th day of April, 2002.

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: Delaine Kolbo

Date: 4/17/02

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

Robert K. Sahr

ROBERT K. SAHR, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF WEST RIVER ELECTRIC ASSOCIATION, INC. FOR A DECLARATORY RULING REGARDING SERVICE TERRITORY RIGHTS CONCERNING BLACK HILLS POWER, INC. AND WEST RIVER ELECTRIC ASSOCIATION, INC.	)	**SECOND ORDER FOR AND NOTICE OF HEARING** **EL02-003**

On February 21, 2002, the South Dakota Public Utilities Commission ("Commission") received a Petition for Declaratory Ruling from West River Electric Association, Inc. (WREA) requesting the Commission to make declaratory rulings as to: (i) whether Black Hills Power, Inc. (BHP) is rendering or has extended service within WREA's territory in violation of SDCL § 49-34A-42; and (ii) whether WREA has the right to provide future electrical service to the Rapid City Waste Water Treatment Facility (the sewer plant) located within WREA's assigned service area.

The Commission has jurisdiction over this matter pursuant to SDCL 49-34A-4 and 49-34A-59 and ARSD 20:10:01:34 and 20:10:01:35.

On February 25, 2002, WREA filed its agreement to an extension of the fifteen-day hearing requirement of SDCL 49-34A-59 to thirty (30) days, as provided in ARSD 20:10:01:35. The Commission originally scheduled the petition for hearing on March 21, 2002. On March 7, 2002, prior to formal order and notice of hearing, BHP filed a request to reschedule the hearing to which WREA had previously agreed.

A hearing on WREA's Petition for Declaratory Ruling will accordingly be held on May 22, 2002, beginning at 9:00 a.m. CDT in Room 412 of the Capitol Building in Pierre, South Dakota.

The deadline for intervention fixed by the Commission was March 15, 2002. On March 11, 2002, BHP filed a Petition to Intervene, and the Commission considered BHP's Petition at its regular meeting on March 28, 2002. No one appeared in opposition to the Petition to Intervene. Finding that WREA, in its original filing, had requested that "the Commission formally serve BHP with a copy of the Petition at such time as the Commission may set the matter for hearing" and that the relief sought by WREA would obviously have a direct and immediate effect on BHP's pecuniary interest in continuing to provide electric service to the sewer plant, the Commission voted unanimously to grant intervention to BHP.

In addition to the two questions set forth in the first paragraph above, the Petition further states that WREA "is entitled to a declaratory ruling that BHP has illegally extended its service within WREA's designated service area and that WREA is entitled to provide all future service to the sewer plant." The particular statutes and rules involved include

SDCL 49-34A-42 through 49-34A-44, inclusive, and 49-34A-59 and ARSD 20:10:01:34 and 20:10:01:35.

The hearing will be an adversary proceeding conducted pursuant to SDCL Chapter 1-26. All persons testifying will be subject to cross-examination. All parties have the right to be present and to be represented by an attorney. These rights and other due process rights will be forfeited if not exercised at the hearing. If you or your representative fail to appear at the time and place set for the hearing, the Final Decision will be based solely on the testimony and evidence provided, if any, during the hearing or a Final Decision may be issued by default pursuant to SDCL 1-26-20. After the hearing, the Commission will consider all evidence and testimony that was presented at the hearing. The Commission will then enter Findings of Fact, Conclusions of Law, and a Final Decision regarding this matter. As a result of this hearing, the Commission may determine: (i) whether WREA has the right to provide the service to the sewer plant installed by BHP in 1985 or 1986; (ii) whether such installation of service by BHP constituted an unlawful rendering or extension of service under SDCL 49-34A-42; and (iii) WREA's and BHP's respective rights to provide future electrical service to the sewer plant. The Commission's Final Decision may be appealed by the parties to the state Circuit Court and the state Supreme Court as provided by law. It is therefore

ORDERED, that a hearing on this matter will be held on May 22, 2002, at 9:00 a.m. CDT in Room 412 of the Capitol Building in Pierre, South Dakota. It is further

Pursuant to the Americans with Disabilities Act, this hearing is being held in a physically accessible location. Please contact the Public Utilities Commission at 1-800-332-1782 at least 48 hours prior to the hearing if you have special needs so arrangements can be made to accommodate you.

Dated at Pierre, South Dakota, this 17th day of April, 2002.

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: Delaine Kolbo

Date: 4/17/02

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg

JAMES A. BURG, Chairman

Pam Nelson

PAM NELSON, Commissioner

Robert K. Sahr

ROBERT K. SAHR, Commissioner

Bangs McCullen Law Firm

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

Reply to Rapid City Office

Rapid City
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
Jeffrey G. Hurd
John H. Raforth
Terry G. Westergaard
Steven R. Nolan
Gregory J. Erlandson
Kyla J. Sipprell
Rachel V. Jepsen
Tracey A. Fischer

Sioux Falls
Michael A. Hauck
John P. Mullen
Robert J. Hollan

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

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

Writer's e-mail address: anelson@bangsmccullen.com

May 9, 2002

RECEIVED
MAY 10 2002
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

Ms. Debra Elofson
Executive Director
Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Re: West River Electric Association, Inc. – Petition
Black Hills Power, Inc. – Petition

Dear Ms. Elofson:

Enclosed please find the original and ten (10) copies of the following documents which we are submitting to you for the scheduled hearing involving West River Electric Association, Inc., and Black Hills Power, Inc., on Thursday, May 22nd at 9:00 a.m.:

1. Joint Stipulation of Facts;

2. West River Electric Association, Inc.'s Additional Proposed Findings of Fact;

3. Black Hill Power, Inc.'s Additional Proposed Findings of Fact;

4. Eleven copies of Exhibit Books that the parties plan on referring to during the testimony of various witnesses that will testify on May 22nd. We have stipulated to the foundation of each exhibit but, both parties reserve the right to state any other objections they may have to the exhibits; and

5. Affidavit of Service.

If you need any additional information from either of the parties, I am authorized to advise you that both sides will attempt to promptly provide whatever additional information you may deem necessary.

Best regards.

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

Allen G. Nelson

agn:ke
Enc.

RECEIVED

MAY 10 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF WEST RIVER ELECTRIC ASSOCIATION, INC. FOR A DECLARATORY RULING REGARDING SERVICE TERRITORY RIGHTS CONCERNING BLACK ILLS POWER, INC. AND WEST RIVER ELECTRIC ASSOCIATION, INC.	))))))	**EL 02-003**

WEST RIVER ELECTRIC ASSOCIATION, INC.'S
AND
BLACK HILLS POWER, INC.'S
JOINT SUBMITTAL OF STIPULATED FACTS

Petitioner West River Electric Association, Inc. ("WREA"), and Intervenor Black Hills Power, Inc. ("BHP"), through their undersigned counsel, respectfully submit the following stipulated facts for consideration and resolution of the captioned matter by the South Dakota Public Utilities Commission ("PUC"). WREA and BHP hereby stipulate and agree as follows:

Stipulation

1. On February 21, 2002, WREA initiated this proceeding by properly filing and serving its Petition for a Declaratory Ruling ("Petition") pursuant to SDCL §1-26-15 and ARSD § 20:10:01:34.

2. On March 8, 2002, BHP properly filed and served a Petition to Intervene in this proceeding pursuant to SDCL § 1-26-17.1 and ARSD § 20:10:01:15:02.

3. The PUC has the authority and jurisdiction to render a decision as to the pending Petition.

4. On March 28, 2002, the PUC granted BHP's Petition to Intervene.

5. Prior to WREA's filing of the Petition, the parties conducted good-faith settlement discussions as to who should provide electrical service for the 1987 expansion of the Rapid City Waste Water Treatment Plant ("Plant") and the anticipated future load growth at the Plant. The parties were unable to reach an agreement.

6. WREA is a cooperative, not for profit utility incorporated under the laws of the State of South Dakota and serves a PUC assigned service territory within South Dakota. BHP is a for profit utility corporation incorporated under the laws of the State of South Dakota and also serves a PUC assigned service territory within South Dakota. (See Exhibits 1 and 2 indicating partial service territory and SDCL § 49-34A-44).

7. The City of Rapid City ("City") has owned and operated a wastewater treatment plant ("Plant") which is located within WREA's PUC assigned service territory. The Plant is located on a 40-acre parcel of property purchased by the City in 1963. The City's planned expansion of the Plant will occur upon the same 40-acre parcel. The City owns an additional 80 acres of property located adjacent to the 40-acre parcel that the City purchased in 1973. (See Exhibits 3, 4 and aerial map Exhibit 5).

8. During the construction phase of the Plant in the mid-1960's, WREA constructed and provided 3-phase electrical service for the Plant up to approximately October, 1967 attached as Exhibit 6.

9. The location of the electric line that is provided by BHP to serve the plant and the location of WREA's line which is available to serve the plant are shown on the attached Exhibit 7.

10. BHP began providing electric service to the Plant in 1967 pursuant to a 1967 city council resolution and a subsequent vote of the city residents at a special city election held on July 11, 1967. (See Exhibits 8 and 9).

11. BHP provided electricity to the Plant prior to and on March 21, 1975. (See SDCL 49-34A-42).

12. Pursuant to SDCL Ch. 34A-42, adopted in 1975 (the "1975 Territory Act"), the PUC established the boundaries of WREA's service territory in 1976 which included the land area upon which the Plant is located and the land area immediately surrounding the Plant. BHP provides electrical service to the Plant as a customer of BHP because BHP provided the electricity to the Plant prior to and on March 21, 1975 (See SDCL § 49-34A-42[1]).

13. Pursuant to the 1975 Territory Act, and the service territory the PUC established for WREA and BHP, WREA served customers located within BHP's service territory and BHP served customers located within WREA's service territory.

14. There is no PUC approved agreement between BHP and WREA related to the service of the Plant's electricity requirements.

15. BHP currently serves the entire Plant's electrical needs through two Large Demand Curtailable Service Agreements and the PUC's Order Approving Contracts with Deviations (Docket EL93-021). (See Exhibit 10)

16. BHP currently serves the Plant's electrical load of approximately 570 kVA. The city's proposed load growth at the Plant is anticipated to be 1,310 kVA, for a total electrical load of approximately 1,880 kVA.

---

[1] Customers that were served by a utility prior to March 21, 1975 are sometimes colloquially referred to as "frozen" customers or accounts with reference to this statute.

17. BHP currently serves the electrical needs of the Plant utilizing a primary distribution line connected to two transformers, and two electrical meters.

18. The City prepared specifications and has received bids for construction of new facilities and expansion of the Plant. The City's expansion plans at the Plant will require that the serving utility add 4 new transformers and four meters to serve the present and future growth at the Plant. (See Exhibit 11).

19. BHP proposes to provide the additional load of the Plant through the utility's transformers and meters and the same primary distribution line that has served the Plant since 1967.

20. WREA proposed to serve the additional load of the Plant through the utility's transformers and meters at the Plant as described in Exhibit 10. WREA is immediately adjacent to the Plant property with 3-phase electrical service and could provide the necessary electrical service to the Plant with a minimal amount of time and expense to incur.

21. The location of existing, planned and the potential future service sites are identified in Exhibit 11 and described as follows:

A. Service Number One. Service 1 to the Plant was installed and maintained by BHP beginning in 1967, when the Plant was completed. WREA has never challenged BHP's right to maintain this service.

B. Service Number Two. Service 2 was installed in 1987 by BHP. BHP did not seek WREA's consent to install this service.

C. Services Three through Five. Services 3 through 5 are the proposed service growth as indicated in City's specifications. Proposed Service 3 will

serve the new sludge handling building. Service 4 will serve a new blower building, and Service 5 will serve a new administration building.

D. Service Number Six. Service 6 is a potential future service site at the Plant.

22. Both WREA and BHP would stipulate to a post-hearing briefing schedule as determined by the PUC.

Dated this 10 day of May 2002.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, LLP

By: Allen G. Nelson

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

Dated this 9th day of May 2002.

BLACK HILLS CORPORATION

By: Linden R. Evans

Linden R. Evans
Attorneys for Black Hills Power, Inc.
P.O. Box 1400
Rapid City, SD 57709-1400
(605) 721-1700

RECEIVED

MAY 10 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF **WEST RIVER ELECTRIC ASSOCIATION, INC.** FOR A DECLARATORY RULING REGARDING SERVICE TERRITORY RIGHTS CONCERNING BLACK HILLS POWER, INC. AND WEST RIVER ELECTRIC ASSOCIATION, INC.	))))))	**EL 02-003**

WEST RIVER ELECTRIC ASSOCIATION, INC.S'
ADDITIONAL PROPOSED FINDINGS OF FACT

Petitioner West River Electric Association, Inc., ("WREA"), through their undersigned counsel, respectfully submit the following additional findings of facts for consideration and resolution of the captioned matter by the South Dakota Public Utilities Commission ("PUC").

Additional Findings of Fact

1. In December of 1975, a meeting was held with representatives of WREA, BHP, Butte Electric and Black Hills Electric Coop in attendance. The following agreement was reached by all parties:

A. It is agreed that the utility now serving a consumer in the territory certified to another utility shall continue to provide service as long as that service continues in the same general character.

Increasing the capacity of the entrance to handle increased usage or an addition shall not be considered a change in character. Replacement of a present structure with one of like character shall also not be considered a change in character.

B. The utilities certified to the territory shall have the option to serve any new service in that territory.

C. In the event a building is placed on the territory boundary between two utilities the location of the service entrance shall determine the supplier.

D. Where a utility has an underground service installed as of December 29, 1975, but does not have a connected consumer at the site – the utility owning the URD facility shall provide the service when it is requested.

On July 12, 1977, at a later meeting with at least BHP and WREA it was agreed:

A. Agreed at meeting with BHP where new service (meter) to be installed, utility with the territory has option of service (i.e. trailer court adding and new meters to be installed – utility servicing the territory puts in the new service)

B. At a later meeting of the parties it was agreed that "where structure moved – service to moved building goes to utility servicing area of its new location. (See Exhibit 12).

2. In 1984, the overall agreement with Black Hills Power was revised slightly. Paragraph 3 was revised to provide that a majority of the square footage of a building shall determine the power supplier. Paragraph 4 was added to cover a set of circumstances if one utility expanded their distribution system into the other utilities territory by mutual agreement, then KWH's would be exchanged.

A footnote was inserted regarding the underground cable we had previously in Peaceful Pines Subdivision which we previously agreed to. (See Exhibit 13).

3. Thereafter, BHP and WREA met on a regular basis (generally every two months) to discuss the issues that would arise between the two companies including those situations that would arise when the frozen accounts were going to expand or otherwise need additional electrical service. These meetings continued until the early 1990's and

thereafter the parties have met on an "as needed basis". Most of the time when a frozen account was going to expand or needed a new service installed the utility that was originally providing the service to the frozen account would contact the utility whose territory included the frozen customer expanding or needing new service. This was all discussed and worked out pursuant to the agreement reached in December 1975 which was revised in 1984. (See Exhibit 12 and 13).

4. Some of those instances included the discussion and agreements reached regarding the following frozen accounts: (See Exhibit 14)

A. Leo's Mobile Home Court – Black Hawk (See Exhibit 15)

This court is located in Black Hawk which WREA served as a frozen account under the 1975 territory act. Leo's subsequently decided to expand their mobile home court. At that time, BHP and WREA agreed that BHP had the right to serve the new accounts. Since BHP was going to serve the new load, WREA agreed to trade that part of Leo's Mobile Home Court which WREA previously served as a frozen account to BHP.

B. Brookdale Mobile Home Court – Rapid Valley (See Exhibit 16)

Approximately in 1985, the Brookdale Mobile Home Court decided to expand their mobile home court. BHP had served the original part of the court which was in BHP's territory assigned to them. The expansion of the court was adjacent to the original part but in WREA's assigned territory. After discussion with BHP, it was agreed that WREA had the right to serve the expansion of the existing court.

C. Plainview Mobile Home Court –Box Elder (See Exhibit 17)

In this case, BHP had been providing electrical service to Plainview as a frozen account located in WREA's territory. Subsequently, BHP installed new services to 11 new Plainview lots without WREA's knowledge. Sometime later, BHP personnel discovered what had happened and brought it to the attention of WREA. It was agreed that WREA would take over the new services and eventually trade for the balance of the mobile home court with BHP.

D. Discount Lumber – Rapid Valley (See Exhibit 18)

This was a frozen account of BHP located in WREA's assigned territory. In 1994, WREA received a letter from BHP requesting permission to install a new three-phase service at Discount Lumber. After reviewing the request, WREA decided to provide the service themselves. This new service was right next to the other Discount Lumber building accounts that were being served by BHP at that time.

E. Sunnyside Mobile Home Court – Black Hawk (See Exhibit 19)

WREA served the original mobile home court as a frozen account under the 1975 territory law. In the mid-1980's, they decided to expand their court. At the time BHP didn't have any facilities in the area, but stated they had the right to serve the new accounts. BHP asked WREA to provide service to these new accounts until such time as BHP would be able to take them over. Eventually that did happen and WREA then traded the accounts that WREA had served since 1975 to BHP.

F. Roths – Rapid Valley (See Exhibit 20)

There are several accounts involved here. First, BHP served the Dave Roth residence as a frozen account in WREA territory prior to 1975. Second, BHP received a request from Hubert Roth to install service to a doublewide modular home. He was locating just southeast of Dave Roth's home but in WREA territory. BHP requested permission from WREA to serve this home which WREA granted since WREA did not have a line in the immediate vicinity. After that Dave Roth requested service to an office and warehouse from BHP. Since the service was in WREA territory, BHP requested permission from WREA to serve it until such time that WREA would be in the area with their own line. WREA granted permission to BHP to serve it until WREA decided at a later date to take over the accounts.

G. Crow I-90 Truckstop – Exit 61 & Interstate 90 (See Exhibit 21)

BHP originally served this customer as a frozen account in WREA territory. Before this account was traded to WREA, Crow's I-90 requested a new service to a sign near BHP's line. BHP requested permission to service this sign which WREA granted until such time as WREA would take over the entire account. At a later date, WREA took over all of Crow I-90 Truckstop's need for electricity.

H. Lakota Homes on North Haines Ave. – Rapid City (See Exhibit 22)

WREA serves Lakota Homes as a frozen account in BHP's territory. In the early 1990's, a new community hall was being planned at Lakota Homes. WREA informed BHP of the situation and while BHP stated that they had the right to serve it, from a practical standpoint, they said they couldn't serve it at that time. BHP gave

WREA permission to serve the hall along with several repeater stations that Mid-Continent had installed in the Lakota Homes until BHP takes them over at a later date.

I. Angel Brothers (See Exhibit 23)

BHP served Angel Brothers in 1975 at the time the territory law was adopted. In May 1978, WREA noticed that another warehouse had been built on the property and contacted BHP. BHP agreed that it was WREA's to serve. WREA decided that it was probably inconvenient at that time for WREA to serve so it was agreed that BHP would continue to serve the customer in WREA's territory until WREA decided to take over the account.

5. During the mid-1980's (approximately 1987), BHP added a second service of electricity to the plant without consulting WREA or obtaining WREA's consent. BHP did not consult the PUC or obtain the PUC's consent either.

6. In late 1998 or early 1999, WREA became aware of the second service BHP was providing to the plant and initially verified this with the City of Rapid City. Thereafter, WREA contacted BHP and challenged BHP's right to maintain the 1987 second service at the Plant. WREA also stated its position that WREA should have been given the option to serve the plant in 1987 when the second service was installed. BHP stated that it was entitled to continue to serve the plant for the service provided in 1987 and any other new and increased load for the plant in the future. BHP further stated with regard to the December 1975 agreement:

"The fact that WREA and BHP have established guidelines which have worked to the benefit of our companies and customers in certain instances in the past does not mean that we must blindly apply such guidelines in this instance." (See Exhibit 24)

Dated this 10 day of May, 2002.

BANGS, McCULLEN, BUTLER,
FOYE & SIMMONS, LLP

By: Allen G Nelson

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

RECEIVED
MAY 1 0 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF WEST RIVER ELECTRIC ASSOCIATION, INC. FOR A DECLARATORY RULING REGARDING SERVICE TERRITORY RIGHTS CONCERNING BLACK ILLS POWER, INC. AND WEST RIVER ELECTRIC ASSOCIATION, INC.	))))))	EL 02-003

BLACK HILLS POWER, INC.'S
ADDITIONAL PROPOSED FINDINGS OF FACT

Intervenor Black Hills Power, Inc. ("BHP"), through its undersigned counsel, respectfully submits the following additional proposed findings facts for consideration and resolution of the captioned matter by the South Dakota Public Utilities Commission ("PUC").

Additional Findings of Fact

1. The use of the Plant as a wastewater treatment facility has remained unchanged and will remain the same following the City's planned expansion.

2. In the contiguous United States, the transmission of electricity takes place over a network or grid, which consists of a configuration of interconnected generation and transmission lines that cross state lines. WREA's electricity is currently transmitted over the grid commonly described as the "Eastern Interconnection." BHP's electricity is transmitted over the grid commonly described as the "Western Interconnection."

3. BHP-generated electricity that currently serves the Customer is transmitted over the "Western Interconnection." WREA's proposed service of the Customer would occur over the "Eastern Interconnection." Electricity transmitted over the Western Interconnection and Eastern Interconnection are of different phases that cannot be directly interconnected. Thus, electricity delivered to the Customer by BHP and WREA may not currently be safely connected.

Any service points that might be simultaneously served at the Plant could not be directly connected without causing injury to persons or property.

4. Many South Dakota customers make use of the "electric heat" rate offered by several South Dakota utilities, including WREA. To effectuate this rate, a second electric meter is installed and, occasionally, additional service wiring and heating load are likewise installed. The separate meter is installed to measure the customer's electricity consumption dedicated to electric heat for billing pursuant to the applicable rate.

5. A hypothetical owner of a duplex located in the service area of "Utility A," but served by "Utility B," may decide to expand the same building to create a four-plex. The expansion would commonly use additional electrical connection points and meters for the new units.

6. BHP reserves the right to raise and propose additional facts at the May 22, 2002 hearing in this matter.

Dated this 7th day of May 2002.

BLACK HILLS CORPORATION

By: Linden R. Evans

Linden R. Evans
Attorneys for Black Hills Power, Inc.
P.O. Box 1400
Rapid City, SD 57709-1400
(605) 721-1700

RECEIVED
MAY 1 0 2002
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

EXHIBIT LIST INDEX

1. Map of PUC established boundaries for WREA and Black Hills Power
2. Enlarged map of PUC established boundaries for WREA and Black Hills Power
3. Deed to City of Rapid City regarding 40-acre tract dated March 5, 1965
4. Deed to City of Rapid City regarding 80-acres dated January 3, 1973
5. Map showing initial 40-acre tract and additional 80-acre tract purchased by the City of Rapid City
6. (A-D) records showing hookup and disconnect of WREA electricity to Rapid City Sewer Plant
7. Map showing general location of WREA electric lines and Black Hills Power's electric lines in relation to the location of the Rapid City Sewer Plant
8. (A & B) City Council records of May 15, 1967 which outlines the City of Rapid City's decision to take electricity from Black Hills Power
9. (A & B) Records showing the City of Rapid City voters approving the proposal of Black Hills Power to furnish electrical service to the Rapid City Sewer Plant
10. (A – 2CC) 2 Large Demand Curtailable Service Agreements and the PUC Order Approving Contracts with Deviations
11. General Plans and Specifications for Construction of new facilities and expansion of the Rapid City Sewer Plant
12. December 1975 agreement between WREA, BHP, Butte Electric and Black Hills Electric Cooperate
13. Revisions in December 1975 agreement reached November 13, 1984
14. Map showing general location of the frozen accounts of BHP and WREA that required additional electric service subsequent to December 1975
15. (A- I) Records regarding Leo's Mobile Home Court
16. (A -D) Records regarding Brookdale Mobile Home Court
17. (A – J) Records regarding Plainview Mobile Home Court
18. (A - D) Records regarding Discount Lumber

19. (A – F) Records regarding Sunnyside Mobile Home Court

20. (A – G) Records regarding Roth property

21. (A - D) Records regarding Crow I-90 Truckstop

22. (A – G) Records regarding Lakota Homes on North Haines Avenue

23. (A – H) Records regarding Angel Brothers

24. (A – I) Correspondence between WREA and BHP regarding the issues involved in this Petition to the PUC

25. (A-E) Miscellaneous records regarding meetings between WREA and BHP

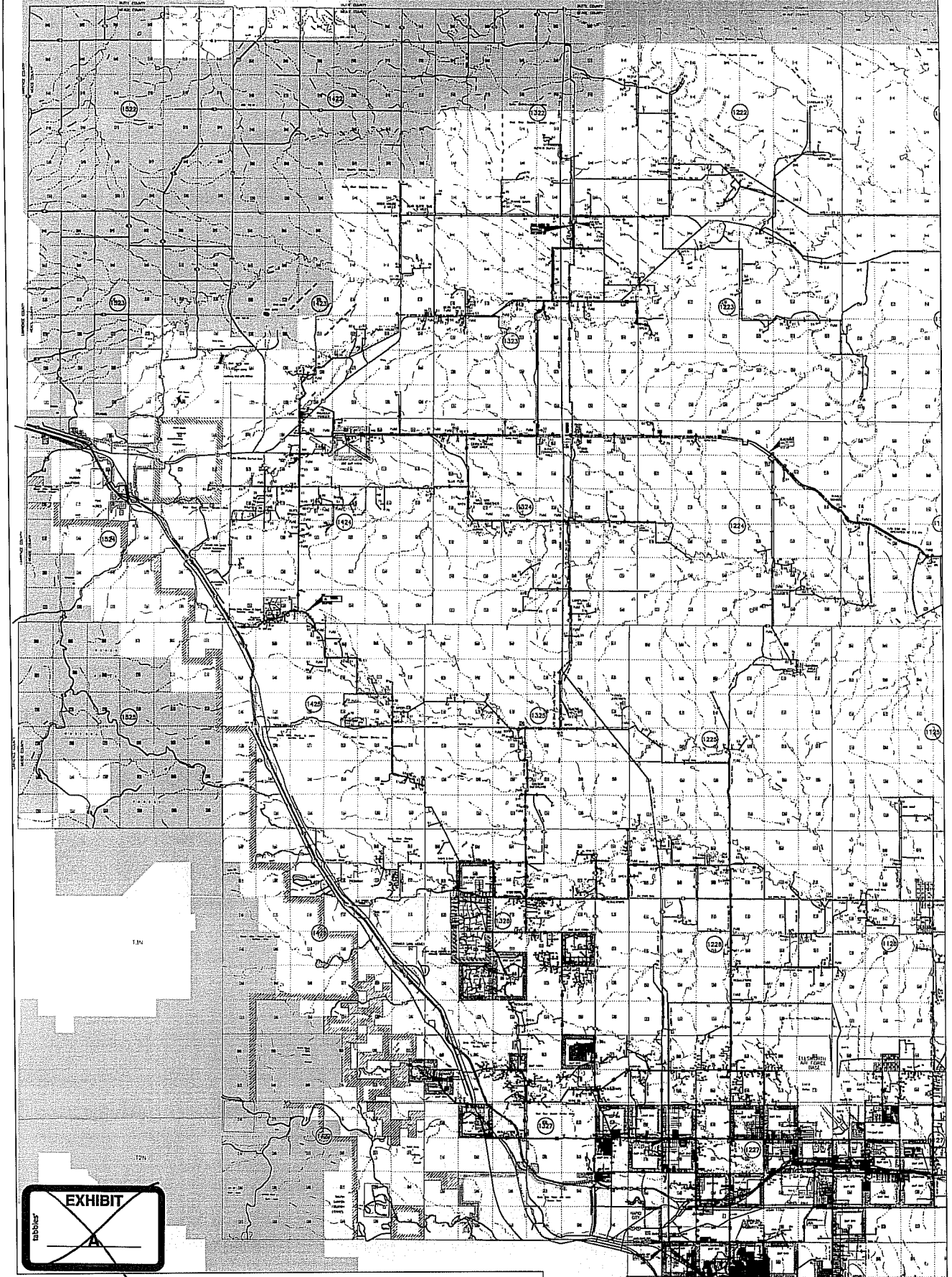


EXHIBIT
A
tabbies
West River Electric Association
Black Hills Electric Cooperative
Butte Electric Cooperative
Grand Electric Cooperative
Black Hills Power

West River Electric Association

Black Hills Electric Cooperative

Black Hills Power

EXHIBIT B

WARRANTY DEED—STATE FORM 31.1403A

BOOK 146 PAGE 708

ALFRED E. JONES AND MAVIS S. JONES

Husband and Wife

grantor s, of Rapid City, Pennington County,

State of South Dakota for and in consideration of

One Dollar and other valuable considerations DOLLARS

GRANT, CONVEY AND WARRANT TO City of Rapid City

grantee, of Rapid City, South Dakota P. O. the following described

real estate in the County of Pennington in the State of South Dakota:

1965

Northwest Quarter of the Northeast Quarter (NW¼NE¼) of Section Twenty-five (25), Township One (1) North, Range Eight (8) East, of the Black Hills Meridian, Pennington County, South Dakota, less the West Sixty-six (66) feet thereof.

A permanent thirty(30) foot easement with a construction easement of an additional thirty (30) feet for a pipe line North to South, across the West Half of the Southeast Quarter (W½SE¼) of Section Twenty-four (24), Township One (1) North, Range Eight (8) East, of the Black Hills Meridian, Pennington County, South Dakota, access road easement, if required, together with all water rights appertaining thereto.

Dated this 5 day of March, 1965.

Alfred E. Jones

Mavis S. Jones

RECORDED
INDEXED 6381

STATE OF SOUTH DAKOTA, COUNTY OF PENNINGTON, ss.
FILED THIS 5 DAY OF April 1965 AT 10:53 O'CLOCK A.M. BOOK 146 PAGE 708
REGISTER OF DEEDS DEPUTY FEES $ 1.00

STATE OF SOUTH DAKOTA,
County of PENNINGTON } ss.

On this the 5th day of March 1965 before me,

W. F. Brady the undersigned officer, personally appeared

Alfred E. Jones and Mavis S. Jones, husband and wife known to me or satisfactorily proven to be the person s whose name s are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

W. F. Brady

Notary Public

My commission expires Title of Officer

W. F. BRADY, NOTARY PUBLIC
PENNINGTON COUNTY, S. DAK.
MY COMM. EXPIRES OCT. 22, 1968

NOTARY SOUTH DAKOTA

154

WARRANTY DEED — State Form

W. W. Walton

Grantor, of Breckenridge, Stephens County,

State of Texas for and in consideration of

Thirty-four Thousand and no/100----------DOLLARS,

GRANTS, CONVEYS AND WARRANTS TO City of Rapid City, a municipal corporation

, Grantee

of Rapid City P. O., the following described

real estate in the County of Pennington in the State of South Dakota:

The East Half (E½) of the Northeast Quarter (NE¼) of Section Twenty-five (25) Township One (1) North, Range Eight (8) East of Black Hills Meridian, Pennington County, South Dakota. EXEMPT FROM TRANSFER FEE

Subject to easements, restrictions and covenants of record and all public right of way and railroad right of way, and prior reservations of oil, gas and mineral rights of record.

Grantor hereby warrants that neither he nor any member of his family have ever claimed or occupied or intend to claim or occupy the above described premises or property as a homestead.

Dated this 3 day of January 1973

W. W. Walton

W. W. Walton

ACKNOWLEDGMENT BY INDIVIDUAL

STATE OF SOUTH DAKOTA, COUNTY OF PENNINGTON SS. 32252

FILED THIS 11 DAY OF Jan 1973 AT 2 O'CLOCK P. M. IN BOOK 174 PAGE 177

Leslie Vanscoy Lorrie Dugger

NAMES OF MEN MONTH

STATE OF SOUTH DAKOTA, COUNTY OF Pennington

RECORDED INDEXED

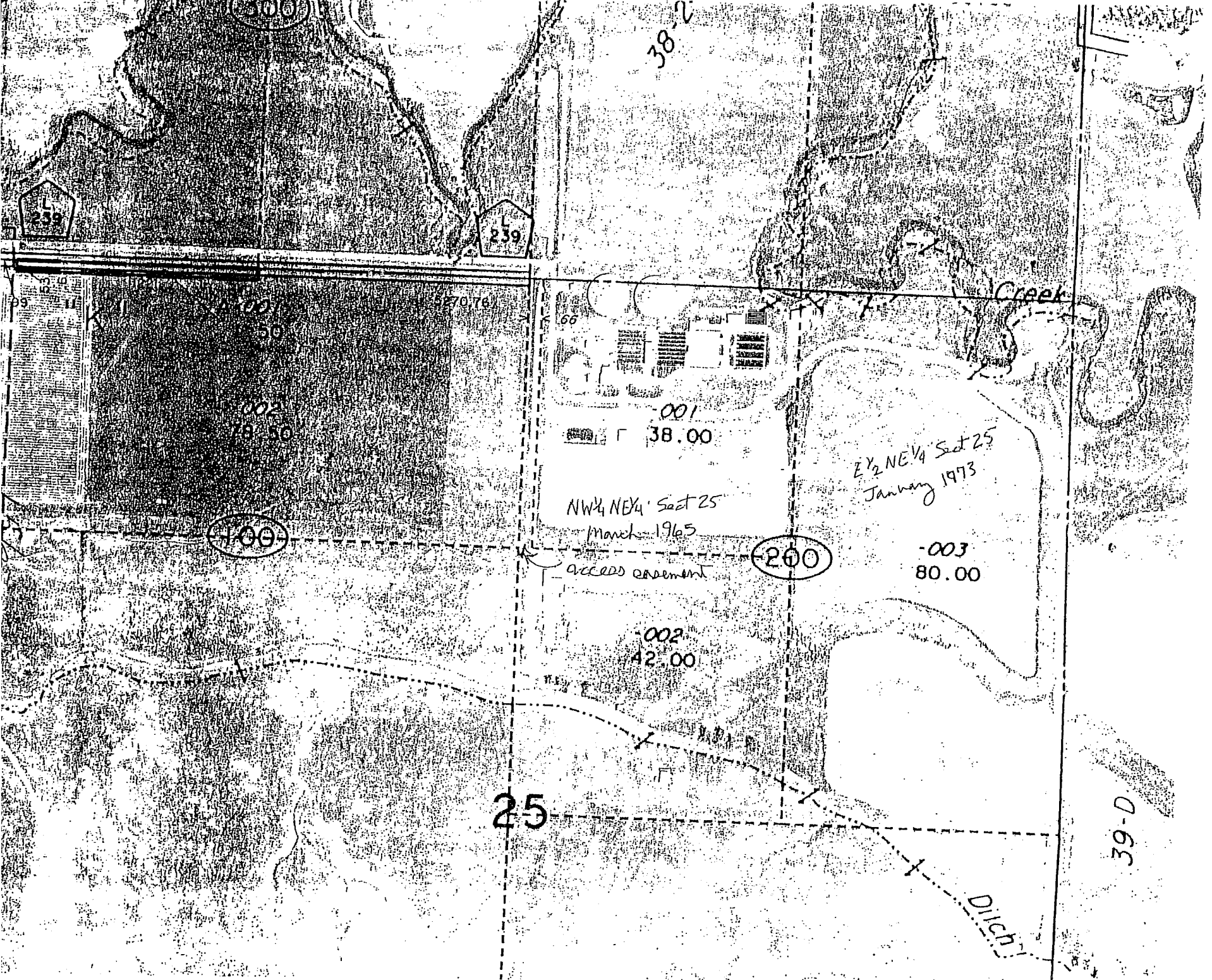
On this the 5th day of January 1973 before me, Louis K Fridley, the undersigned officer, personally appeared W. W. Walton known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Louis K Fridley

Title of Officer

My commission expires:


300
38.2
239
239
Creek
-001
38.00
NW¼ NE¼ Sect 25
March 1965
E½ NE¼ Sect 25
January 1973
100
200
access easement
-003
80.00
-002
42.00
25
39-D
Ditch

88 CONNECT DISCONNECT

Brazenia Const

Membership No.

vice Old Service

Non-Farm Commercial

ee Pd. Amount Collect

Pd. Amount Collect

KS:

ken by Date Oct 24-67

CONNECT	DISCONNECT 61575
Amps.	Meter No. 43-708 626
Reading	Make GE Amps. 30
er Used Meter	Volts 240 Reading 4140
Size	Trans. No. Size
ked	Svc. Disconnected at
	Date worked Oct 24-67

S:

cards done

Order worked by Dlm

732 TIPPECANOE PRESS INC., SHELBYVILLE, IND.

Nº 8871 CONNECT DISCONNECT

Name Brazenia Const. Sewer Plant

Address

Block No. Membership No.

New Service Old Service

Farm Non-Farm Commercial

Memb. Fee Pd. Amount Collect

Insp. Fee Pd. Amount Collect

REMARKS:

Order taken by Date Oct 24-67

CONNECT	DISCONNECT
Meter No.	Meter No. Coupl 1-1104
Make Amps.	Make GE Amps.
Volts Reading	Volts 7200 Reading
New Meter Used Meter	Trans. No. 424336-65K Size 10K
Trans. No. Size	Svc. Disconnected at
Date worked	Date worked Oct 24-67

REMARKS:

Order worked by Dlm

FORM 11732 TIPPECANOE PRESS INC., SHELBYVILLE, IND.

№ 9774 CONNECT DISCONNECT

Name Bregana Const.

Address Sewer plant

Block No. ..... Membership No. .....

New Service ..... Old Service .....

Farm ..... Non-Farm ..... Commercial .....

Memb. Fee Pd. ..... Amount ..... Collect .....

Insp. Fee Pd. ..... Amount ..... Collect .....

REMARKS: 400 See Tite

Bregania side of meter 3.50 + tax

Order taken by ..... Date 7-21-67

CONNECT	DISCONNECT
Meter No.	Meter No. .....
Make ..... Amps.	Make ..... Amps. .....
Volts ..... Reading	Volts ..... Reading .....
New Meter ..... Used Meter	Trans. No. ..... Size .....
Trans. No. ..... Size	Svc. Disconnected at .....
Date worked	Date worked .....

REMARKS: cords done

Order worked by [signature]

FORM 11732 TIPPECANOE PRESS INC., SHELBYVILLE, IND.

№ 9759 CONNECT DISCONNECT

Name Bregenzer Krosky

Address

Block No. Membership No.

New Service ✓ Old Service

Farm Non-Farm Commercial

Memb. Fee Pd. Amount Collect

Insp. Fee Pd. Amount Collect

REMARKS:

Rock Worker service

Order taken by CH Date 6-22-67

CONNECT	DISCONNECT
Meter No.	Meter No.
Make 25 Amps.	Make Amps.
Volts 7200 Reading	Volts Reading
New Meter Used Meter	Trans. No. Size
Trans. No. B497-405-66Y Size 25K	Svc. Disconnected at
Date worked	Date worked

REMARKS:

Order worked by Dave

FORM 11732 TIPPECANOE PRESS INC., SHELBYVILLE, IND.

№ 9760 CONNECT DISCONNECT

Name Breeze-Korsky

Address P.O. Box 1592 - Rapid City S.D.

Block No. Same + other service Membership No.

New Service ✓ Old Service

Farm Non-Farm Commercial ✓

Memb. Fee Pd. Amount Collect

Insp. Fee Pd. Amount Collect

REMARKS: Will bill
Rock washer service at sewage
Plant.

Order taken by [illegible] Date 6-22-67

CONNECT	DISCONNECT
Meter No. 13-061-713	Meter No.
Make Ducan Amps. 7.5	Make Amps.
Volts 240 Reading 60000	Volts Reading
New Meter ✓ Used Meter	Trans. No. Size
Trans. No. Size	Svc. Disconnected at
Date worked June 29/67	Date worked

REMARKS:

Order worked by [illegible]

FORM 11732 TIPPECANOE PRESS INC., SHELBYVILLE, IND.

(JOINS 17)

BLACK HILLS POWER & LIGHT SUBSTATION SERVICE TERRITORY

ST. PAT SUBSTATION

MAP 950

MAP 951

MAP 952

MAP 949

MAP 956

MAP 962

MAP 954

MAP 957

RAPID VALLEY SUBSTATION

MAP 1128B

BLACK HILLS POWER & LIGHT SERVICE TERRITORY

3 OCR'S

MAP 958

MAP 960

OCR

TO MOON MEADOWS SUBSTATION

JALOPY JUNGLE

HILL TOP SWITCH

TO SPRING CREEK SUBSTATION

BLACK HILLS POWER & LIGHT SERVICE TERRITORY

West River Electric Service Area

(JOINS 1128B)

10 REA LINE

BHP LINE

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

RUSHMORE ELECTRIC POWER COOPERATIVE
ENGINEERING DEPARTMENT

WEST RIVER ELECTRIC ASSOCIATION

WALL, SOUTH DAKOTA
SOUTH DAKOTA 11 PENNINGTON

DETAIL

COMPILED FROM COUNTY MA
RURAL ELECTRIFICATION ASSOCI

COUNTY	PENNINGTO
TOWNSHIP	1N
RANGE	8E
	1228

11. The City Auditor and the City Treasurer are authorized and directed to furnish to the purchaser of said bonds and to the attorneys approving the same certified copies of all proceedings and records of the city relating to said bonds and to the improvements financed thereby and to the right and power of the city to make said improvements, to levy assessments therefor and to issue said bonds and all said certified copies and certificates shall be deemed representations of the city as to the facts therein stated.

Approved Henry J. Baker
Mayor

Attest R. R. Lang
City Auditor

(Seal)

The motion for the adoption of the foregoing resolution was seconded by Alderman St. Pierre and upon vote being taken thereon, the following voted in favor thereof: Rand, St. Pierre, Shoener, Baumann, Fenner, Goodhope, Harrison, Kies, Larson and the following voted against the same: None, whereupon said resolution was declared duly passed and adopted.

Mayor Baker introduced an Ordinance entitled "an Ordinance Providing for the Acquisition and Construction of Automobile Parking Facilities and the Issuance and Sale of Revenue Bonds to Provide Funds Therefor and Providing Covenants for the Security of Such Bonds". Upon motion duly made, seconded and carried, said Ordinance was placed on its first reading and was fully and distinctly read.

Thereupon said Ordinance was declared duly passed upon its first reading. Upon motion duly made, seconded and carried, the meeting was adjourned to June 5, 1967, at 7:30 o'clock P.M., for the purpose of giving the second reading to said Ordinance and adopting the same.

An offer from Allison-Williams Co., to purchase legally issued Parking Revenue Bonds for par and accrued interest was read to the Council.

Upon motion made by Shoener, seconded by Larson and carried by unanimous vote, the Council accepted the offer and authorized the Mayor and City Auditor to execute the same on behalf of the City of Rapid City.

Upon motion made by Kies, seconded by St. Pierre and carried, the Council approved a trailer court license for Jerry & Verna Burrow at 602 E. Watertown Street, conditioned that compliance with two items of request by the Inspection Department are met.

Upon motion made by Kies, seconded by Goodhope and carried, the Council licensed Robert Froehlich to operate 5 ice cream vending machines.

Upon motion made by Kies, seconded by Rand and carried, the Council licensed the following as apprentice electricians: Gary Bloom, 513 St. James Street; Jerry Freeman, 224 East St. Joe Street; Bernard Potts, 520 East Madison Street.

Upon motion made by Rand, seconded by Baumann and carried, the Council authorized the City Treasurer to sell on June 15, 1967, at 10:00 o'clock A.M., abandoned bicycles accumulated by the Police Department; and authorized the City Auditor to publish notice thereof, all in accordance with the provisions of Ordinance No. 983.

In accordance with the recommendation of the Water & Sewer Committee, Alderman St. Pierre moved that the City accept service from Black Hills Power & Light Co., for furnishing power to the new waste water treatment plant now under construction.

The motion was seconded by Alderman Baumann.

Alderman St. Pierre read a letter from the City's consulting engineer, Kirkham, Michael & Associates, relating to the statement of service from each potential supplier of power for the new waste water treatment plant, which statement was filed.

Alderman St. Pierre also read telegrams from Alderman Fritts and Al McDonald.

Alderman Harrison moved to postpone action to June 5, 1967, on selecting a power supplier to the waste water treatment plant to allow more time for research and to better inform the public. The motion was seconded by Alderman Fenner.

Alderman Fenner and William Rensch, Attorney for Rapid City Taxpayers Ass'n. then spoke in support of the motion to postpone.

A vote was taken on the motion to postpone and the motion lost. The vote was 2 for

and 7 against postponing.

Discussion was then had on St. Pierre's original motion.

Alderman Kies explained his position favoring power from Black Hills Power & Light Co.

Alderman Fenner gave his reasons for favoring the West River Electric Ass'n.

Alderman Dewey Harrison read a prepared statement as to his stand and filed the same for record.

Also heard for R.E.A. power were Reuben Deutsch and Charles Johnson, Directors, Louis Freiberg, Attorney, Cone Hunter, Manager, all of or for West River Electric Ass'n., Everett Weaver and Mr. Mabon, rate expert.

After hearing all persons, a roll call vote was asked for and taken on St. Pierre's motion with the following voting Yes: Rand, St. Pierre, Shoener, Baumann, Goodhope, Kies, Larson and the following voted No: Fenner, Harrison. The motion was declared to have carried.

On motion made by Fenner, seconded by Shoener and carried, the City Engineer was authorized to proceed with repair of those downtown sidewalks which were included in the original notice to repair and which have not yet been fixed.

The following written resolution was introduced, read by the Mayor and St. Pierre moved its adoption:

RESOLUTION

WHEREAS, the structures located on Lots 20, 21, and 22, Block 118, Original Townsite, owned by Donald Getchell, do not meet the minimum occupancy Code, and

WHEREAS, by reason of inadequate maintenance, dilapidation and abandonment, these structures constitute a fire hazard, are a hazard to public welfare, health and safety and are hereby declared to be a public nuisance, and

WHEREAS, the above owner has been ordered to correct this Public Nuisance and has failed to make the necessary corrections.

NOW THEREFORE, BE IT RESOLVED by the Common Council of the City of Rapid City, South Dakota, that the above named person be prosecuted as a violator of the Uniform Building Code of the City of Rapid City and that the Building Official be instructed to proceed with the necessary corrections and the cost thereof be charged to the owner as a special assessment on the real estate described, all in accordance with the Ordinance in such case made and provided.

Common Council

By Henry J. Baker
Mayor

Attest:

R. R. Lang
City Auditor

(Seal)

The motion was seconded by Rand and carried by unanimous vote.

The following bills having been audited, it was moved by St. Pierre to authorize the City Auditor to issue warrants drawn on the proper funds in payment thereof:

A & B Welding Supply Co.	Supplies	182.18
Ace Radiator Works	Repairs	23.50
Aero Sheet Metal Works	Radio Box	4.38
Afco Trim & Awning, Inc.	Repairs	55.75
Amstan Supply Division	Parts	138.16
Assoc. Hosp. Serv. Inc.	Group Insurance	2,614.33
Dale Barber	Appraisal Fee	150.00
Bean Bag Market	Food for Jail	23.87
Beckers Drug	Projector Bulb	3.92
Birdsall Sand & Gravel Co.	Concrete	1,277.70

Mayor

Attest:

City Auditor

(Seal)

******* ******* ******* ******* ******* ******* ***

OFFICIAL PROCEEDINGS OF
THE COMMON COUNCIL OF
RAPID CITY, SOUTH DAKOTA

Rapid City, S. D.
July 14, 1967

Pursuant to due call and notice thereof, a special meeting of the Common Council of the City of Rapid City, South Dakota, was held at the Municipal Building in said City on Friday, July 14, 1967, at 4:45 o'clock P.M.

The following Aldermen were present: Fritts, Goodhope, Kies, Larson, St. Pierre, Shoener and the following were absent: Baumann, Fenner, Harrison, Rand.

Kenneth Kies, President of the Council presided because of the absence of the Mayor.

The City Auditor presented to the Council the official returns of the Judges and Clerks of the special election held in and for the City on July 14, 1967, which returns were duly examined, canvassed, approved and ordered placed on file.

The following written resolution was introduced, read by the Council's President and St. Pierre moved its adoption:

RESOLUTION
CANVASSING VOTE AT SPECIAL CITY
ELECTION HELD ON JULY 11, 1967

WHEREAS, there was held in the City of Rapid City, South Dakota, on Tuesday, the 11th day of July, 1967, a special city election of said City of Rapid City for the purpose of voting upon the question"Shall the action of the Common Council of May 15, 1967, accepting the proposal of Black Hills Power & Light Co., to furnish electrical service to the new waste treatment plant be approved or rejected?"

AND WHEREAS, at said election the total number of votes cast upon the question were as follows:

	For Approval	Against Approval	Spoiled Ballots	Total
1st Ward, 1st Precinct	109	98	1	208
1st Ward, 2nd Precinct	48	83		131
1st Ward, 3rd Precinct	242	177		419
1st Ward, 4th Precinct	219	195		414
1st Ward, 5th Precinct	234	201	1	436
2nd Ward, 1st Precinct	281	137		418
2nd Ward, 2nd Precinct	243	86		329
3rd Ward, 1st Precinct	77	124		201
3rd Ward, 2nd Precinct	156	87		243
4th Ward, 1st Precinct	205	211	2	418
4th Ward, 2nd Precinct	129	176	3	308
4th Ward, 3rd Precinct	103	160		263
5th Ward, 1st Precinct	232	126	1	359
5th Ward, 2nd Precinct	317	148		465
5th Ward, 3rd Precinct	269	195	2	466
5th Ward, 4th Precinct	306	190	1	497
5th Ward, 5th Precinct	325	202		527

Total	For Approval	Against Approval	Spoiled Ballots	Total
	3,495	2,596	11	6,102

NOW THEREFORE, Be It Resolved by the Common Council of the City of Rapid City, South Dakota, as follows:

The vote on the proposition "SHALL THE ACTION OF THE COMMON COUNCIL OF MAY 15, 1967, ACCEPTING THE PROPOSAL OF BLACK HILLS POWER AND LIGHT CO., TO FURNISH ELECTRICAL SERVICE TO THE NEW WASTE TREATMENT PLANT BE APPROVED OR REJECTED?" being 3495 for approval of the Common Council's action and 2596 against approval of the Common Council's action, the action of the Common Council of May 15, 1967, accepting the service of Black Hills Power & Light Co., to furnish electricity to the new waste water treatment plant is hereby approved.

Adopted at Rapid City, South Dakota, on July 14, 1967.

Approved Kenneth J. Kies
President of the
Common Council

Attest:

R.R. Lang
City Auditor

(Seal)

The motion for the adoption of the foregoing resolution was seconded by Larson and upon vote being taken thereon, the following voted in favor thereof: Fritts, Goodhope, Kies, Larson, St. Pierre, Shoener and the following voted against the same: None, whereupon said resolution was declared duly passed and adopted.

The following election bills were presented:

First Ward	$380.00
Second Ward	156.00
Third Ward	146.00
Fourth Ward	222.00
Fifth Ward	383.00
Total:	$1,287.00

It was moved by Larson to pay the election bills. The motion was seconded by Shoener and upon vote being taken thereon, the following voted in favor thereof: Fritts, Goodhope, Kies, Larson, St. Pierre, Shoener and the following voted against the same: None, whereupon the motion was declared to have carried.

City Engineer Swanson presented Change Order No. 1 to the contract with Northwestern Engineering Co., for constructing Street Improvements Nos. 148-149-150-151. The change order provides for changing the seal coat from chips to slurry seal, at no change in cost.

It was moved by Shoener to approve the change order and to authorize the Mayor and City Auditor to execute said change order on behalf of the City of Rapid City.

The motion was seconded by Fritts and carried by unanimous vote.

Upon motion made by Shoener, seconded by Larson and carried, the meeting adjourned.

Kenneth J. Kies
President of the
Common Council

Attest: R.R. Lang
City Auditor

(Seal)

jm rcvd

BEFORE THE PUBLIC UTILITIES COMMISSION

AUG 18 1993

OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF BLACK HILLS POWER AND LIGHT COMPANY FOR APPROVAL OF PROPOSED SERVICE AGREEMENTS WITH RAPID CITY.	)))))	ORDER APPROVING CONTRACTS WITH DEVIATIONS EL93-021

On July 19, 1993, Black Hills Power and Light Company (BHP&L) filed with the Public Utilities Commission (Commission) two (2) Large Demand Curtailable (LDC) service agreements with the City of Rapid City and the Third Revised Sheet No. 1 for Section No. 4 of BHP&L's tariff (Summary List of Contracts with Deviation). According to BHP&L, "[the] agreements for two wastewater treatment plant electric accounts provide the City with the same level of incentive provided General Service Large customers considering LDC service." BHP&L requested that the Commission approve these contracts with deviations with an effective date of June 1, 1993.

At its regularly scheduled August 3, 1993, meeting, the Commission considered BHP&L's request for approval of the contracts with deviations and the associated tariff change. Commission Staff recommended approval.

The Commission finds that it has jurisdiction over this matter pursuant to SDCL Chapter 49-34A, specifically, 49-34A-4, 49-34A-6, 49-34A-8 and 49-34A-10. Further, the Commission finds that BHP&L's proposed tariff revision is both just and reasonable and shall be approved. As the Commission's final decision in this matter, it is therefore

ORDERED, that BHP&L's tariff revision regarding the service agreements (contracts with deviations) between BHP&L and Rapid City is hereby approved; and it is

FURTHER ORDERED, that this tariff revision shall be effective for services rendered on and after June 1, 1993, and it is

FURTHER ORDERED, that BHP&L shall submit an annual report on these contracts with deviations (contracts No. 10431 and 10432) as required by the Order Approving Contract with Deviations with Wharf Resources in Docket EL92-019.

Dated at Pierre, South Dakota, this 17th day of August, 1993.

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: Roberta R. Zubal

Date: 8/17/93

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

LASKA SCHOENFELDER, Chairman

KENNETH STOFFERAHN, Commissioner

JAMES A. BURG, Commissioner

Account Number 1.09.4181480.03

Contract No. 10432
Effective Date:
June 1, 1993

LARGE DEMAND CURTAILABLE SERVICE AGREEMENT

This Large Demand Curtailable Service Agreement ("Agreement") is entered into this 7th day of June, 1993, by and between Black Hills Power and Light Company ("Black Hills") and the City of Rapid City ("Customer").

1. PURCHASE AND SALE OF CURTAILABLE ELECTRIC ENERGY.

Black Hills shall supply and Customer shall take all electric power and energy required for its waste water treatment operation located in Pennington County, South Dakota, 6200 Anderson Road, Rapid City, South Dakota, (New Facility - East) except to the extent that Black Hills shall be entitled to curtail a supply of electric power and energy as set forth in this Agreement and the tariff filed with the South Dakota Public Utilities Commission, at which time customer shall curtail and/or generate electric power and energy required to meet its needs.

2. NATURE OF SERVICE.

Such power and energy delivered by Black Hills shall be three phase, alternating current, approximately 60 cycles at a nominal phase to phase voltage of 480 volts.

3. CURTAILABLE SERVICE.

The electric power and energy supplied by Black Hills to Customer shall be on a curtailable basis. Black Hills has filed with and received approval from the South Dakota Public Utilities

Commission, Rate No. LDC-1, Large Demand Curtailable Service. A copy of such rate is attached as Exhibit 1. Customer has elected to purchase all of its electric power and energy pursuant to that rate, or its successor. This Agreement is contingent upon approval by the South Dakota Public Utilities Commission of this Contract of Deviation.

Customer has elected notice Option A with the corresponding Curtailable Load Credit of Rate No. LDC-1. This option allows for no prior notification. Customer shall curtail its load to the Firm Service Capacity or pay the penalty within the rate upon 10 minutes notice. All references to "a year" in this Agreement or Rate LDC-1 shall be from the anniversary date of the initiation of service consistent with this Agreement.

4. CUSTOMER'S EQUIPMENT.

4.1 Point of Delivery. Customer shall install and maintain at its own expense all electrical facilities on its side of the point of delivery which are necessary for the proper reception of electric power and energy and for its use beyond that point. Customer's facilities shall be of the type and nature which shall not interfere with other service rendered by Black Hills to any other customer.

4.2 Generating Equipment. Customer shall also be responsible at its own risk and expense to furnish, install and maintain in good and safe working condition any generation equipment, machinery, or other apparatus which it deems necessary on the customer side of the interconnection point of electrical

power and energy, if any, sufficient to replace that electric power and energy as provided to Customer consistent with its arrangement to allow the curtailment of service.

4.3 Limitation to Generation. Customer agrees and acknowledges that the generation equipment, machinery and apparatus which it shall install for purposes of providing electric energy and power during those curtailment periods set forth in this Agreement and as allowed for under Rate LDC-1 shall be utilized only for purposes of providing generation of electric power and energy in the event Black Hills notifies Customer of a curtailment or during an interruption or suspension of service by Black Hills or during a failure in the distribution system or as a result of unstable power supply and shall not be used to provide electric power and energy during any other time period. The machinery, equipment and apparatus as installed by the customer shall be such to operate and run separated from interconnection with Black Hills' distribution system.

4.4 No Duty to Inspect. Black Hills shall have no responsibility to test and/or inspect Customer's equipment used for purposes of providing generation and Customer acknowledges and hereby releases Black Hills from any responsibility for any failures in Customer's electric facilities, machinery and/or apparatus.

4.5 Testing and Maintenance of Equipment. Testing shall be in compliance with the generator manufacturer's recommended full load exercising time frame for such equipment, or Customer's

standard operation procedure for such equipment, whichever is greater. Customer shall endeavor to coordinate its maintenance of such equipment to ensure that the same occurs during off peak periods for Black Hills. Customer shall be solely responsible for the maintenance of its generating equipment.

5. RATES.

Black Hills shall bill and Customer shall pay for all electric power and energy supplied hereunder at the rates and charges due and payable pursuant to the Black Hills' electric Rate No. LDC-1. Customer understands that the initial rates and terms set forth in this contract in Rate No. LDC-1 may be revised by Black Hills from time to time. Customer agrees that if Black Hills should during the term of this contract revise or eliminate any such rates or terms as set forth in Rate No. LDC-1 that such changes or revisions shall be applicable to Customer for the balance of the term of this Agreement. Customer acknowledges that its rate as set forth within Rate No. LDC-1 is subject to all terms and conditions of Rate No. LDC-1 except as modified by this Agreement and/or those terms set forth in the Contract of Deviation attached as Exhibit 2. The rate is subject to revision by the South Dakota Public Utilities Commission, but the rate shall not be eliminated during the duration of this contract.

6. NO LIABILITY FOR INTERRUPTIONS OR SUSPENSION OF SERVICE.

Black Hills shall endeavor to maintain adequate and continuous service. However, Black Hills does not guarantee or

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otherwise ensure that the supply of electric energy or power will at all times be constant. Black Hills shall not be liable to Customer for any loss or damages occasioned by delay, interruption or suspension of service. Black Hills shall only be liable to Customer in the event of gross negligence causing such interruption. Black Hills shall not be liable for any lost profits or other consequential damages or expenses incurred by Customer as the result of any interruption or disruption of service.

In the event Black Hills is prevented from delivering electric service or any part thereof for any reason, Black Hills shall not be obligated to deliver power during said time and there will be a prorata reduction in Billing Capacity or similar charges provided in the rate schedule applicable.

7. COMMUNICATION.

Customer shall provide a designated telephone line so that Black Hills may notify them in the event of a curtailment request and/or a reconnect signal.

8. RIGHT OF WAY.

Customer shall provide to Black Hills, without any cost, a suitable location and right of way to Customer's premises for all necessary lines, equipment, or other appurtenant facilities. All such facilities, lines, or appurtenances as installed by Black Hills shall remain its property and Black Hills shall have all necessary rights to inspect, repair, remove, or construct additional facilities as necessary.

9. INDEMNIFICATION.

Black Hills shall not be liable for any loss, damage, or expense to property or persons as a result of injury or death as suffered by Customer, its employees, agents, or any third parties who are occupying Customer's property resulting from the operation of any electrical equipment or facilities located on Customer's side of the point of delivery. Customer agrees to indemnify and hold Black Hills harmless from any such loss, damage, injury, or death, or related expenses, including reasonable attorney's fees which Black Hills may incur.

10. FIRM SERVICE CAPACITY.

Customer has designated a Firm Service Capacity of zero kVA. During all periods of curtailment, Customer shall reduce its electric demand to or below the Firm Service Capacity at or before the time specified by Black Hills.

11. MATTERS OF DEVIATION.

Deviations, if any, under this Agreement are set forth on Exhibit 2 attached hereto and incorporated herein by this reference.

12. MISCELLANEOUS.

12.1 Assignment. Customer may assign its rights and obligations under this Agreement only with the written consent of Black Hills, which consent shall not be unreasonably withheld.

12.2 Notice. All notices under this Agreement, except those notices necessary for curtailment, which may be provided by

telephone, shall be in writing sent to each party to this Agreement at their respective address below:

Black Hills Power and Light Company
Attention: Rate Department
625 Ninth Street
P. O. Box 1400
Rapid City, SD 57709

City of Rapid City
300 Sixth Street
Rapid City, SD 57701

12.3 Entire Agreement and Modification. This Agreement constitutes the entire agreement between the parties and may be amended only by written agreement properly executed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands the date and year first written above.

BLACK HILLS POWER AND LIGHT COMPANY

By _____
Everett E. Hoyt, President
and Chief Operating Officer

CITY OF RAPID CITY

By _____
Its Council President

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
'ID CITY, SOUTH DAKOTA

SECTION NO. 3A
SECOND REVISED SHEET NO. 12
REPLACES FIRST REVISED SHEET NO. 12

BILLING CODES 22, 28, 32, AND 38

LARGE DEMAND CURTAILABLE SERVICE (LDC)

RATE No. LDC-1
Page 1 of 5

AVAILABLE

At points on the Company's existing secondary distribution lines supplied by its interconnected transmission system.

APPLICABLE

At the customer's election, to any General Service-Large customer's entire service requirements supplied at one point of delivery when the customer agrees to curtail a minimum designated load under the conditions of one of the following options:

	Minimum Prior Notification	Minimum Curtailment Length	Maximum Curtailment Length
Option A	None	6 hours	16 hours
Option B	1 hour	6 hours	16 hours
Option C	4 hours	6 hours	16 hours

Service is by Large Demand Curtailable Service Agreement only, and is not applicable for temporary, standby, supplementary, emergency, resale, shared, or incidental purposes.

CHARACTER OF SERVICE

Alternating current, 60 hertz, three phase, at a single standard utilization voltage most available to the location of the customer.

NET MONTHLY BILL

Rate

Capacity Charge
$9.25 per kVA of Billing Capacity

Energy Charge
All usage at 3.4¢ per kWh

ATE FILED: September 30, 1992

EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

Minimum

The Capacity Charge less Curtailable Load Credit

Curtailable Load Credit

The monthly bill shall be reduced according to the following schedule for the excess, if any, that Billing Capacity exceeds Firm Service Capacity.

Option A	-	$5.00 per kVA
Option B	-	$4.75 per kVA
Option C	-	$4.25 per kVA

Penalty for Non-Compliance

If at any time a customer fails to curtail as requested by the Company, a penalty equal to five (5) times the Capacity Charge per kVA for the maximum difference in kW that the maximum load during any curtailment period within the billing period exceeds the Firm Service Capacity. If more than one curtailment occurs during a billing period and the customer fully complies with at least one curtailment request and does not fully comply with at least one other curtailment request, the penalty for non-compliance will be reduced by multiplying it by the proportion of the total number of curtailments with which the customer failed to comply fully to the number of curtailments ordered.

DETERMINATION OF BILLING CAPACITY

The Billing Capacity in any month shall be the highest of the following:

a. The kilovolt-ampere (kVA) load during the fifteen-minute period of maximum use during the billing period; or
b. Eighty percent (80%) of the highest Billing Capacity in any of the preceding eleven (11) months; or
c. The Firm Service Capacity.

LARGE DEMAND CURTAILABLE SERVICE
(continued)

FIRM SERVICE CAPACITY

The customer shall initially designate by Electric Service Agreement a Firm Service Capacity of at least 500 kVA less than: (a) the customer's maximum actual Billing Capacity during the twelve billing periods immediately preceding the election of this rate for existing customers, or (b) maximum estimated Billing Capacity during the twelve billing periods following the election of this rate for new customers.

The Customer shall agree to reduce electric demand to or below the Firm Service Capacity at or before the time specified by the Company in any notice of curtailment. The Customer shall further agree not to create demands in excess of Firm Service Capacity for the duration of each curtailment period. The customer may increase electric demand after the end of the curtailment period as specified by the Company.

SUBSTATION OWNERSHIP DISCOUNT

Customers who furnish and maintain a transformer substation with controlling and protective equipment, with the exception of metering equipment, for the purpose of transforming service from the Company's transmission voltage (47,000 volts, and above) or primary distribution voltage (2,400 volts to 24,900 volts) to the customer's utilization voltages, shall receive a monthly credit of $0.25 per kVA of Billing Capacity for transmission service and $0.15 per kVA of Billing Capacity for primary distribution service.

FUEL AND PURCHASED POWER ADJUSTMENT

The above schedule of charges shall be adjusted in accordance with the Fuel and Purchased Power Adjustment tariff as set forth beginning on Sheet No. 31 through Sheet No. 42 which are made a part hereof by express reference as if set forth verbatim herein.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

PAYMENT

Net monthly bills are due and payable twenty (20) days from the date of the bill, and after that date the account becomes delinquent. A late payment charge of 1.5% on the current unpaid balance shall apply to delinquent accounts. An insufficient check charge of $5.00 shall apply for returned checks. If a bill is not paid, the Company shall have the right to suspend service, providing ten (10) days' written notice of such suspension has been given. When service is suspended for nonpayment of a bill, a Customer Service Charge will apply.

CONTRACT PERIOD

A period of not less than five (5) years and if not then terminated by at least one hundred eighty (180) days' prior written notice by either party, shall continue until so terminated. Where service is being initiated or enlarged and requires special investment on the part of the Company, a longer period may be required and shall be as stated in the Electric Service Agreement.

TERMS AND CONDITIONS

1. Service will be rendered under the Company's General Rules and Regulations.

2. Service provided hereunder shall be on a continuous basis. If service is discontinued and then resumed within twelve (12) months after service was first discontinued, the customer shall pay all charges that would have been billed if service had not been discontinued.

3. Curtailment periods will typically be for a minimum of six consecutive hours with the duration and frequency to be at the discretion of the Company. Daily curtailments will not exceed 16 hours total and total curtailment in any calendar year will not exceed 400 hours.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

TERMS AND CONDITIONS (continued)

4. The Company at its option may terminate the Large Demand Curtailable Service Agreement if the Customer has demonstrated an inability to curtail its loads to the Firm Service Capacity when requested by the Company.

5. General Service - Large customers with Billing Capacities which are not large enough to provide 500 KVA of curtailable load will be considered by the Company for LDC service on a case-by-case basis.

6. Curtailable service for Industrial Contract Service customers is available, however, the rates and conditions of service will be determined on a case-by-case basis and filed with the South Dakota Public Utilities Commission for review and approval.

TAX ADJUSTMENT

Bills computed under the above rate will be increased by the applicable proportionate part of any impost, assessment or charge imposed or levied by any governmental authority as a result of laws or ordinances enacted, which is assessed or levied on the basis of revenue for electric energy or service sold, and/or the volume of energy generated and sold.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 30, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

EXHIBIT 2

CONTRACT FOR DEVIATION

This Exhibit is attached and incorporated into an Agreement for Large Demand Curtailable Service between Black Hills Power and Light Company and the City of Rapid City.

1. CREDIT.

The City of Rapid City shall receive a credit equal to $2.00 per kVA, if any, that Billing Capacity exceeds Firm Service Capacity. This credit shall be in addition to that credit granted under the Curtailable Load Credit Option A as set forth in Rate No. LDC-1, or its successor.

2. PENALTY FOR NONCOMPLIANCE.

The City of Rapid City shall not be subject to the Penalty in Rate No. LDC-1 as a result of the first generation related failure during each contract year. The penalty for noncompliance, when imposed, shall be equal to five times the Capacity Charge per kVA, as provided for in Rate LDC-1.

The City of Rapid City shall be allowed a grace period of 14 days in which to restore its generation capabilities without incurring any additional penalty when such generator failure is the result of catastrophic failure and inability to generate electricity.

3. TERM.

The Contract Period shall run for three years from the date of Agreement and shall continue thereafter until terminated by a one year written notice of either party.

Dated the date and year first above written.

BLACK HILLS POWER AND LIGHT COMPANY

By _____
Everett E. Hoyt, President
and Chief Operating Officer

THE CITY OF RAPID CITY

By _____
Its MAYOR
6-7-93

ount Number 1.09.4181470.01

Contract No. 10431
Effective Date:
June 1, 1993

LARGE DEMAND CURTAILABLE SERVICE AGREEMENT

This Large Demand Curtailable Service Agreement ("Agreement") is entered into this 7th day of June, 1993, by and between Black Hills Power and Light Company ("Black Hills") and the City of Rapid City ("Customer").

1. PURCHASE AND SALE OF CURTAILABLE ELECTRIC ENERGY.

Black Hills shall supply and Customer shall take all electric power and energy required for its waste water treatment operation located in Pennington County, South Dakota, 6200 Anderson Road, Rapid City, South Dakota, (Old Facility - West) except to the extent that Black Hills shall be entitled to curtail a supply of electric power and energy as set forth in this Agreement and the tariff filed with the South Dakota Public Utilities Commission, at which time customer shall curtail and/or generate electric power and energy required to meet its needs.

2. NATURE OF SERVICE.

Such power and energy delivered by Black Hills shall be three phase, alternating current, approximately 60 cycles at a nominal phase to phase voltage of 480 volts.

3. CURTAILABLE SERVICE.

The electric power and energy supplied by Black Hills to Customer shall be on a curtailable basis. Black Hills has filed with and received approval from the South Dakota Public Utilities

Commission, Rate No. LDC-1, Large Demand Curtailable Service. A copy of such rate is attached as Exhibit 1. Customer has elected to purchase all of its electric power and energy pursuant to that rate, or its successor. This Agreement is contingent upon approval by the South Dakota Public Utilities Commission of this Contract of Deviation.

Customer has elected notice Option A with the corresponding Curtailable Load Credit of Rate No. LDC-1. This option allows for no prior notification. Customer shall curtail its load to the Firm Service Capacity or pay the penalty within the rate upon 10 minutes notice. All references to "a year" in this Agreement or Rate LDC-1 shall be from the anniversary date of the initiation of service consistent with this Agreement.

4. CUSTOMER'S EQUIPMENT.

4.1 Point of Delivery. Customer shall install and maintain at its own expense all electrical facilities on its side of the point of delivery which are necessary for the proper reception of electric power and energy and for its use beyond that point. Customer's facilities shall be of the type and nature which shall not interfere with other service rendered by Black Hills to any other customer.

4.2 Generating Equipment. Customer shall also be responsible at its own risk and expense to furnish, install and maintain in good and safe working condition any generation equipment, machinery, or other apparatus which it deems necessary on the customer side of the interconnection point of electrical

power and energy, if any, sufficient to replace that electric power and energy as provided to Customer consistent with its arrangement to allow the curtailment of service.

4.3 Limitation to Generation. Customer agrees and acknowledges that the generation equipment, machinery and apparatus which it shall install for purposes of providing electric energy and power during those curtailment periods set forth in this Agreement and as allowed for under Rate LDC-1 shall be utilized only for purposes of providing generation of electric power and energy in the event Black Hills notifies Customer of a curtailment or during an interruption or suspension of service by Black Hills or during a failure in the distribution system or as a result of unstable power supply and shall not be used to provide electric power and energy during any other time period. The machinery, equipment and apparatus as installed by the customer shall be such to operate and run separated from interconnection with Black Hills' distribution system.

4.4 No Duty to Inspect. Black Hills shall have no responsibility to test and/or inspect Customer's equipment used for purposes of providing generation and Customer acknowledges and hereby releases Black Hills from any responsibility for any failures in Customer's electric facilities, machinery and/or apparatus.

4.5 Testing and Maintenance of Equipment. Testing shall be in compliance with the generator manufacturer's recommended full load exercising time frame for such equipment, or Customer's

standard operation procedure for such equipment, whichever is greater. Customer shall endeavor to coordinate its maintenance of such equipment to ensure that the same occurs during off peak periods for Black Hills. Customer shall be solely responsible for the maintenance of its generating equipment.

5. RATES.

Black Hills shall bill and Customer shall pay for all electric power and energy supplied hereunder at the rates and charges due and payable pursuant to the Black Hills' electric Rate No. LDC-1. Customer understands that the initial rates and terms set forth in this contract in Rate No. LDC-1 may be revised by Black Hills from time to time. Customer agrees that if Black Hills should during the term of this contract revise or eliminate any such rates or terms as set forth in Rate No. LDC-1 that such changes or revisions shall be applicable to Customer for the balance of the term of this Agreement. Customer acknowledges that its rate as set forth within Rate No. LDC-1 is subject to all terms and conditions of Rate No. LDC-1 except as modified by this Agreement and/or those terms set forth in the Contract of Deviation attached as Exhibit 2. The rate is subject to revision by the South Dakota Public Utilities Commission, but the rate shall not be eliminated during the duration of this contract.

6. NO LIABILITY FOR INTERRUPTIONS OR SUSPENSION OF SERVICE.

Black Hills shall endeavor to maintain adequate and continuous service. However, Black Hills does not guarantee or

otherwise ensure that the supply of electric energy or power will at all times be constant. Black Hills shall not be liable to Customer for any loss or damages occasioned by delay, interruption or suspension of service. Black Hills shall only be liable to Customer in the event of gross negligence causing such interruption. Black Hills shall not be liable for any lost profits or other consequential damages or expenses incurred by Customer as the result of any interruption or disruption of service.

In the event Black Hills is prevented from delivering electric service or any part thereof for any reason, Black Hills shall not be obligated to deliver power during said time and there will be a prorata reduction in Billing Capacity or similar charges provided in the rate schedule applicable.

7. COMMUNICATION.

Customer shall provide a designated telephone line so that Black Hills may notify them in the event of a curtailment request and/or a reconnect signal.

8. RIGHT OF WAY.

Customer shall provide to Black Hills, without any cost, a suitable location and right of way to Customer's premises for all necessary lines, equipment, or other appurtenant facilities. All such facilities, lines, or appurtenances as installed by Black Hills shall remain its property and Black Hills shall have all necessary rights to inspect, repair, remove, or construct additional facilities as necessary.

9. INDEMNIFICATION.

Black Hills shall not be liable for any loss, damage, or expense to property or persons as a result of injury or death as suffered by Customer, its employees, agents, or any third parties who are occupying Customer's property resulting from the operation of any electrical equipment or facilities located on Customer's side of the point of delivery. Customer agrees to indemnify and hold Black Hills harmless from any such loss, damage, injury, or death, or related expenses, including reasonable attorney's fees which Black Hills may incur.

10. FIRM SERVICE CAPACITY.

Customer has designated a Firm Service Capacity of zero kVA. During all periods of curtailment, Customer shall reduce its electric demand to or below the Firm Service Capacity at or before the time specified by Black Hills.

11. MATTERS OF DEVIATION.

Deviations, if any, under this Agreement are set forth on Exhibit 2 attached hereto and incorporated herein by this reference.

12. MISCELLANEOUS.

12.1 Assignment. Customer may assign its rights and obligations under this Agreement only with the written consent of Black Hills, which consent shall not be unreasonably withheld.

12.2 Notice. All notices under this Agreement, except those notices necessary for curtailment, which may be provided by

telephone, shall be in writing sent to each party to this Agreement at their respective address below:

Black Hills Power and Light Company
Attention: Rate Department
625 Ninth Street
P. O. Box 1400
Rapid City, SD 57709

City of Rapid City
300 Sixth Street
Rapid City, SD 57701

12.3 Entire Agreement and Modification. This Agreement constitutes the entire agreement between the parties and may be amended only by written agreement properly executed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands the date and year first written above.

BLACK HILLS POWER AND LIGHT COMPANY

By _____
Everett E. Hoyt, President
and Chief Operating Officer

CITY OF RAPID CITY

By _____
Its Council President

PUBLIC UTILITIES COMMISSION OF SOUTH DAKOTA

BLACK HILLS POWER AND LIGHT COMPANY
RAPID CITY, SOUTH DAKOTA

SECTION NO. 3A
SECOND REVISED SHEET NO. 12
REPLACES FIRST REVISED SHEET NO. 12

BILLING CODES 22, 28, 32, AND 38

LARGE DEMAND CURTAILABLE SERVICE (LDC)

RATE No. LDC-1
Page 1 of 5

AVAILABLE

At points on the Company's existing secondary distribution lines supplied by its interconnected transmission system.

APPLICABLE

At the customer's election, to any General Service-Large customer's entire service requirements supplied at one point of delivery when the customer agrees to curtail a minimum designated load under the conditions of one of the following options:

	Minimum Prior Notification	Minimum Curtailment Length	Maximum Curtailment Length
Option A	None	6 hours	16 hours
Option B	1 hour	6 hours	16 hours
Option C	4 hours	6 hours	16 hours

Service is by Large Demand Curtailable Service Agreement only, and is not applicable for temporary, standby, supplementary, emergency, resale, shared, or incidental purposes.

CHARACTER OF SERVICE

Alternating current, 60 hertz, three phase, at a single standard utilization voltage most available to the location of the customer.

NET MONTHLY BILL

Rate

Capacity Charge
$9.25 per kVA of Billing Capacity

Energy Charge
All usage at 3.4¢ per kWh

DATE FILED: September 30, 1992

EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

Minimum

The Capacity Charge less Curtailable Load Credit

Curtailable Load Credit

The monthly bill shall be reduced according to the following schedule for the excess, if any, that Billing Capacity exceeds Firm Service Capacity.

Option A	-	$5.00 per kVA
Option B	-	$4.75 per kVA
Option C	-	$4.25 per kVA

Penalty for Non-Compliance

If at any time a customer fails to curtail as requested by the Company, a penalty equal to five (5) times the Capacity Charge per kVA for the maximum difference in kW that the maximum load during any curtailment period within the billing period exceeds the Firm Service Capacity. If more than one curtailment occurs during a billing period and the customer fully complies with at least one curtailment request and does not fully comply with at least one other curtailment request, the penalty for non-compliance will be reduced by multiplying it by the proportion of the total number of curtailments with which the customer failed to comply fully to the number of curtailments ordered.

DETERMINATION OF BILLING CAPACITY

The Billing Capacity in any month shall be the highest of the following:

a. The kilovolt-ampere (kVA) load during the fifteen-minute period of maximum use during the billing period; or
b. Eighty percent (80%) of the highest Billing Capacity in any of the preceding eleven (11) months; or
c. The Firm Service Capacity.

LARGE DEMAND CURTAILABLE SERVICE
(continued)

FIRM SERVICE CAPACITY

The customer shall initially designate by Electric Service Agreement a Firm Service Capacity of at least 500 kVA less than: (a) the customer's maximum actual Billing Capacity during the twelve billing periods immediately preceding the election of this rate for existing customers, or (b) maximum estimated Billing Capacity during the twelve billing periods following the election of this rate for new customers.

The Customer shall agree to reduce electric demand to or below the Firm Service Capacity at or before the time specified by the Company in any notice of curtailment. The Customer shall further agree not to create demands in excess of Firm Service Capacity for the duration of each curtailment period. The customer may increase electric demand after the end of the curtailment period as specified by the Company.

SUBSTATION OWNERSHIP DISCOUNT

Customers who furnish and maintain a transformer substation with controlling and protective equipment, with the exception of metering equipment, for the purpose of transforming service from the Company's transmission voltage (47,000 volts, and above) or primary distribution voltage (2,400 volts to 24,900 volts) to the customer's utilization voltages, shall receive a monthly credit of $0.25 per kVA of Billing Capacity for transmission service and $0.15 per kVA of Billing Capacity for primary distribution service.

FUEL AND PURCHASED POWER ADJUSTMENT

The above schedule of charges shall be adjusted in accordance with the Fuel and Purchased Power Adjustment tariff as set forth beginning on Sheet No. 31 through Sheet No. 42 which are made a part hereof by express reference as if set forth verbatim herein.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

PAYMENT

Net monthly bills are due and payable twenty (20) days from the date of the bill, and after that date the account becomes delinquent. A late payment charge of 1.5% on the current unpaid balance shall apply to delinquent accounts. An insufficient check charge of $5.00 shall apply for returned checks. If a bill is not paid, the Company shall have the right to suspend service, providing ten (10) days' written notice of such suspension has been given. When service is suspended for nonpayment of a bill, a Customer Service Charge will apply.

CONTRACT PERIOD

A period of not less than five (5) years and if not then terminated by at least one hundred eighty (180) days' prior written notice by either party, shall continue until so terminated. Where service is being initiated or enlarged and requires special investment on the part of the Company, a longer period may be required and shall be as stated in the Electric Service Agreement.

TERMS AND CONDITIONS

1. Service will be rendered under the Company's General Rules and Regulations.

2. Service provided hereunder shall be on a continuous basis. If service is discontinued and then resumed within twelve (12) months after service was first discontinued, the customer shall pay all charges that would have been billed if service had not been discontinued.

3. Curtailment periods will typically be for a minimum of six consecutive hours with the duration and frequency to be at the discretion of the Company. Daily curtailments will not exceed 16 hours total and total curtailment in any calendar year will not exceed 400 hours.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 9, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

LARGE DEMAND CURTAILABLE SERVICE
(continued)

TERMS AND CONDITIONS (continued)

4. The Company at its option may terminate the Large Demand Curtailable Service Agreement if the Customer has demonstrated an inability to curtail its loads to the Firm Service Capacity when requested by the Company.

5. General Service - Large customers with Billing Capacities which are not large enough to provide 500 KVA of curtailable load will be considered by the Company for LDC service on a case-by-case basis.

6. Curtailable service for Industrial Contract Service customers is available, however, the rates and conditions of service will be determined on a case-by-case basis and filed with the South Dakota Public Utilities Commission for review and approval.

TAX ADJUSTMENT

Bills computed under the above rate will be increased by the applicable proportionate part of any impost, assessment or charge imposed or levied by any governmental authority as a result of laws or ordinances enacted, which is assessed or levied on the basis of revenue for electric energy or service sold, and/or the volume of energy generated and sold.

DATE FILED: September 30, 1992 EFFECTIVE DATE: For Service Rendered On and After September 30, 1992

ISSUED BY: Kyle D. White
Kyle D. White
Manager, Rates and Regulatory Affairs

EXHIBIT 2

CONTRACT FOR DEVIATION

This Exhibit is attached and incorporated into an Agreement for Large Demand Curtailable Service between Black Hills Power and Light Company and the City of Rapid City.

1. CREDIT.

The City of Rapid City shall receive a credit equal to $2.00 per kVA, if any, that Billing Capacity exceeds Firm Service Capacity. This credit shall be in addition to that credit granted under the Curtailable Load Credit Option A as set forth in Rate No. LDC-1, or its successor.

2. PENALTY FOR NONCOMPLIANCE.

The City of Rapid City shall not be subject to the Penalty in Rate No. LDC-1 as a result of the first generation related failure during each contract year. The penalty for noncompliance, when imposed, shall be equal to five times the Capacity Charge per kVA, as provided for in Rate LDC-1.

The City of Rapid City shall be allowed a grace period of 14 days in which to restore its generation capabilities without incurring any additional penalty when such generator failure is the result of catastrophic failure and inability to generate electricity.

3. TERM.

The Contract Period shall run for three years from the date of Agreement and shall continue thereafter until terminated by a one year written notice of either party.

Dated the date and year first above written.

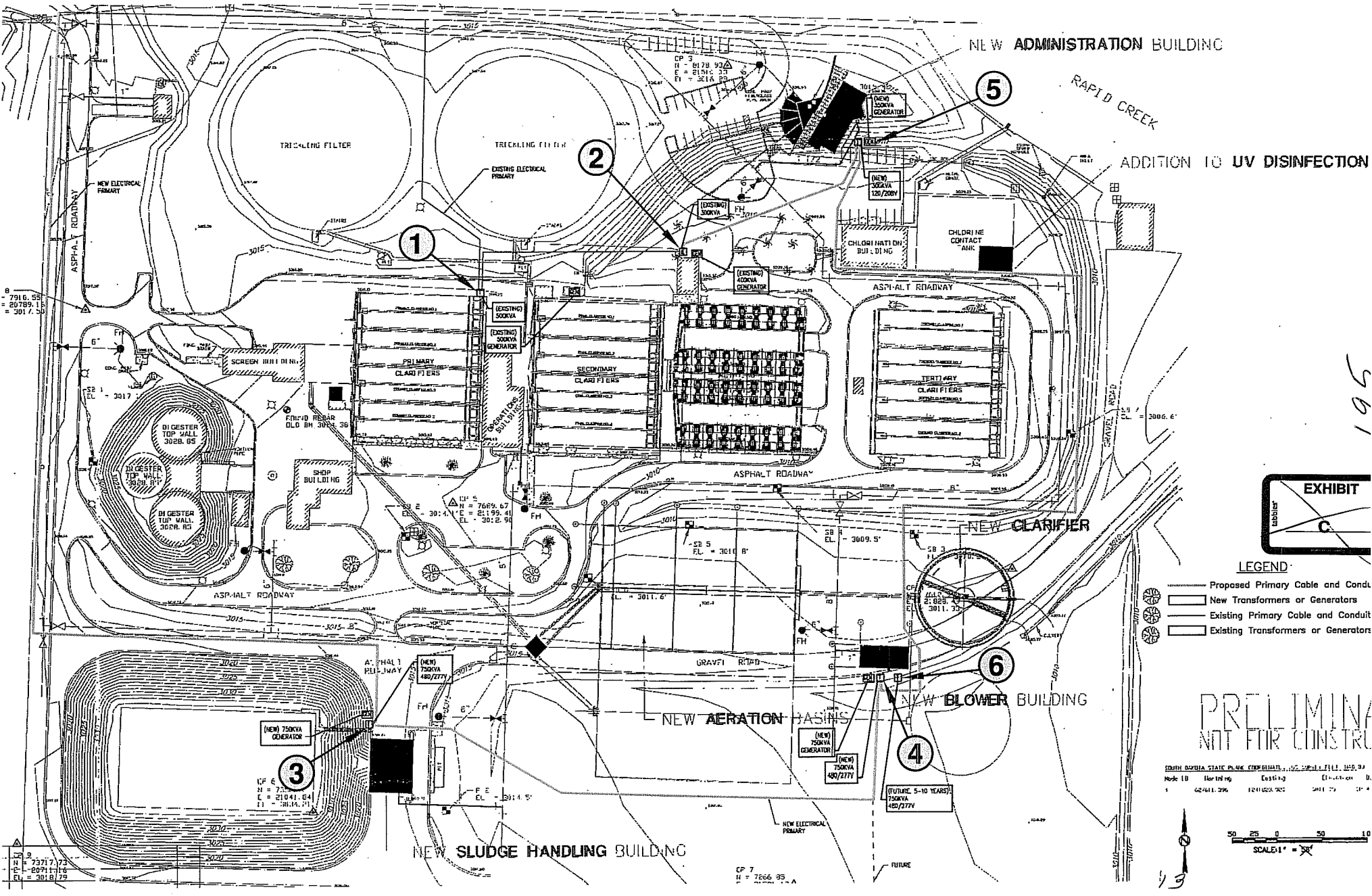
BLACK HILLS POWER AND LIGHT COMPANY

By _____
Everett E. Hoyt, President
and Chief Operating Officer

THE CITY OF RAPID CITY

By _____
Its MAYOR

6-7-93


NEW ADMINISTRATION BUILDING
RAPID CREEK
ADDITION TO UV DISINFECTION
TRICKLING FILTER
TRICKLING FILTER
EXISTING ELECTRICAL PRIMARY
NEW ELECTRICAL PRIMARY
ASPHALT ROADWAY
(NEW) 350KVA GENERATOR
(NEW) 300KVA 120/208V
(EXISTING) 300KVA
(EXISTING) 400KVA GENERATOR
CHLORINATION BUILDING
CHLORINE CONTACT TANK
(EXISTING) 500KVA
(EXISTING) 500KVA GENERATOR
SCREEN BUILDING
PRIMARY CLARIFIERS
SECONDARY CLARIFIERS
TERTIARY CLARIFIERS
GRAVITY DAMS BUILDING
DIGESTER TOP WALL 3028.85
DIGESTER TOP WALL 3031.87
DIGESTER TOP WALL 3028.83
SHOP BUILDING
ASPHALT ROADWAY
NEW CLARIFIER
GRAVEL ROAD
NEW BLOWER BUILDING
NEW AERATION BASINS
(NEW) 750KVA GENERATOR
(NEW) 750KVA 480/277V
(FUTURE 5-10 YEARS) 750KVA 480/277V
NEW SLUDGE HANDLING BUILDING
NEW ELECTRICAL PRIMARY
FUTURE
1
2
3
4
5
6
EXHIBIT
C
LEGEND
Proposed Primary Cable and Conduit
New Transformers or Generators
Existing Primary Cable and Conduit
Existing Transformers or Generators
PRELIMINA
NOT FOR CONSTRU
SCALE: 1" = 50'

RECEIVED

MAY 1 5 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

1. It is agreed that the utility now serving a consumer in the territory certified to another utility shall continue to provide service as long as that services continues in the same general character.

   Increasing the capacity of the entrance to handle increased usage or an addition shall not be considered a change in character. Replacement of a present structure with one of like character shall also not be considered a change in character.

2. The utility certified to the territory shall have the option to serve any new service in that territory.

3. In the event a building is placed on the territory boundary between two utilites, the location of the service entrance shall determine the supplier.

4. Where a utility has an underground service installed as of December 29, 1975, but does not have a connected consumer at the site - the utility owning the URD facilities shall provide the service when it is requested.

normally light goes with service even though not on meter - if lots of lighting check with ~~each~~ other

This was accepted at meeting with BHEC
Butler & BHEC in Dec 1975

11-13-84
Revised

1. It is agreed that the utility now serving a consumer in the territory certified to another utility shall continue to provide service as long as that service continues in the same general character.

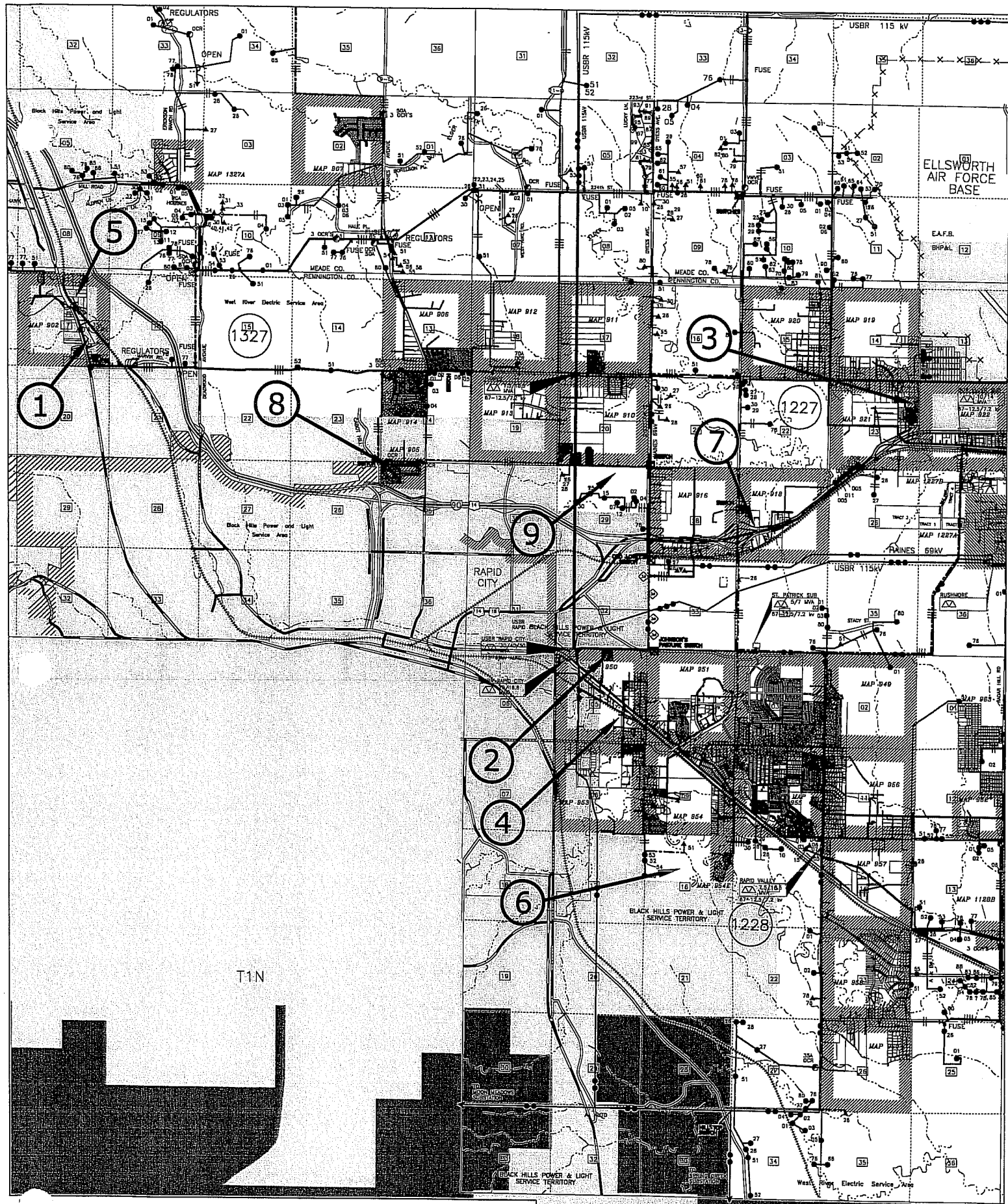
   Increasing the capacity of the entrance to handle increased usage or an addition shall not be considered a change in character. Replacement of a present structure with one of like character shall also not be considered a change in character.

2. The utility certified to the territory shall have the option to serve any new service in that territory.

3. In the event a building is placed on the territory boundary between two utilities, the territory in which the majority of the square footage exists shall determine the supplier.

4. Where a customer extends its distribution facilities across the territory boundary line into another utility's territory and serves additional load in the other utility's territory, KWH will be exchanged.

   NOTE It is separately agreed with West River Electric Association that where underground service in Peaceful Pines Subdivision was installed as of December 29, 1975, but does not have a connected consumer at the site, West River Electric Association shall provide service when it is requested.



West River Electric Association

Black Hills Electric Cooperative

Black Hills Power

WEST RIVER ELECTRIC ASSOCIATION, INC.

BOX 412, WALL, SOUTH DAKOTA 57790
Tel: (605) 279-2135

BRANCH OFFICE: 3250 EAST HWY. 44
RAPID CITY, SOUTH DAKOTA 57701
Tel: [redacted]
Tel. (605) 393-

September 5, 1990

Dear

We are writing to inform you we plan on trading your service to Black Hills Power & Light (BHP&L). We have talked to Damon Reel (owner of Leo's Mobile Home Court) and he has agreed to the trade. Mr. Reel did ask us to notify you when we were ready to do the trade.

We are ready to proceed with the trade. It will take place on September 18, 1990, starting at about 9:00 A.M. There will be a short outage when the transfer is made.

You will receive your final bill on October 1. Any deposit you have will be credited to your final bill. The Capital Credits you have accrued will remain in your name, and will be refunded on our normal rotation. We recommend that you send us your current address every five years, if you move, to protect your Capital Credits.

We have appreciated serving you, and thank you for your patronage. If you have any questions please feel free to call me at 279-2135, or Dave Semerad (Rapid City Branch Manager) at 393-1500.

Sincerely,

James J. Pahl
General Manager

JJP/vjm

cc: Damon Reel
cc: Gene Raetz, BHP&L

199

Thor: These customers are the ones located in Lois Th
Court. These are the ones Damon Red asked us to
of the exchange.

1. Lowell Igo
Rt 6, Box 3600
RC, SD 57701

2. Robert B. Lowe
Rt 6, Box 3590
RC, SD 57701

3. Oscar J. Chartland
Rt 6, Box 3580
RC, SD 57701

4. JoAnn R. Montoya
Rt 6, Box 3570
RC, SD 57702

5. John M. Imberi
Rt 6, Box 3560 #9
RC, SD 57702

6. Timothy Morris
Rt 6, Box 3550 #8
RC, SD 57701

7. Charles Stido
Rt 6, Box 3540

8. L.W. Hansen
P.O. Box 406
Black Hawk, SD 57

9. Paul A. English
2133 Helios
RC, SD 57701

10. Cindy L. Hansen
Rt 6, Box 3510 #4
RC, SD 57702

11. Louis McConnell
Rt 6, Box 3500
RC, SD 57702

12. Lori J. Oyler
P.O. Box 215
Black Hawk, SD 57

13. Lisa Collins
Rt 6, Box 3480
RC, SD 57702

ACCOUNT # 9020905001

NAME: Lera, Lio Mud

ADDRESS: Rt 6, Box 3690

R-C-(old)

BILL MONTH			KWH	CHARGES				
10-89			282					
9-89			338					
8-89			367					000
7-89			285					0.00
6-89			248					282.00
5-89			272					338.00
4-89			307					367.00
3-89			294					285.00
2-89			338					248.00
1-89			291					272.00
12-88			279					307.00
11-88			249					294.00
								338.00
								291.00
								279.00
								249.00
								012
								3,350.0

Cost of W.O. 3747.70 x
Depreciation 0.54 =
2023.75 *

3747. -
2023. . +
1723.95 *
167.57

*1,911.52
Ins. 407.70
24% -220.17
*1,187.57

NN
W 7E Sec. 17
80/ 90216-09-15

WEST RIVER ELECTRIC ASSOCIATION, INC.
South Dakota 11, ington
Staking Sheet -- Underground

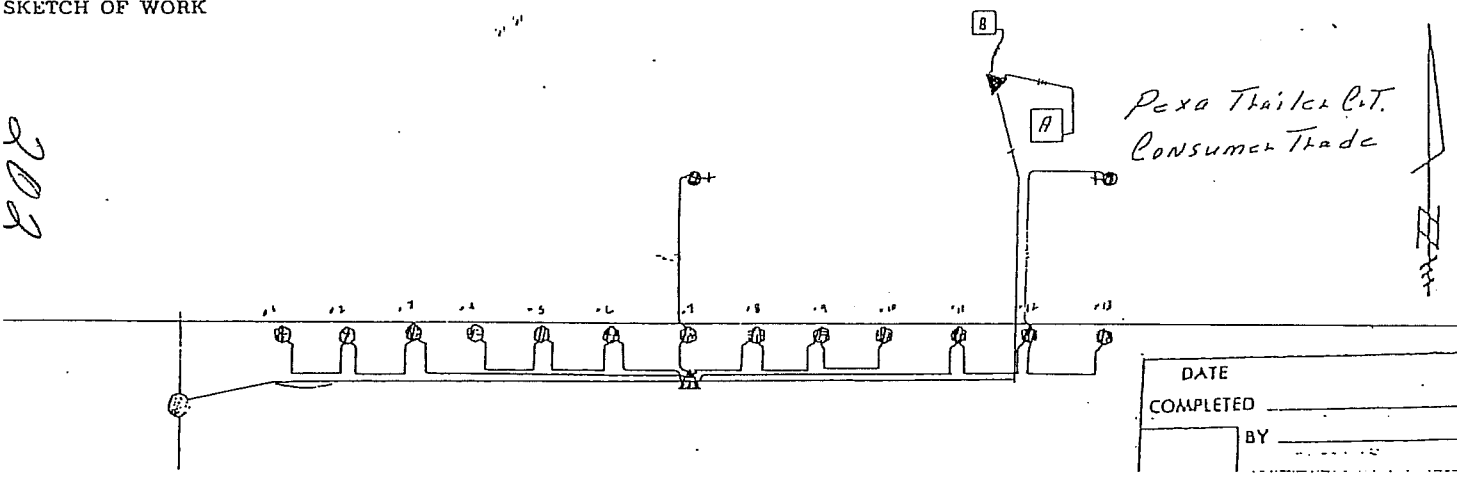
Work Plan Reference	87-88
NEW CONSTRUCTION	
SYSTEM IMPROVEMENT	
REPLACEMENT	
RETIREMENT-NO REPLACEMENT	
NO. OF SERVICES	

WORK ORDER NO. _____
RETIREMENT W.O. _____
SHEET NO. 1 OF NO. _____
LINE _____ LEAD _____
STAKED BY CM DATE 2-14-90
CHECKED BY _____ DATE _____

KIND: _____ RULING SPAN: _____ BURIED SIZE: 1/0 1Ø KIND: 15KV-175 mil EN.

NO.	NO.		POLES H. & C.	PRI-UNIT O.H.	PRI-UNIT U.R.D	R/W CLEARING	TRANS. "G"	TRANS. "UG"	GR. "M2"	GUY NO.	GUY UNIT "E"	GUY LEAD	ANCHOR "F"	SECONDARY O.H. SPAN UNDER-BUILD	SECONDARY O.H. SPAN SEC. ONLY	SECONDARY O.H. UNIT NO.	SECONDARY O.H. UNIT J.O.R.K.	SERVICE O.H. SPAN	SERVICE O.H. UNIT NO.	SERVICE O.H. UNIT K	SECONDARY BURIED SPAN	SECONDARY BURIED UNIT NO	SECONDARY BURIED UNIT "UK" OR "UM"	SEC. OR SER. WIRE SIZE	METER LOOP	METER SIZE METER	METER "UMB"	MISC. & REMARKS
35043			40-4	C-1	WM2-4				11																			
					UM2-4																							
Trans.1	83990	270'						UY725	6-6													2	UM3-1					
Ped #7									6-6												20'	1	UK100	1/0 TRX USC		02-226		90216030
No Numb			30-5																		105'	1	UM5	3 x 6 USC				M26-5(175)265
Ped #6									6-6												60'	1	UK100	4/0 TRX USC		04-285		90216025
Ped #5									6-6												80'	1	UK100	4/0 TRX USC		04-733		90216020
Ped #4									6-6												80'	1	UK100	1/0 TRX USC		07-658		90216017
Ped 3-Trans									6-6												180'	1	UK100	4/0 TRX USC		08-175		90216016
Ped #2									6-6												80'	1	UK100	4/0 TRX USC		05-404		90216010
Ped #1									6-6												85'	1	UK100	4/0 TRX USC		07-195		90216015
Ped 8-Trans									6-6												60'	1	UK100	4/0 TRX USC		01-413		90216035
Ped #9									6-6												80'	1	UK100	4/0 TRX USC		07-336		90216040
Ped #10									6-6												80'	1	UK100	1/0 TRX USC		05-370		90216041
Ped #11-Trans									6-6												180'	1	UK100	4/0 TRX USC		07-314		90216045
Ped #12									6-6												80'	1	UK100	4/0 TRX USC		01-085		90216046

SKETCH OF WORK



*Denotes Secondary Joint with Primary

	FT.	NO WIRES	LINE FT.	WIRE SIZE & KIND
PRI. O.H.				
PRI. BURIED				
SEC. O.H.				
SEC. BURIED				
SER. O.H.				
SER. BURIED				

DATE COMPLETED _____
BY _____

S.O.# _____ Temp. Loop
S.O.# _____ Perm. Loop

203

Allen

3/21/90

18,744	KWh's	– Rollins area
35,477	"	– Pines Drive INN
89,112	"	– Leo's Trailer Ctr
251,700	"	– RC Jmp
14,420	"	– Coleman Bldg
18,441	"	– Sorenson - Reel
5,436	"	– Rushmore Homes (Arg Vallo)
28,276	"	– West Winds Area
459,576	"	
– 448,000	"	– Plainview Trailer Ctr
11,576	"	– Difference

Book: 82
Page: 1985
R99-26316.0 Page 001 of 002
12/30/1999 01:15p 12.00
Marlys Faber Deed

QUIT CLAIM DEED

DAMON C. REEL and DONNA WYNIA (formerly known as DONNA ROOT), grantors of Pennington County, State of South Dakota, for and in consideration of One Dollar ($1.00) and all other valuable consideration, convey and quit claim to REEL WYNING, L.L.C., a South Dakota Limited Liability Company, of 4063 Valley West Drive, Rapid City, South Dakota 57702, all interest in the following described real estate in the County of Pennington in the State of South Dakota:

Tract B (which includes a portion of Lot 2) of Lot Four (4) of Lot G of the Southeast Quarter (SE1/4) of Section Seventeen (17), Township Two (2) North, Range Seven (7) East of the Black Hills Meridian, Pennington County, South Dakota.

Grantors hereby convey to Grantee any after acquired title in the above described real estate which may be hereafter acquired by Grantors by operation of law or otherwise.

EXEMPT FROM TRANSFER FEE (SDCL 43-4-22(19)

Dated this 29th day of Dec, 1999.

Damon C. Reel
Damon C. Reel

Donna Wynia
Donna Wynia

STATE OF SOUTH DAKOTA)
):SS
COUNTY OF PENNINGTON)

☐ TRANSFER FEE PAID $ _____
☒ EXEMPT FROM TRANSFER FEE.

On this the 29th day of Dec, 1999, before me, the undersigned officer, personally appeared DAMON C. REEL, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

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

Cynthia R Hartz
Notary Public, South Dakota

My Commission Expires:
8-22-2005
(SEAL)

204

Book: 82
Page: 1988
RSD-26310.0 Page 002 of 002
12/30/1999 01:15p 12.00
Marlys Faber Deed

STATE OF SOUTH DAKOTA)
):SS
COUNTY OF PENNINGTON)

On this the 29th day of Dec, 1999, before me, the undersigned officer, personally appeared DONNA WYNIA (formerly known as DONNA ROOT), known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained.

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

Notary Public, South Dakota

My Commission Expires:
[illegible]
(SEAL)

Prepared By:
Kenneth G. Campbell
Attorney at Law
2630 Jackson Blvd., Suite 201
Rapid City, SD 57702
(605) 348-7763

24:qcd.reel

205

PENNINGTON CO.
SPRING 1997
THE SIDWELL CO

20 - 17 H

PENNINGTON CO.

1-00'

SCALE: 1" = 100'

REVISED 11-1-94

E.½ S.E.¼ SEC. 17 T.2N. R.7E.

20-17H

7-189

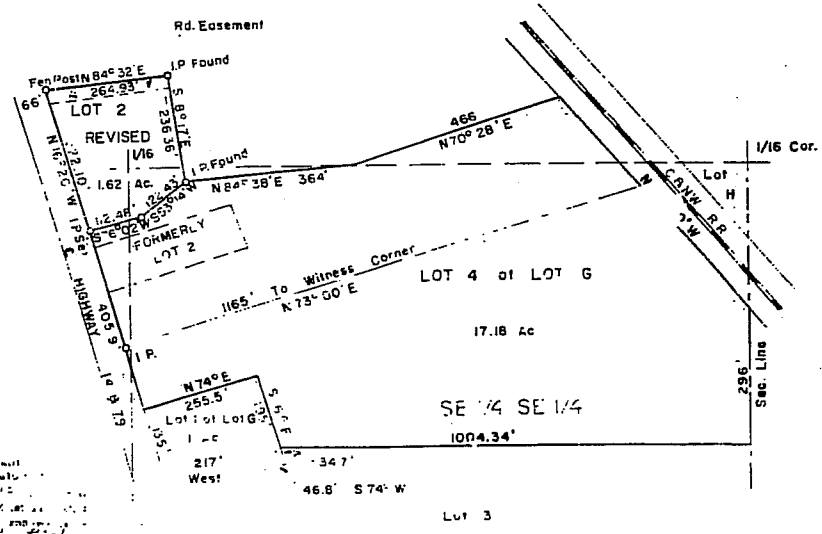
LOT 2, REVISED, of LOT G of SE 1/4 SEC.17
LOT 4 of LOT G of SE 1/4 SEC.17

T2N R7E BHM

PENNINGTON COUNTY, S.D.

April, 1949

Scale: 1" = 200'



STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON } S.S.

I, Gertrude E. Erickson, do hereby certify that I am the owner of that portion of SE 1/4, Sec. 17, T2N, R7E, BHM, covered by LOT 2, REVISED, of LOT G and by LOT 4 of LOT G and that I authorized the survey and within plat of same.

Owner

I, Claude E. Bangs, a registered land surveyor do hereby certify that being so authorized I made survey and plat of LOT 2 REVISED, of LOT G and a plat of LOT 4 of LOT G from record and that same is correctly shown herein

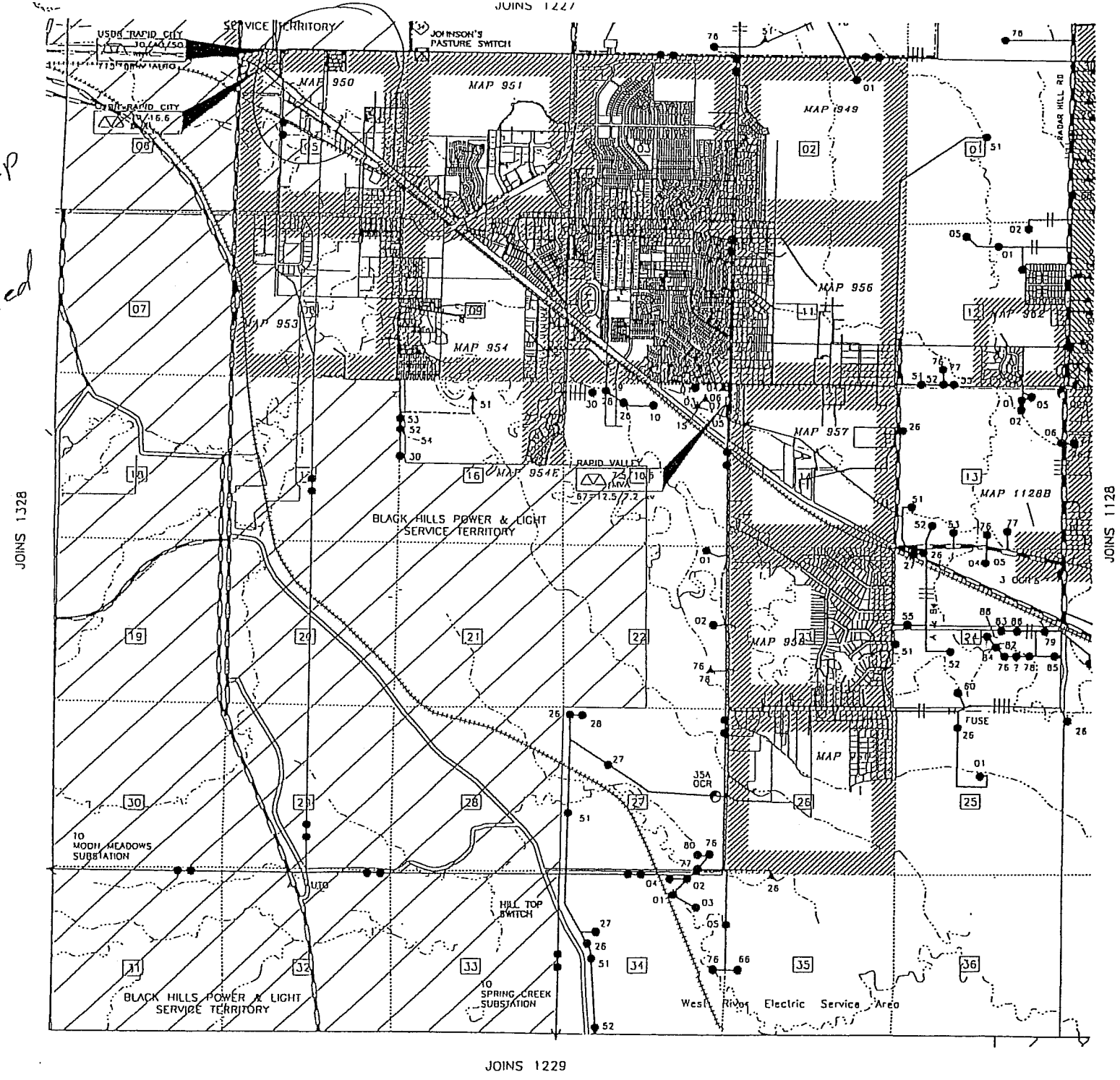
Surveyor

On this 14th day of April, 1959, before me, a notary public, personally appeared Gertrude E. Erickson and Claude E. Bangs, known to me to be the persons described in the foregoing instruments and acknowledged to me that they signed the same

Notary Public

My Commission Expires

Brookdale Tr. CT.
Sec. map 950
ATTached



DRAWN BY: A. Blansett
LAST WO#: ---
LAST REV: Jan 2001 Map Book
FILE NAME: WREA DETAIL MAP

RUSHMORE ELECTRIC POWER COOPERATIVE
ENGINEERING DEPARTMENT
Rapid City, South Dakota

WEST RIVER ELECTRIC ASSOCIATION

WALL, SOUTH DAKOTA
SOUTH DAKOTA 11 PENNINGTON

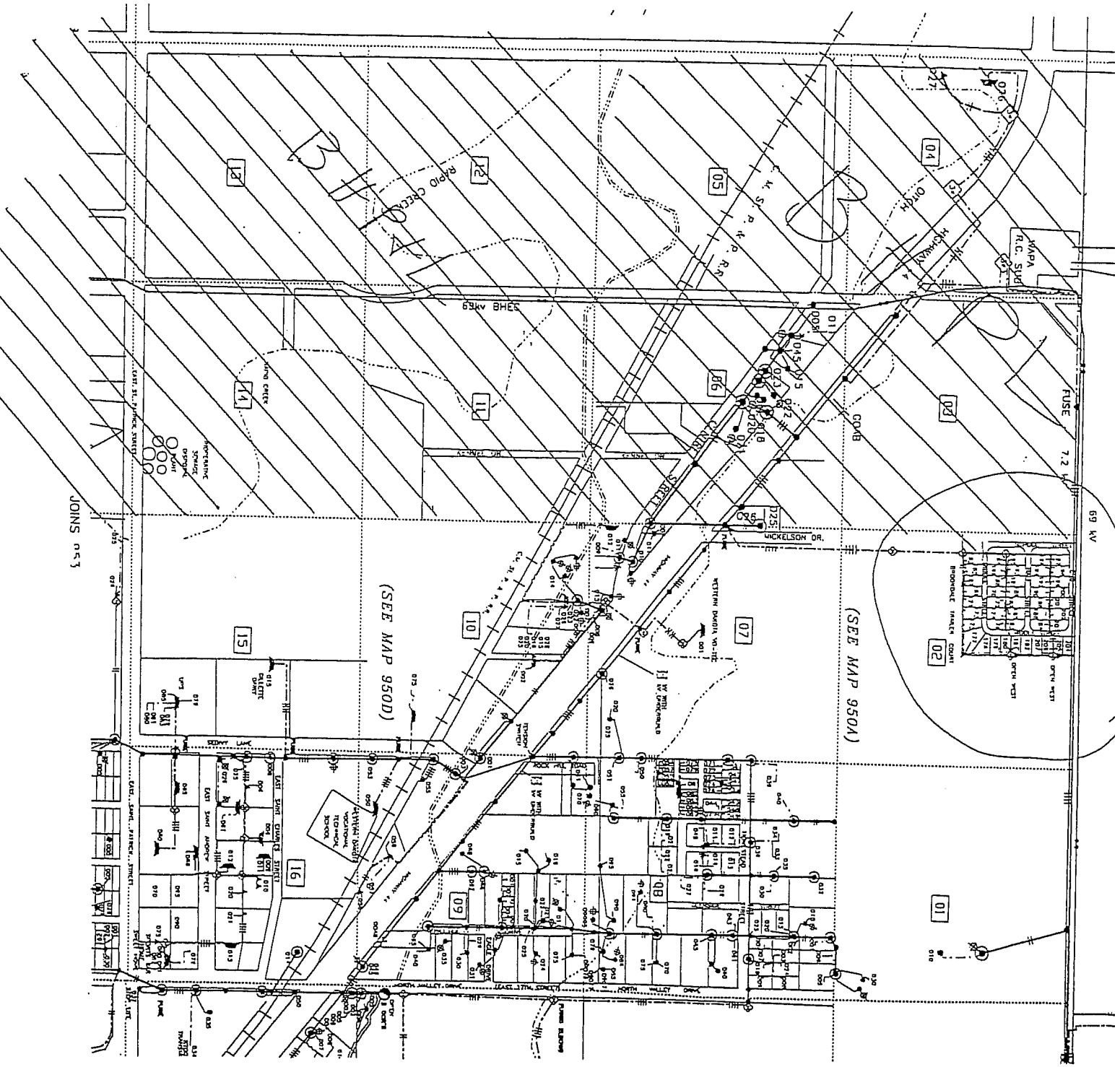
208

DETAIL

COMPILED FROM COUNTY MAPS
RURAL ELECTRIFICATION ASSOCIATION

COUNTY	PENNINGTON
TOWNSHIP	1N
RANGE	8E
MAP	1228

JOINS 1228



SUBDIVISION

COMPILED FROM COUNTY MAPS
RURAL ELECTRIFICATION ASSOCIATION

COORDINATE	TOWNSHIP	RANGE
1228	1N	8

SEC 5

MAP 950

WEST RIVER ELECTRIC ASSOCIATION, INC.

WALL, SOUTH DAKOTA
SOUTH DAKOTA 11 PENNINGTON

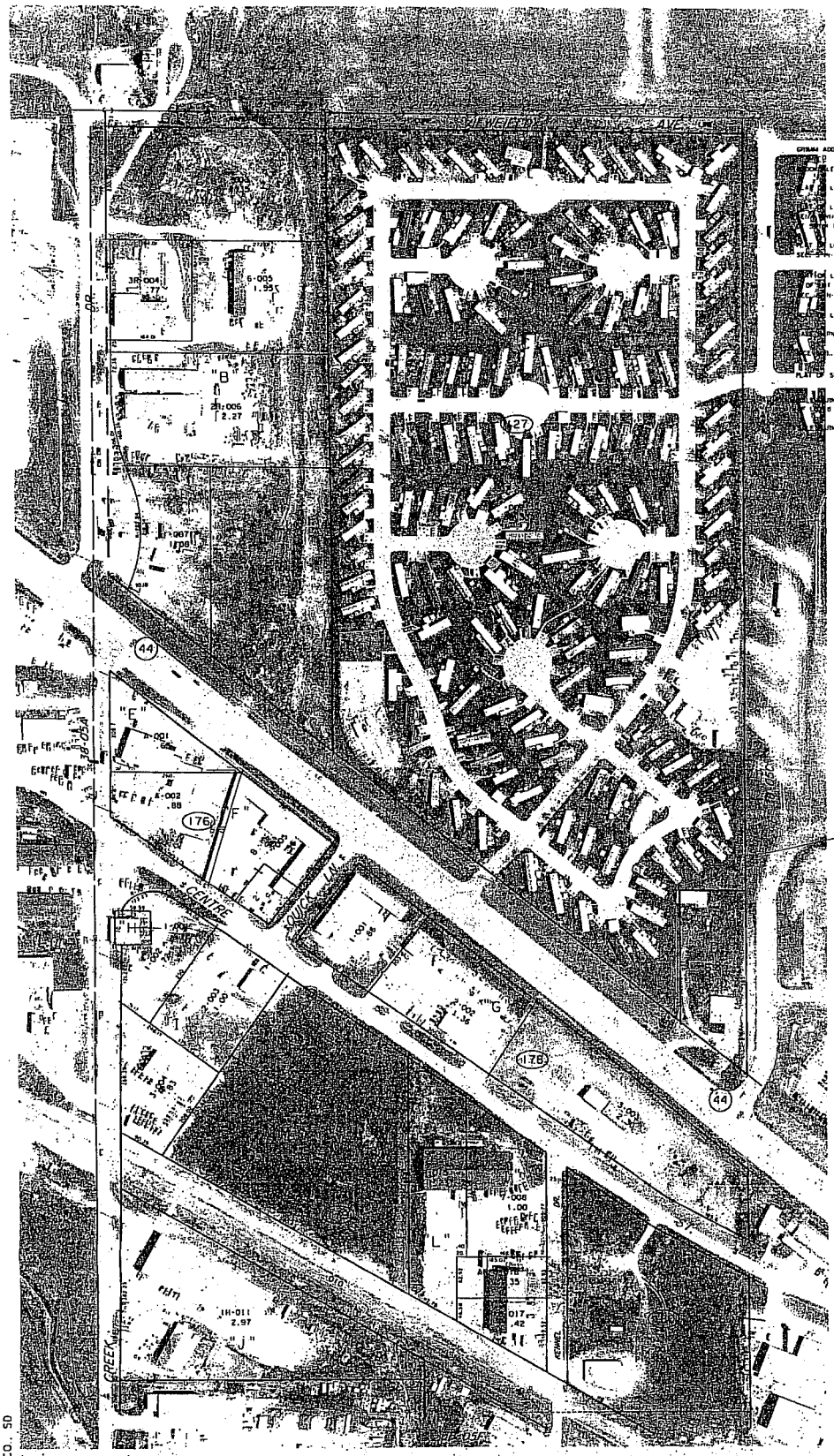
SCALE 1in = 800ft

DRAWN BY: A. Blansett
LAST WOI: ---
LAST REV: Jan 2001 Map Bo
FILE NAME: WREA SUBDMAP

RUSHMORE ELECTRIC POWER COOPERATIV
ENGINEERING DEPARTMENT

PENNINGTON CO.
SPRING 1997
THE SIDWELL CO

38 - 05 B



DOES NOT REPRESENT A SURVEY OF THE LAND

SCALE: 1" = 100'

REVISED 11-1-99

PENNINGTON CO. SD

E.½ N.W.¼ SEC. 5 T.1N. R.8E.

38-05B

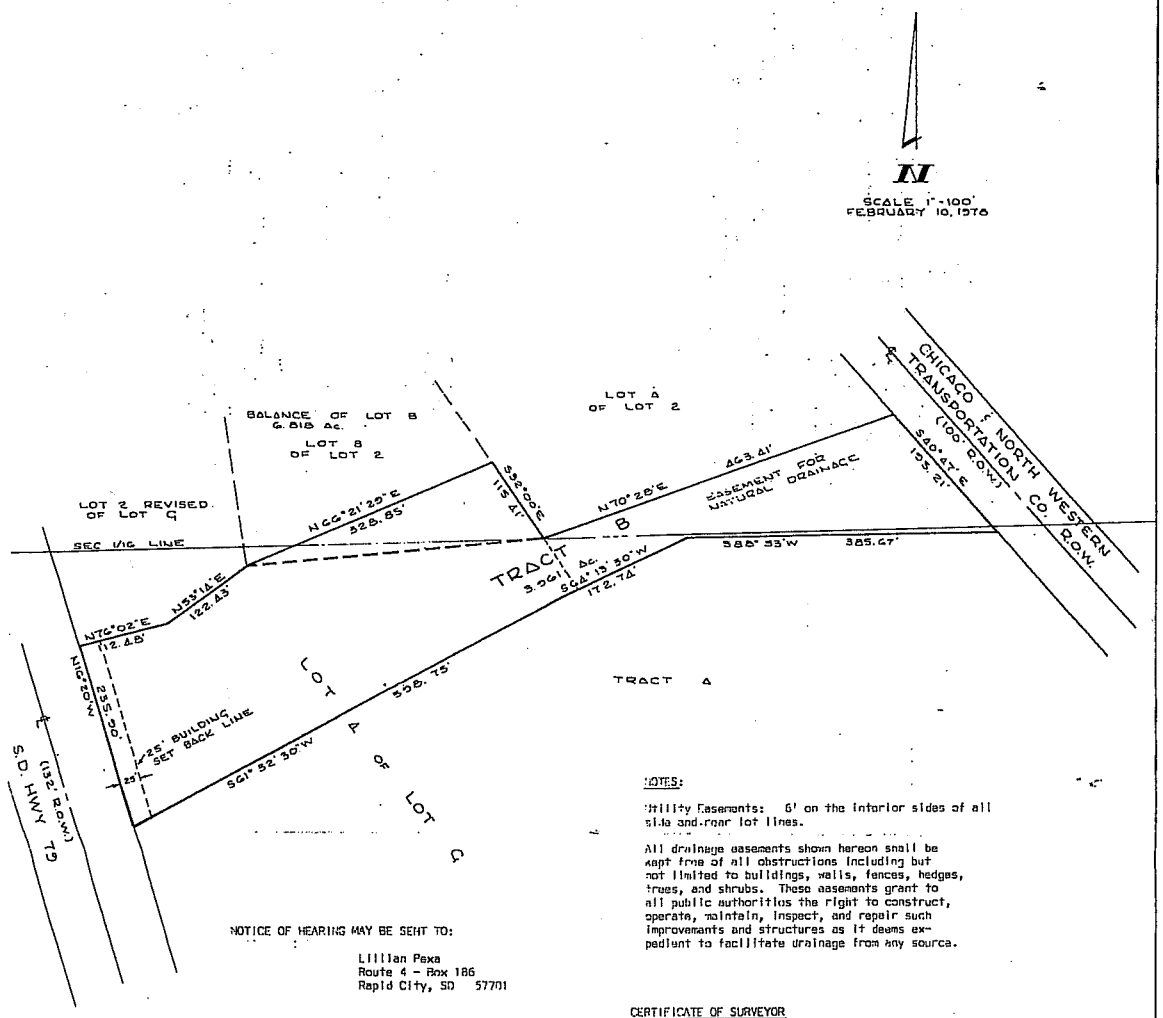
210

2-22-78 2-23-78

PLAT OF

TRACT B (which includes a portion of LOT B of LOT 2) OF LOT 4 OF LOT C OF SEC OF SECTION 17, T2N, R7E, B.H.M.,

PENNINGTON COUNTY, SOUTH DAKOTA



NOTES:

Utility Easements: 6' on the interior sides of all side and rear lot lines.

All drainage easements shown hereon shall be kept free of all obstructions including but not limited to buildings, walls, fences, hedges, trees, and shrubs. These easements grant to all public authorities the right to construct, operate, maintain, inspect, and repair such improvements and structures as it deems expedient to facilitate drainage from any source.

NOTICE OF HEARING MAY BE SENT TO:

Lillian Pexa
Route 4 - Box 186
Rapid City, SD 57701

CERTIFICATE OF OWNERSHIP
State of South Dakota
County of Pennington S.S.

I, Lillian Pexa, do hereby certify that I am the owner of the tract of land shown and described hereon, that the plat was done at my request for the purposes indicated hereon, and that I do hereby approve the within plat of said land.

In witness whereof, I have hereunto set my hand and seal.

OWNER: Lillian Pexa
Lillian Pexa

On the ___ day of _____, 19 7_, before me, a Notary Public, personally appeared Lillian Pexa, known to me to be the person described in the foregoing instrument and acknowledged to me that she signed the same.

NOTARY PUBLIC: _____

My commission expires: _____

CERTIFICATE OF DIRECTOR OF EQUALIZATION

I, Director of Equalization of Pennington County, do hereby certify that I have on record in my office a copy of the within described plat.

Dated this 18 day of April, 19 78.

Maurice Hand
Director of Equalization of Pennington County

APPROVED: Maurice Hand
Director of Equalization of Pennington County

DATE: _____

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON

CERTIFICATE OF SURVEYOR
State of South Dakota
County of Pennington S.S.

I, James P. Heald, Registered Land Surveyor No. 2199 of the State of South Dakota, do hereby certify that being so authorized, I caused the within plat of the land shown and described hereon to be made under my responsible direction and supervision using the official records of Pennington County and that to the best of my knowledge and belief the within plat is a representation of said records and of the desired boundaries and of the associated information as required by government, commission, or agency rules and regulations. I further certify that no land survey was performed for the preparation of the within plat. All area amounts shown on the within plat are to be considered as having the words "more or less" following.

In witness whereof, I have hereunto set my hand and seal.

REGISTERED LAND SURVEYOR: James P. Heald
James P. Heald

On the 14th day of February, 19 78, before me, a Notary Public, personally appeared James P. Heald, known to me to be the person described in the foregoing instrument and acknowledged to me that he signed the same.

NOTARY PUBLIC: Rebecca G. Nelson

My commission expires: 9/10/78

RESOLUTION BY GOVERNING BOARD
State of South Dakota
County of Pennington S.S.

I, Finance Officer of the City of Rapid City, do hereby certify that at an official meeting held on April 17, 19 78, the Common Council by resolution did approve the plat as shown hereon.

Finance Officer of the City of Rapid City

CERTIFICATE OF COUNTY TREASURER

I, Treasurer of Pennington County, do hereby certify that all taxes which are liens upon the within described lands are fully paid according to the records of my office.

Dated this 24th day of February, 19 78.

Betty Metzen Deputy
Treasurer of Pennington County

This is the Clarence Mobile Home Court

July 8, 1986

Meeting with BHP&L

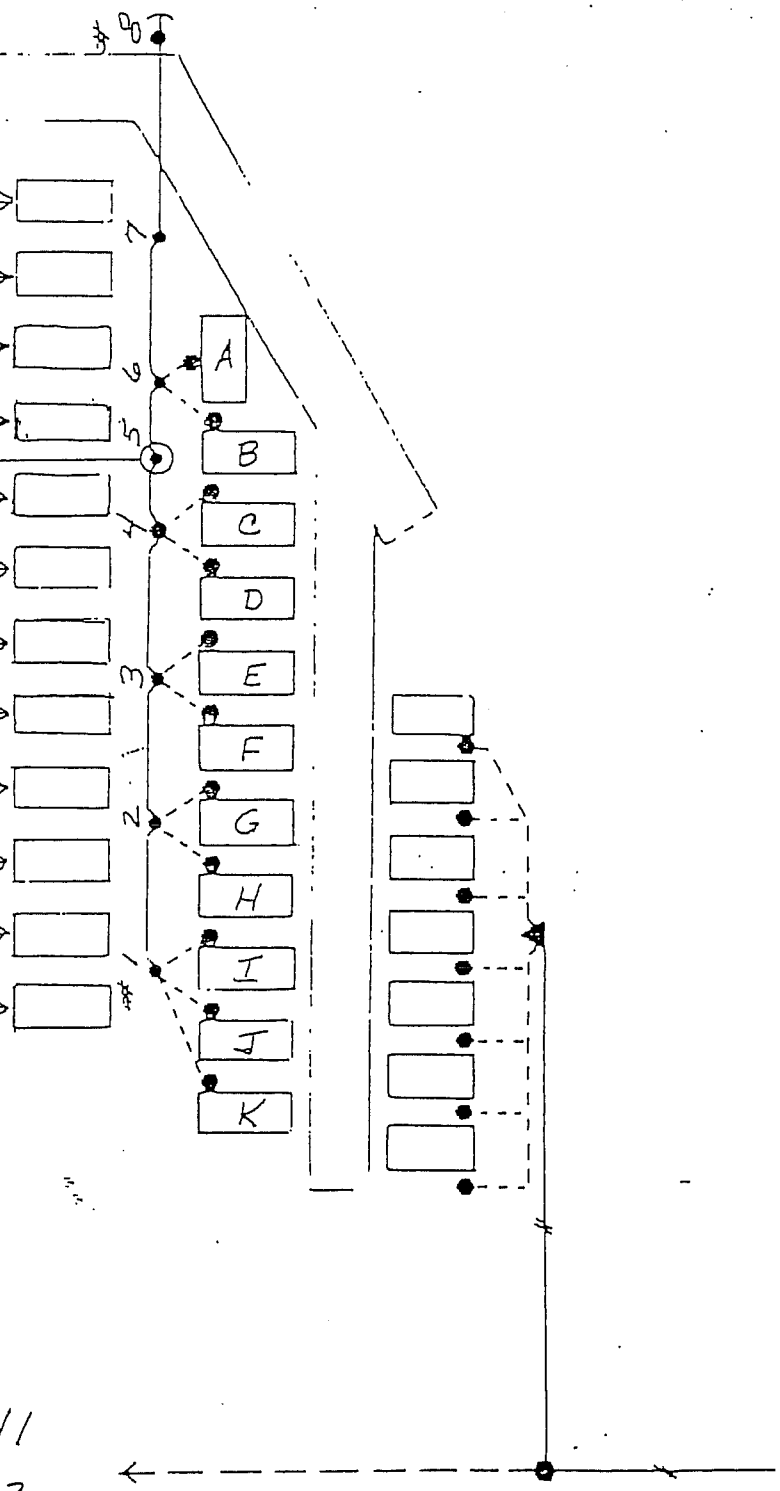
1. Reviewed taking over the 12 lots we have coming in BHP&L mistakenly served, plus 12 additional lots on the opposite side of the pole line. We will give BHP&L KWH's for the last 12 lots. BHP&L would like us to look at the area east of Black Hawk.

2. Al Matson has contacted BHP&L regarding a sales off near the Starlight theatre at Black Hawk. BHP may want us to serve it at this time.

PLAINSVIEW

"C" ATTACHED BILL REGISTER SHEETS FOR KWH – DOLLAR AMOUNTS – ETC.

ACCOUNT #	METER #	LOT #
11-18-4505-3	39542	90
11-18-4510-3	56094	91
11-18-4517-1	48389	92
11-18-4500-7	70433	93
11-18-4414-1	53433	94
11-18-4413-1	59025	95
11-18-4391-1	60207	96
11-18-4412-9	55893	97
11-18-4385-9	40389	98
11-18-4390-7	57268	99
11-18-4382-2	43395	100
11-18-4380-2	65231	101



12

Annual Kwh - 88,894

Poles #1 thru #8 #4541
with 50KVA Transformer

Less 45% depreciation 2043
(10 Pals) Total - $2498

Meter Pedestals & underground

213

ELECTRIC BILL REGISTER

RAPID CITY GROUP 13 REPORT DATE 07/16/86 PAGE 89

ACCOUNT NO.	NAME AND ADDRESS	FRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4505.3	MAYER JAMES A PO BOX 2908		39542		1		07.14.86	3548	3942	394	10.	BALANCE FORWARD	44.08	
C-C / TAX DISTRICT	BOX ELDER SD57719						BILL DATE 07.17.86					FUEL ADJ 3.62	33.94	
3 / 01.01.00	PLAINSVIEW 90 CR HIST= 111111111111											LATE PMT CHG .65		

CURRENT	30 DAYS	60 DAYS	90 DAYS	OVER 90	DAYS OVER
35.30	42.85	1.23			

DEPOSIT NO.	METER NO.	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.
	39542	676	469	520	478	398	495	310	411	347	445	603	1053
AMT.		5110	3554	3910	3734	3409	4120	2694	3246	2839	3611	4567	7672

SALES TAX → 1.36
TOTAL → 79.38

ACCOUNT NO.	NAME AND ADDRESS	FRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4510.3	PLAINSVIEW 91		56094		1		06.09.86	16679	16679		10.	BALANCE FORWARD	75.00CR	
C-C / TAX DISTRICT							BILL DATE 07.17.86							
1 / 01.01.00	CR HIST= 999999000000													

CURRENT	30 DAYS	60 DAYS	90 DAYS	OVER 90	DAYS OVER
75.00-					1

DEPOSIT NO.	METER NO.	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.
	56094	429	697	790	945	816		627	490				
AMT.		3499	4942	5578	6697	6255		4734	3735				

SALES TAX →
TOTAL → 75.00CR

ACCOUNT NO.	NAME AND ADDRESS	FRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4517.1	SIPMA MILES C RR 1 BOX 2392		43389		1		07.14.86	16064	16859	795	10.	BALANCE FORWARD	0.00	
C-C / TAX DISTRICT	BOX ELDER SD57719						BILL DATE 07.17.86					FUEL ADJ 7.31	61.37	
2 / 01.01.00	PLAINSVIEW 92 CR HIST= 000000000000													

CURRENT	30 DAYS	60 DAYS	90 DAYS	OVER 90	DAYS OVER
63.82					

DEPOSIT NO.	METER NO.	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.
	48389	766	725	685	719	626	698	498	876	619	585	724	969
AMT.		5698	5113	4929	5262	4961	5522	3903	6126	4516	4527	5342	7115

SALES TAX → 2.45
TOTAL → 63.82

ACCOUNT NO.	NAME AND ADDRESS	FRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4500.7	DAVIS CHARLES E PO BOX 2554		70433		1		07.14.86	8950	10090	1,140	10.	BALANCE FORWARD	0.00	
C-C / TAX DISTRICT	BOX ELDER SD57719						BILL DATE 07.17.86					FUEL ADJ 10.48	84.97	
2 / 01.01.00	PLAINSVIEW 93 CR HIST= 000000000000													

CURRENT	30 DAYS	60 DAYS	90 DAYS	OVER 90	DAYS OVER
88.37					

DEPOSIT NO.	METER NO.	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.
	70433	610	580	560	480	420	510	580	1400	760	510	510	650
AMT.		4679	4231	4157	3746	3559	4223	4432	9372	5385	4036	3970	5004

SALES TAX → 3.40
TOTAL → 88.37

ACCOUNT NO.	NAME AND ADDRESS	FRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4414.1	VALDEZ FRANK PO BOX 2376		53433		1		07.14.86	15888	16446	558	10.	BALANCE FORWARD	0.00	
C-C / TAX DISTRICT	BOX ELDER SD57719						BILL DATE 07.17.86					FUEL ADJ 5.13	45.16	
2 / 01.01.00	PLAINSVIEW 94 CR HIST= 000000000000													

CURRENT	30 DAYS	60 DAYS	90 DAYS	OVER 90	DAYS OVER
46.97					

DEPOSIT NO.	METER NO.	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.
	53433	732	659	663	620	570	703	499	592	570	641	720	815
AMT.		5475	4711	4793	4634	4590	5557	3910	4367	4214	4894	5316	6096

SALES TAX → 1.81
TOTAL → 46.97

ACCOUNT NO.	NAME AND ADDRESS	FRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4413.1	CLARY RICHARD PO BOX 2868		39025		1		07.14.86	27064	27855	791	12.	BALANCE FORWARD	0.00	
C-C / TAX DISTRICT	BOX ELDER SD57719						BILL DATE 07.17.86					FUEL ADJ 7.27	51.73	
2 / 01.[illegible]	PLAINSVIEW 95 CR HIST= 000000000000													

CURRENT	30 DAYS	60 DAYS	90 DAYS	OVER 90	DAYS OVER
53.80					

DEPOSIT NO.	METER NO.	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.
	39025	727	759	959	1267	996	1107	680	574	757	1490	1533	1279
AMT.		4602	4432	5433	7090	6235	6938	4305	3644	4491	8463	8505	7500

SALES TAX → 2.07
TOTAL → 53.80

ACCOUNT NO.	NAME AND ADDRESS	FIRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4391.1	KRAUSE RICHARD S RR 1 BOX 2660		60207		1		07.14.86	28572	29183	611	10.	BALANCE FORWARD	0.00	
C-C / TAX DISTRICT	BOX ELDER SD57719						BILL DATE 07.17.86					FUEL ADJ 5.62	48.79	
2 / 01.01.00	PLAINSVIEW 96 CR HIST= 000000000000						CURRENT 50.74	30 DAYS	60 DAYS	90 DAYS	OVER 90	DAYS OVER		
DEPOSIT NO. / METER NO.	JAN. / FEB. / MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.				
60207	2222 / 1613	1242	1051	708	516	651	627	1136	1289	2444		SALES TAX	1.95	
AMT. $	15196 / 10659	8532	7854	5591	4020	4732	4566	8132	8965	16881		TOTAL	50.74	

ACCOUNT NO.	NAME AND ADDRESS	FIRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4412.9	WALKER BRIAN D PO BOX 2852		55893		1		07.14.86	77408	77917	509	10.	BALANCE FORWARD	0.00	
C-C / TAX DISTRICT	BOX ELDER SD57719						BILL DATE 07.17.86					FUEL ADJ 4.68	41.81	
1 / 01.01.00	PLAINSVIEW 97 CR HIST= 000000999000						CURRENT 43.48	30 DAYS	60 DAYS	90 DAYS	OVER 90	DAYS OVER		
DEPOSIT NO. / METER NO.	JAN. / FEB. / MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.				
296504 / 55893	616 / 511 / 584	419	353	394	396	478	410		395	695		SALES TAX	1.67	
INT= 2.1000												TOTAL	43.48	
AMT. $ 45	4719 / 3810 / 4305	3358	3103	3422	3247	3661	3227		3232	5301				

ACCOUNT NO.	NAME AND ADDRESS	FIRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4385.9	PETERSON JEFFERY L RR 1 BOX 2844-98		40389		1		07.14.86	14625	15136	511	10.	BALANCE FORWARD	0.88	
C-C / TAX DISTRICT	BOX ELDER SD57719						BILL DATE 07.17.86					FUEL ADJ 4.70 LATE PMT CHG .88	41.95	
2 / 01.01.00	PLAINSVIEW 98 CR HIST= 000100000000						CURRENT 43.63	30 DAYS 98	60 DAYS	90 DAYS	OVER 90	DAYS OVER		
DEPOSIT NO. / METER NO.	JAN. / FEB. / MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.				
40389	935 / 849 / 769	711	587	704	528	668	473	589	735	1056		SALES TAX	1.68	
AMT. $	6800 / 5868 / 5447	5212	4696	5564	4097	4838	3616	4553	5413	7692		TOTAL	44.51	

ACCOUNT NO.	NAME AND ADDRESS	FIRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4390.7	ROSSKNECHT RALPH 1603 MORNINGSIDD DR		57268		1		07.14.86	50247	50534	287	10.	BALANCE FORWARD	0.54	
C-C / TAX DISTRICT	RAPID CITY SD57701						BILL DATE 07.17.86					FUEL ADJ 2.64 LATE PMT CHG .54	26.63	
2 / 01.01.00	PLAINSVIEW 99 CR HIST= 000000000000						CURRENT 27.73	30 DAYS 54	60 DAYS	90 DAYS	OVER 90	DAYS OVER		
DEPOSIT NO. / METER NO.	JAN. / FEB. / MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.				
57268	478 / 488 / 473	379	325	399	183	494	421	425	422	528		SALES TAX	1.07	
AMT. $	3819 / 3670 / 3620	3105	2912	3457	1877	3759	3295	3450	3406	4196		TOTAL	28.24	

ACCOUNT NO.	NAME AND ADDRESS	FIRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4382.2	TRENARY KELLY D RR 3 BOX 2828		43395	1	1		07.14.86	15568	15709	141	10.	BALANCE FORWARD	47.62	
C-C / TAX DISTRICT	RAPID CITY SD57701						BILL DATE 07.17.86					FUEL ADJ 1.30 LATE PMT CHG .70	16.65	
2 / 01.01.00	PLAINSVIEW 100 CR HIST= 000101000000						CURRENT 17.32	30 DAYS 25.02	60 DAYS 22.60	90 DAYS	OVER 90	DAYS OVER		
DEPOSIT NO. / METER NO.	JAN. / FEB. / MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.				
43395	305 / 294 / 277	232	202	247	400	454	226	204	258	318		SALES TAX	1.67	
AMT. $	2690 / 2489 / 2410	2172	2075	2406	3273	3512	2093	2035	2354	2806		TOTAL	64.94	

ACCOUNT NO.	NAME AND ADDRESS	FIRM BILL CODE	METER NO.	Ø	MULT.	DEMAND	READING DATE	PREVIOUS RDG.	CURRENT RDG.	USAGE	RATE	EXPLANATION	AMOUNT	REMARKS
11.18.4380.2	LEWIS DORIS M PO BOX 804		65231		1		07.14.86	16055	16548	493	10.	BALANCE FORWARD	0.00	
C-C / TAX DISTRICT	RAPID CITY SD57709						BILL DATE 07.17.86					FUEL ADJ 4.53	40.72	
1 / 01.01.00	PLAINSVIEW 101 CR HIST= 999110999999						CURRENT 42.35	30 DAYS	60 DAYS	90 DAYS	OVER 90	DAYS OVER		
DEPOSIT NO. / METER NO.	JAN. / FEB. / MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT.	OCT.	NOV.	DEC.				
307016 / 65231	52 / 677 / 626	264	296	381	170	21	460	481	626	835		SALES TAX	1.6	
INT= .0500												TOTAL	42.35	
AMT. $ 45	1039 / 4821 / 4565	2375	2715	3333	1793	3307	3536	3847	4714	6228				

EW

BHPL 9-16-89
Possible Popular Dee co
Trial Court Conveyance vs Plaintiff
Dog Track

KWH	
174,992	Paper Co and Dee Co
263,145	Dog Track +
166,225	Conveyance

Plaintiff =
Conveyance = 166,225 KWH (+ nearby)

Coner Plant 2,200,000 KWH
Cuna 2 - 601,200 KWH +

Sept. 19, 1989

Meeting with BHP&L

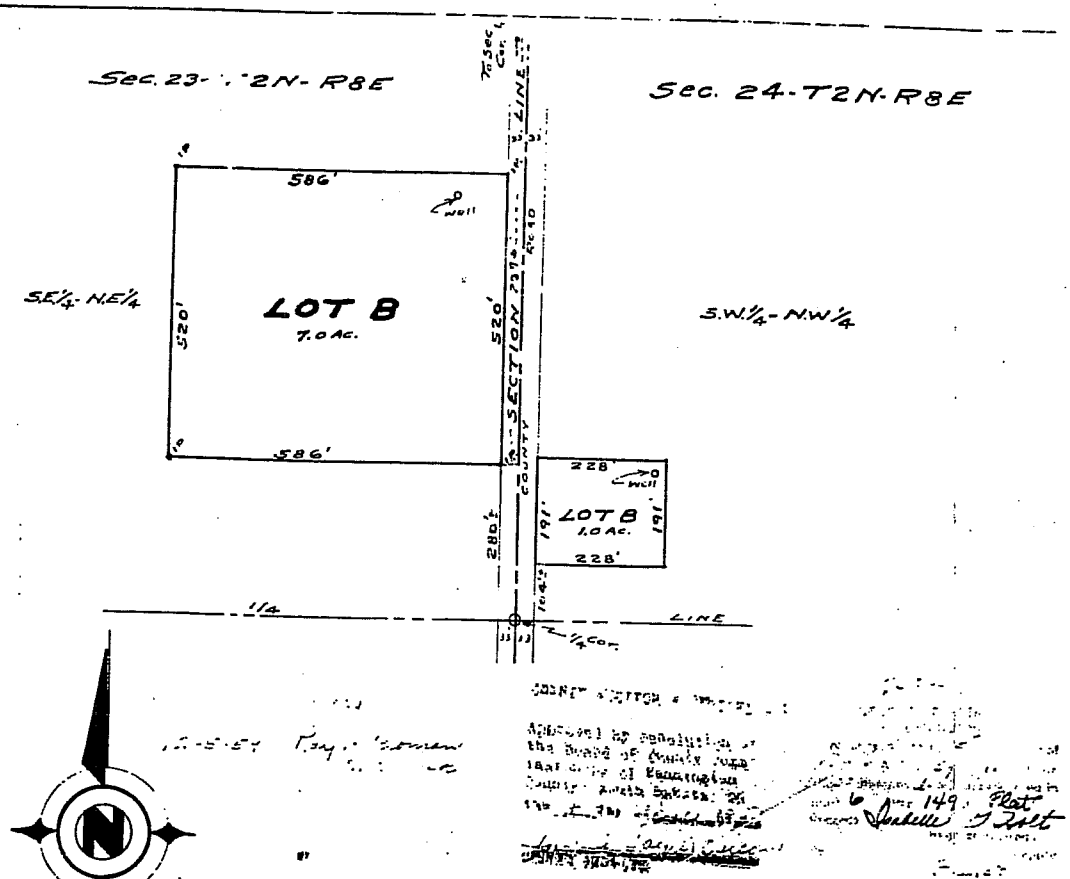
1.) Discuss RC Implement area. We agreed to conside taking over the Plainview Trailer Court in exchange fo RC Implement. BHP&L will give us the info for RWK's at Plainview. We are to give the monthly info on Quiet Mile to B

2.) BHP&L is going to check into the easement on the O crossing by Crow's I-90.

3.) We also discussed the Dog Trash & the Sewer plant a possible trades.

4.) BHP&L will update their frozen list for us along with the usage. We are to do the same for them.

5.) When we get things ready we will get together and set a date.



PLAT SHOWING LOT B, OF
SE¼-NE¼, OF SEC. 23-T2N-R8E,
AND LOT B, OF THE SW¼-NW¼,
SEC. 24-T2N-R8E, BHM.

SCALE 1" = 200'

SEPT. 1959.

OWNER(S) CERTIFICATE

STATE OF SOUTH DAKOTA }
COUNTY OF PENNINGTON } S.S. Paul & Frances Wintrode

OWNER(S) OF THE SE¼-NE¼ OF SECTION 23-T2N-R8E BHM., AND THE SW¼-NW¼ OF SECTION 24-T2N-R8E, BHM.; HEREBY JOIN IN APPROVE THE PLAT AND SURVEY SHOWN HEREON.

OWNER(S)

STATE OF SOUTH DAKOTA }
COUNTY OF PENNINGTON } S.S.

BEFORE ME, ON THIS THE DAY OF THE UNDERSIGNED OFFICER PERSONALLY APPEARED KNOWN TO ME OR SATISFACTORILY PROVE BE THE PERSONS WHOSE NAMES THEY SUBSCRIBED TO THE W INSTRUMENT AND ACKNOWLEDGED THAT THEY EXECUTED T SAME FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF I HEREUNTO SET MY HAN AND OFFICIAL SEAL.

NOTARY PUBLIC

SURVEYOR'S CERTIFICATE

State of South Dakota }
County of Pennington } S.S.

I, Evan R. Rounds, a Registered Land Surveyor, hereby certify that the Plat and Survey shown hereon are true and correct.

Evan R. Rounds
REGISTERED LAND SURVEYOR

State of South Dakota }
County of Pennington } S.S.

on this the 1 day of 1959, before me, the undersigned officer, personally appeared Evan R. Rounds, known to me or satisfactorily proven to be the person whose name he subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

NOTARY PUBLIC

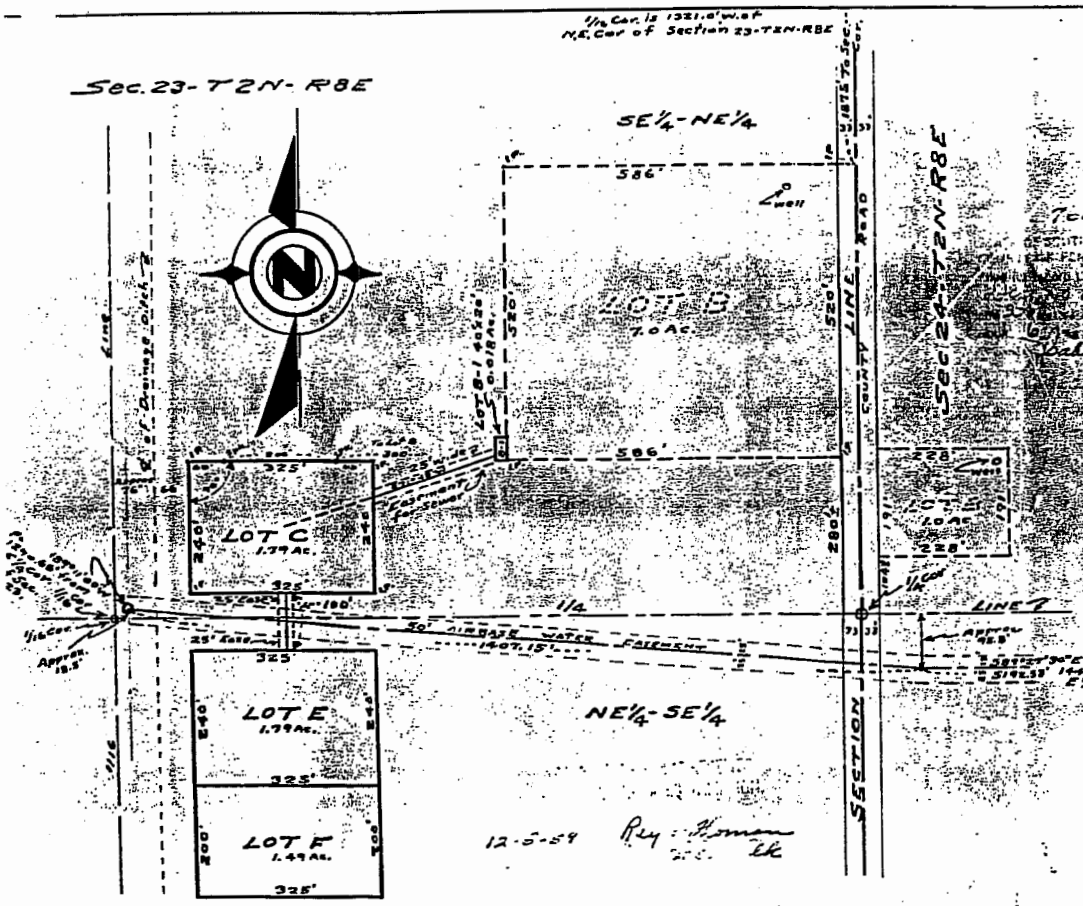
COUNTY TREASURER'S CERTIFICATE

I, Warren G. Rowe, the County Treasurer of Pennington County, South Dakota, hereby certify that all taxes which are liens upon the land included in the within Plat, according to the records of this office, have been fully paid.

COUNTY TREASURER

PLAT SHOWING; LOTS B-1 AND C OF THE SE¼-NE¼, AND LOTS E AND F OF THE NE¼-SE¼; AND CONNECTING EASEMENTS; SECTION 23-T2N-R8E, BHM.

SCALE 1" = 200' NOVEMBER 1959.



OWNER(S) CERTIFICATE

STATE OF SOUTH DAKOTA } SS.
COUNTY OF PENNINGTON }

OWNER OF THAT PORTION OF THE SE¼-NE¼ OF SECTION 23-T2N-R8E UPON WHICH LOTS B-1 AND C AND CONNECTING EASEMENTS ARE LOCATED AND THAT PORTION OF THE NE¼-SE¼ OF SAID SECTION 23, UPON WHICH LOTS E AND F AND CONNECTING EASEMENTS ARE LOCATED HEREON, JOIN IN AND APPROVE THE PLAT AND SURVEY SHOWN HEREON.

OWNER

STATE OF SOUTH DAKOTA } SS.
COUNTY OF PENNINGTON }

ON THIS THE ____ DAY OF ____, 1959 BEFORE ME, THE UNDERSIGNED OFFICER PERSONALLY APPEARED ____ KNOWN TO ME OR SATISFACTORILY PROVEN TO BE THE PERSON WHOSE NAMES THEY SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED THAT THEY EXECUTED THE SAME FOR THE PURPOSES THEREIN CONTAINED.

IN WITNESS WHEREOF I HEREUNTO SET MY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC

SURVEYOR'S CERTIFICATE

State of South Dakota } SS.
County of Pennington }

I, Evan R. Rounds, a Registered Land Surveyor, hereby certify that the plat and survey shown hereon are true and correct.

REGISTERED LAND SURVEYOR

State of South Dakota } SS.
County of Pennington }

On this the 4th day of November, 1959, before me, Ken P. Graves, the undersigned officer, personally appeared Evan R. Rounds, known to me or satisfactorily proven to be the person whose name he subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness where of, I hereunto set my hand and official seal.

Pennington County, South Dakota

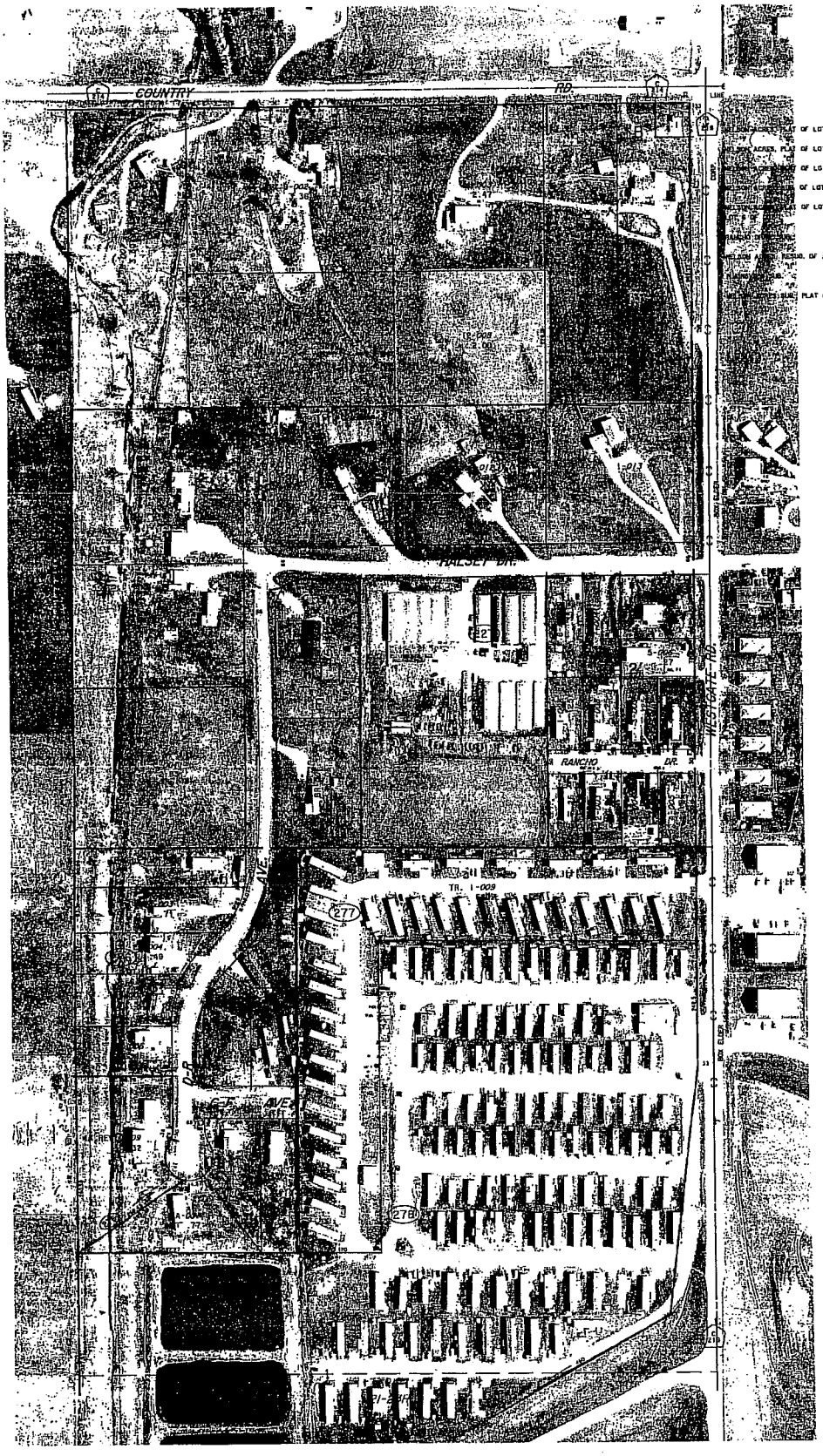
COUNTY TREASURER'S CERTIFICATE

I, Warren C. Rowe, the County Treasurer of Pennington County, South Dakota, hereby certify that all taxes which are liens upon the land included in the within Plat, according to the records of this office, have been fully paid.

COUNTY TREASURER

COUNTY AUDITOR'S CERTIFICATE

Approved by resolution of the Board of County Commissioners of Pennington County, South Dakota, on the 5th day of November 1959.



PENNINGTON CO., SD

Phinview

REVISED 11-1-94

SCALE: 1" = 100'

E.½ N.E.¼ SEC. 23 T.2N. R.8E.

DOES NOT REPRESENT A SURVEY

21-23D

SURVEY PLAT OF PLAINSVIEW SUBDIVISION, INCLUDING:

TRACTS 1, 2, and 3

(Formerly Lots B-1 and C of the SE¼ of NE¼ of SECTION 23, T2N, R8E, BHM, and Lot N of the SE¼ of NE¼ and the NE¼ of SE¼ of SECTION 23, T2N, R8E, BHM.)

ALL LOCATED IN:
SE¼ of NE¼ and NE¼ of SE¼ of SECTION 23, T2N, R8E, BHM,
PENNINGTON COUNTY, SOUTH DAKOTA

Base flood elevation and flood hazard factor not determined as per FIRM Panel 780. Source FEMA map dated 12-1-81.

NOTE: According to the Ellsworth Air Force Base AICUZ Study of December 1977, this property is within the 70-75 LDN (day night average sound level) zone and also Compatible Use District 12 (CUD 12). CUD 12 reflects the combined effects of noise, flight tracts, altitude and accident potential. For CUD 12, the AICUZ Study strongly discourages residential uses and additionally recommends noise level reduction of at least 30 decibels in the 70-75 LDN Zone.

LEGEND:

● - Indicates found survey monument as noted

⊙ - Indicates set 5/8" rebar with survey cap marked "Davis Eng. 3095"

○ - Indicates set 5/8" rebar with no cap

(R) - Indicates recorded in previous survey

(M) - Indicates measured this survey

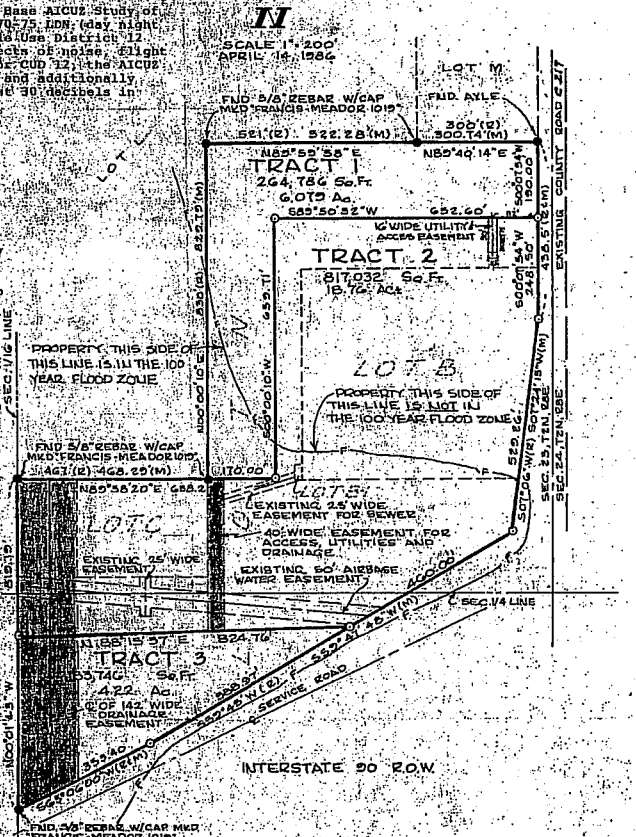
DRAINAGE NOTES:

All major drainage easements shown hereon shall be kept free of all obstructions including but not limited to buildings, walls, fences, hedges, trees and shrubs. These easements grant to all public authorities the right to construct, operate, maintain, inspect and repair such improvements and structures as it deems expedient to facilitate drainage from any source.

Utility and Drainage Easements:
8' on the interior side of all side and rear lot lines.
Basis of Bearings:
As shown hereon.
Building Setback Requirements:
25' front

NOTICE OF HEARING
May Be Sent To: ?

Keith Kuchenbecker
RR #1 Box 2044
Box Elder, SD 57719



CERTIFICATE OF OWNERSHIP:
State of South Dakota
County of Pennington s.s.

WE, Byron Keith Kuchenbecker and Linda M. Kuchenbecker, do hereby certify that we are the owners of the tract of land shown and described hereon, and that the plat was done at our request for the purposes indicated hereon, and that we do hereby approve the within plat of said land, and that the development of this land shall conform to all existing zoning, subdivision and erosion and sediment control regulations.

In witness whereof, we have set our hand.

OWNER: Byron Keith Kuchenbecker
Byron Keith Kuchenbecker

OWNER: Linda M. Kuchenbecker
Linda M. Kuchenbecker

On the 27th day of April, 19 86, before me, a Notary Public, personally appeared Byron Keith Kuchenbecker and Linda M. Kuchenbecker, known to me to be the people described in the foregoing instrument and acknowledged to me that they signed the same.

NOTARY PUBLIC: Elizabeth Ruth Reynolds
My Commission Expires: April 27, 1992

CERTIFICATE OF COUNTY TREASURER:

I, Treasurer of Pennington County, do hereby certify that all taxes which are liens upon the within described lands are fully paid according to records of my office.

Dated this 22nd day of April, 19 86.

Patricia L. Bastian, Deputy
Treasurer of Pennington County

CERTIFICATE OF DIRECTOR OF EQUALIZATION:

I, Director of Equalization of Pennington County, do hereby certify that I have on record in my office a copy of the within described plat.

DIRECTOR OF EQUALIZATION: Richard Kauk, CAA by HG

Dated this 29th day of April, 19 86.

APPROVED: Richard Kauk, CAA by HG

DATE: 21-86

CERTIFICATE OF STREET AUTHORITY:

The location of the proposed lot lines abutting the County or State Highway or the City Street as shown hereon is hereby approved. Any change in the location of the proposed lot lines shall require additional approval.

SDDOT

CERTIFICATE OF SURVEYOR:
State of South Dakota
County of Pennington s.s.

I, Ronald D. Davis, registered land surveyor #3095 of the State of South Dakota, do hereby certify that at the request of the owners listed hereon, I did survey and cause this plat to be made and I did mark upon the ground the boundaries thereof in the manner shown. All area amounts shown hereon are considered to have the words "more or less" following.

In witness whereof, I have set my hand and seal.

REGISTERED LAND SURVEYOR: Ronald D. Davis
Ronald D. Davis

On the 21 day of April, 19 86, before me, a Notary Public, personally appeared Ronald D. Davis, known to me to be the person described in the foregoing instrument and acknowledged to me that he signed the same.

NOTARY PUBLIC: Elizabeth Ruth Reynolds
My Commission Expires: April 27, 1992

CERTIFICATE OF FINANCE OFFICER:

I, Finance Officer of the City of Box Elder, do hereby certify that all special assessments which are liens upon the within described lands are fully paid according to the records of my office.

Dated this 23 day of April, 19 86.

Barbara J. Patterson
Finance Officer of the City of Box Elder

RESOLUTION BY GOVERNING BOARD:
State of South Dakota
County of Pennington s.s.

I, Finance Officer of the City of Box Elder, do hereby certify that at an official meeting held on the 22nd day of April, 19 86, the Common Council by Resolution did approve the plat shown hereon.

Barbara J. Patterson
Finance Officer of the City of Box Elder

STATE OF SOUTH DAKOTA
COUNTY OF PENNINGTON
Filed for Record April 30, 1986 at 8:55 o'clock A.M.
Register of Deeds
Fee $ 20.00
Deputy

REGISTER OF DEEDS SEAL PENNINGTON COUNTY SOUTH DAKOTA

22

BLACK HILLS POWER AND LIGHT COMPANY
P.O. BOX 1400 409 DEADWOOD AVENUE
RAPID CITY, SOUTH DAKOTA 57709

JAMES MATTERN
VICE PRESIDENT OF ADMINISTRATION

TELEPHONE
(605) 342-3200

October 25, 1994

Mr Dave Semerad
Rapid City Branch Manager
WREA
3250 Hwy 44 E
Rapid City SD 57701

Dear Dave:

This is a follow-up to our telephone conversation that we had on Monday, October 24, 1994.

Black Hills Power and Light Company (BHP&L) is requesting that West River Electric Association allow BHP&L to serve a new service to be constructed by Discount Lumber. This building, approximately 20 x 40, will be constructed in the southwest corner of the Discount Lumber property. BHP&L currently serves the buildings associated with the Discount Lumber operation. I am including a map for your reference. Other details are:

- Nearest WREA 3-phase line is approximately 400 feet to the east of this proposed building.
- This will be a type of storage and light work building. 100 amp panel, 3-phase 120/208.
- Manager of Discount Lumber is Dick Smith.

Your timely review and approval to allow BHP&L to provide service to this building will be appreciated by Discount Lumber & BHP&L.

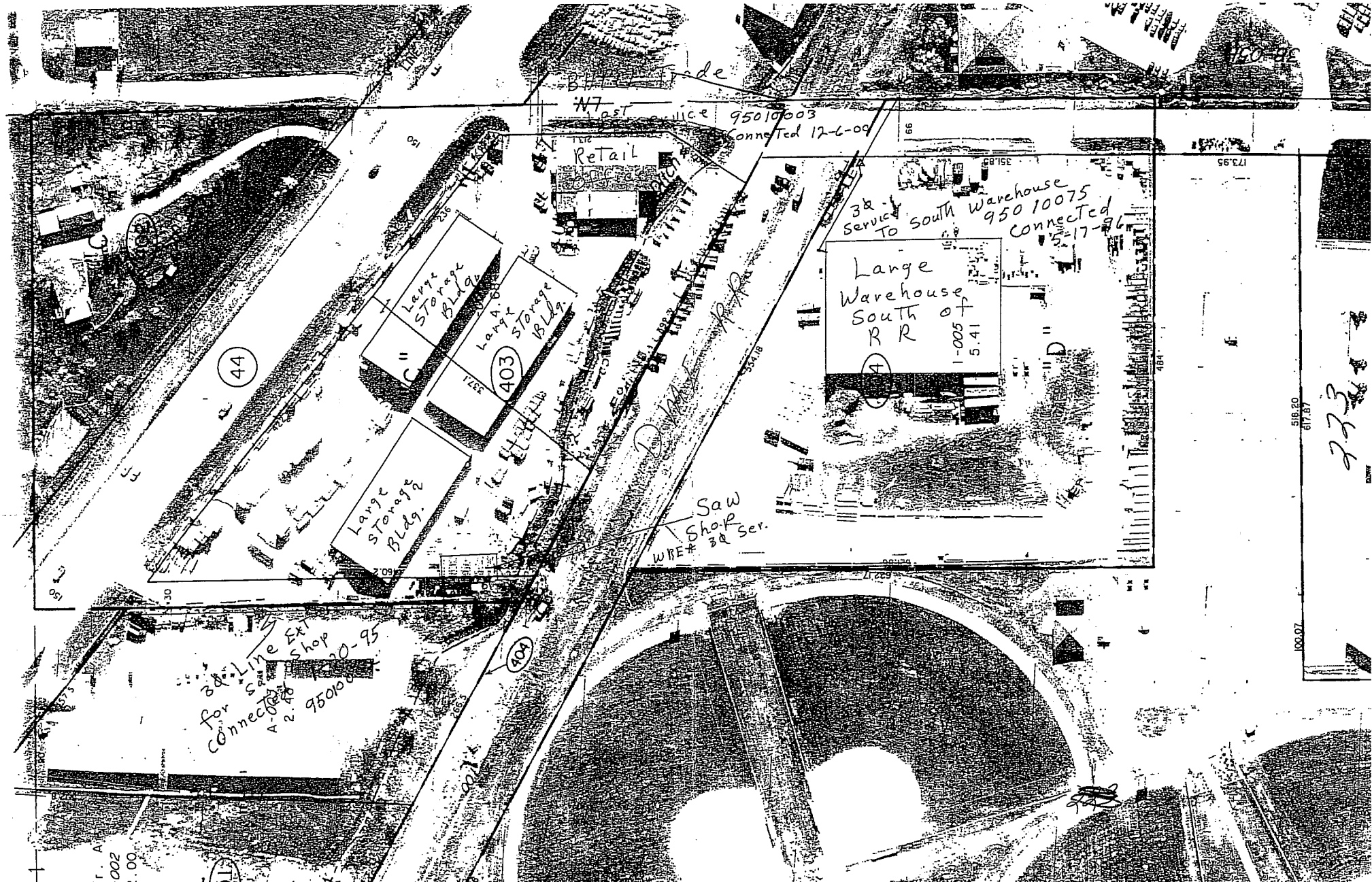
I will be unavailable for the remainder of this week. Please contact Brian Broucek at 342-3200 for your response or if you have any questions.

Sincerely,

Jim Mattern

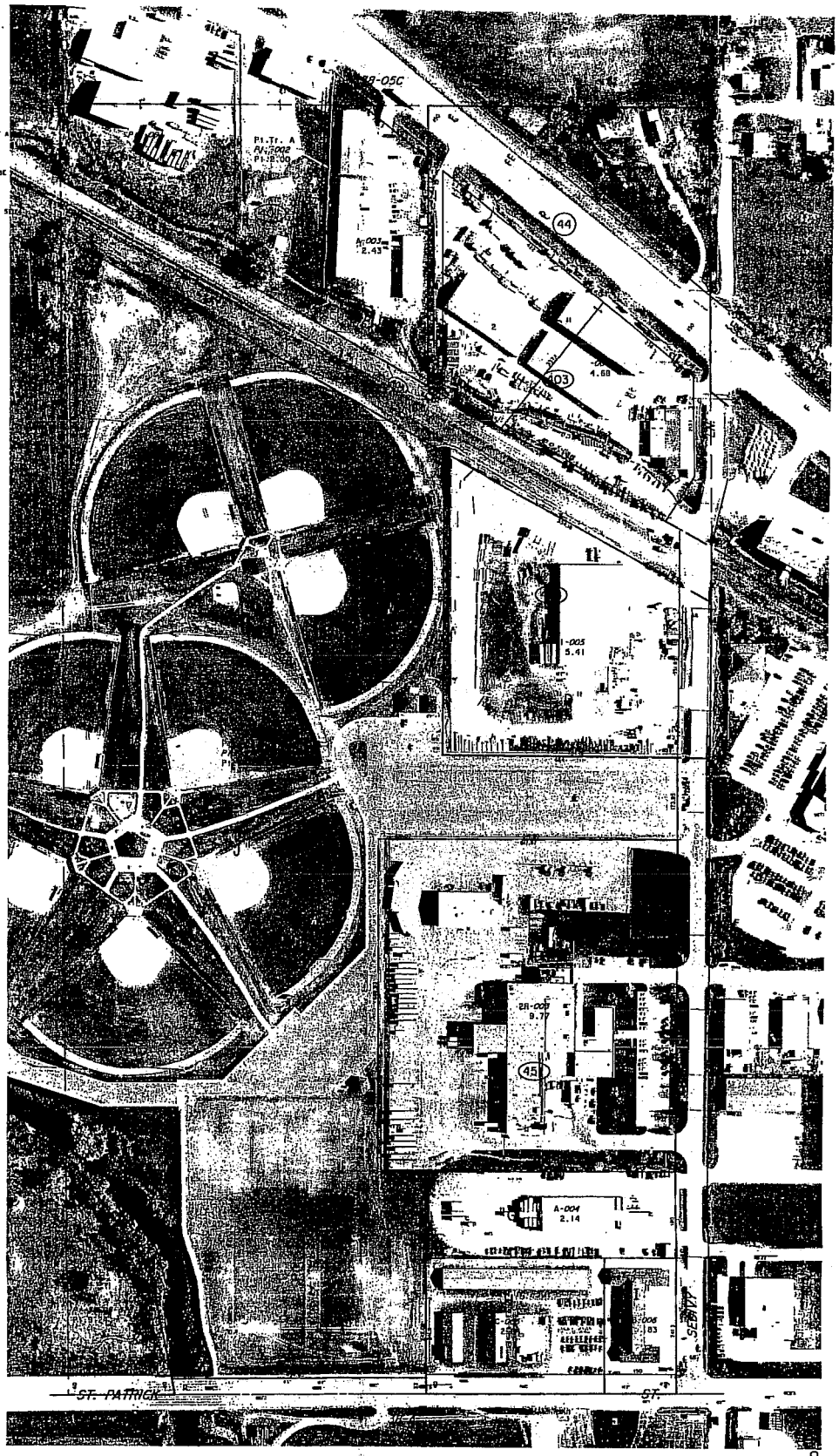
Jim Mattern
Vice President of Administration

jm/cc


Bldg. Trade
N7
Post Office
95010003
Connected 12-6-00
Retail
Large Storage Bldg.
Large Storage Bldg.
Large Storage Bldg.
44
403
3¢ Service To South Warehouse
950 10075
Connected 5-17-96
Large Warehouse South of R R
1-005
5.41
4
Saw Shop
WBE# 3¢ Ser.
3¢ Line Ext for Saw Shop
Connected 12-20-95
A-2 950108
404

PENNINGTON CO.
SPRING 1997
THE SIDWELL CO

"A"
PLAT OF LOT 1 NW1/4 SE1/4 SEC. 5-1N-8E
"B"
PLAT OF LOT 1 OF LOT C SW1/4 NE1/4, LOT A
LOT 1 NW1/4 SE1/4 & TR. A SW1/4 NE1/4,
NW1/4 SE1/4 SEC. 5-1N-8E
"C"
PLAT OF LOTS 2 THRU 6 SE1/4 SEC. 5-1N-8E
"D"
K.H.C. SUB., PLAT OF LOT 1
"E"
PLAT OF LOT 1 SE1/4 SW1/4 & LOT 1 SW1/4 S
SEC 5-1N-8E
"F"
DAIRYLAND SUB., PLAT OF LOT 1R & 2R
"G"
DAIRYLAND SUB., PLAT OF LOT A
"H"
DAIRYLAND SUB., PLAT OF LOT C
"I"
DAIRYLAND SUB., PLAT OF LOT B
"J"
DAIRYLAND SUB PLAT OF LOT 4



different location

Discount
Number

DOES NOT REPRESENT A SURVEY OF THE LAND.
MAPPING BY AERIAL METHODS.

PENNINGTON CO.

SCALE: 1" = 100'

REVISED 11-1-97

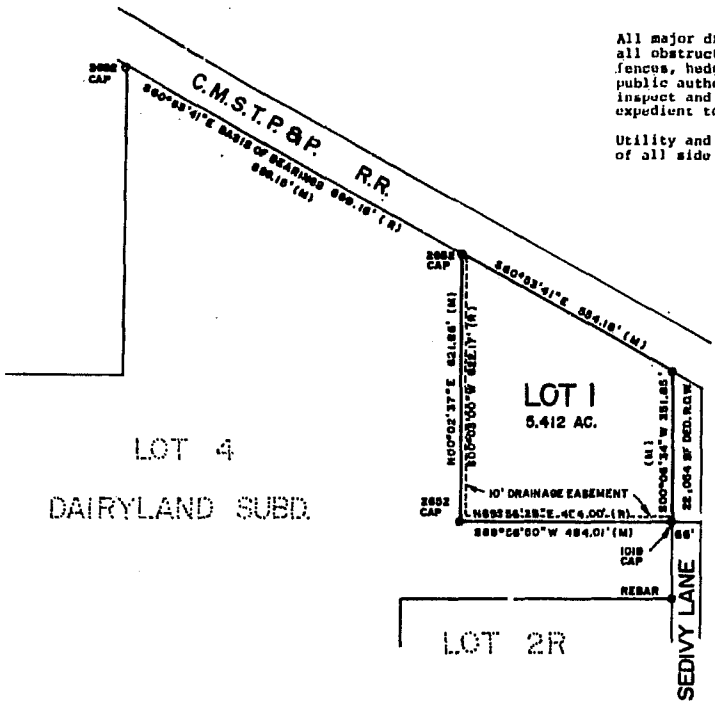
38-05G

W.½ S.E.¼ SEC. 5 T.1N. R.8E.

224

PLAT OF LOT I OF K.H.C. SUBDIVISION AND DEDICATED RIGHT-OF-WAY

FORMERLY AND LOCATED IN THE EAST 550' OF LOT A OF THE NW1/4 SE1/4 OF SECTION 5, T1N, R8E, B.H.M., RAPID CITY, PENNINGTON COUNTY, SOUTH DAKOTA



All major drainage easements shown hereon shall be kept free of all obstructions including but not limited to buildings, walls, fences, hedges, trees and shrubs. These easements grant to all public authorities the right to construct, operate, maintain, inspect and repair such improvements and structures as it deems expedient to facilitate drainage from any source.

Utility and Minor Drainage Easements - 8' on the interior side of all side and rear lot lines.

1" = 200'

(R) = Previously Recorded
(M) = Measured This Survey
● = Found Monument As Shown
● = Set Rebar With Survey Cap Marked FISK ENG 1771

FISK ENGINEERING, INC.
P.O. BOX 8154
RAPID CITY, SOUTH DAKOTA 57709
(605) 348-1538
PROJECT NO: 95-09-03

Sedivy Lane as shown hereon contains 22,054 square feet and is hereby dedicated as public right-of-way, however, such dedication shall not be construed to mean a donation of the fee of said land.

CERTIFICATE OF SURVEYOR State of South Dakota County of Pennington ss

I, Warren L. Fisk, Registered Land Surveyor No. 1771 in the State of South Dakota, do hereby certify that being so authorized, I made the survey and within plat of the land shown and described hereon and that the same is, in all things, true and correct. In Witness Whereof, I hereunto set my hand and official seal this 26th day of September, 1995.

Warren L. Fisk, P.E., L.S. No. 1771 — Warren L. Fisk

CERTIFICATE AND ACKNOWLEDGEMENT OF OWNERSHIP State of South Dakota County of Pennington ss

I, Pieter Van Wingerden, President of Knecht Home Center, Inc., do hereby certify that Knecht Home Center Inc. is the owner of the above described lands and that on behalf of Knecht Home Center, Inc., I did authorize and do hereby approve the survey and within plat of said land and that development of this land shall conform to all existing applicable zoning, subdivision and erosion and sediment control regulations.

Pieter Van Wingerden - President of Knecht Home Center, Inc. - Owner — Pieter Van Wingerden

On this day of , 1995, before me, a Notary Public, personally appeared Pieter Van Wingerden, known to me to be the person described in the foregoing instrument and acknowledged to me that he signed the same.

Notary Public _____ My Commission Expires _____

CERTIFICAT OF STREET AUTHORITY State of South Dakota County of Pennington ss

The location of the proposed access road to the County or State Highway or City Street as shown hereon is hereby approved. Any change in the location of the proposed access shall require additional approval.

Street Authority — Date October 26, 1995

CERTIFICATE OF COUNTY TREASURER State of South Dakota County of Pennington ss

I, Treasurer of Pennington County, do hereby certify that all taxes which are liens upon the within described lands have been fully paid according to the records of my office.

Dated this 5 day of OCT, 1995 — Pennington County Treasurer

CERTIFICATE OF DIRECTOR OF EQUALIZATION State of South Dakota County of Pennington ss

I, Director of Equalization of Pennington County, do hereby certify that I have on file in my office a copy of the within described plat of land.

Signed this 11th day of Oct, 1995 — Pennington County Director of Equalization

CERTIFICATE OF FINANCE OFFICER State of South Dakota County of Pennington ss

I, Finance Officer of the City of Rapid City, do hereby certify that all special assessments which are liens upon the within describes lands are fully paid according to the records of my office.

Dated this 11th day of October, 1995 — Asst. Finance Officer of the City of Rapid City

RESOLUTION OF GOVERNING BOARD State of South Dakota County of Pennington ss

I, Finance Officer of the City of Rapid City, do hereby certify that at an official meeting held on the ____ day of _____, 1995, the Rapid City Common Council did, by resolution, approve the within plat.

Dated this 8th day of November, 1995 — Finance Officer of the City of Rapid City

CERTIFICATE OF THE REGISTER OF DEEDS State of South Dakota County of Pennington ss # 60514

Filed for record this 8th day of November, 1995 at 4:19 o'clock P M., and recorded in Book 27 of Plats on Page 49.

Pennington County Register of Deeds — Fees 10.00

275

Meeting with BHP&L

6/3/85

1. We need to take over Dan Sunstrum yet from BHP&L. No KU will exchange on this as we gave BHP&L permission to serve this until we in the area. We will have to buy BHP&L's line & service to the house. Tentative date set for June.

2. Need to get a list of the new consumers we serve in Springfield Mobile Home at BHP&L's request to them.

3. Next meeting for set for Sept. 12.

Oct. 15, 1985

Meeting with Black Hills Power & Light

1.) BHP&L gave us permission to serve Joanne Boardman (24 KWh's) and Alfred Boardman (9795 KWh's). We a to let BHP&L know when we are ready to take over Alfred Boardman. We need to look at th then an equal amount of KWh's.

2.) Send Gene a list of the new accounts in Kingsile Mobile Home Ctr that belong to BHP&L.

An Investor Owned Utility
BLACK HILLS POWER and LIGHT COMPANY
SERVING IN SOUTH DAKOTA, WYOMING AND MONTANA
P.O. BOX 1400, RAPID CITY, SOUTH DAKOTA 57709 . . . AREA CODE 605 . . . TEL. 342-3200

July 12, 1984

Larry and Carol Seitz
RR 6 Box 3340
Rapid City SD 57701

Dear Mr. and Mrs. Seitz:

Because West River Electric Assn. has facilities adjacent to you at the Sunnyside Mobile Home Court (formerly Rest Haven) on Sturgis Road, we are requesting them to provide electric service to the rest of the Mobile Home Court until we have additional reason to extend our line to your location.

Your site is in the certified territory of Black Hills Power and Light Company, and we reserve the right to serve you at any time in the future.

Sincerely yours,

Gene Raetz

Gene Raetz
District Manager

cc R.E. Furois
Jim Pahl
Doug Mehlhaff

An Investor Owned Utility
BLACK HILLS POWER and LIGHT COMPANY
SERVING IN SOUTH DAKOTA, WYOMING AND MONTANA
P.O. BOX 1400, RAPID CITY, SOUTH DAKOTA 57709 . . . AREA CODE 605 . . . TEL. 342-3200

July 12, 1984

Thorval A. Sautter
WREA
Box 412
Wall, SD 57790

Dear Thor:

Attached is a copy of my letter to Larry and Carol Seitz. We authorize you to provide service until we are closer to their site. At that time, we will purchase the facilities you install to serve them at the Sunnyside Mobile Home Court.

Sincerely yours,

Gene

Gene Raetz
District Manager

cc R.E. Furois
Jim Pahl
Doug Mehlhaff

County PENN
N-S 2N E-W 7E Sec. 17
Map Detail No. 90207
Est. Cost
Cost 6748.18

WEST R ELECTRIC ASSOCIATION, INC.
South Dakota 11, Pennington
Staking Sheet - Underground

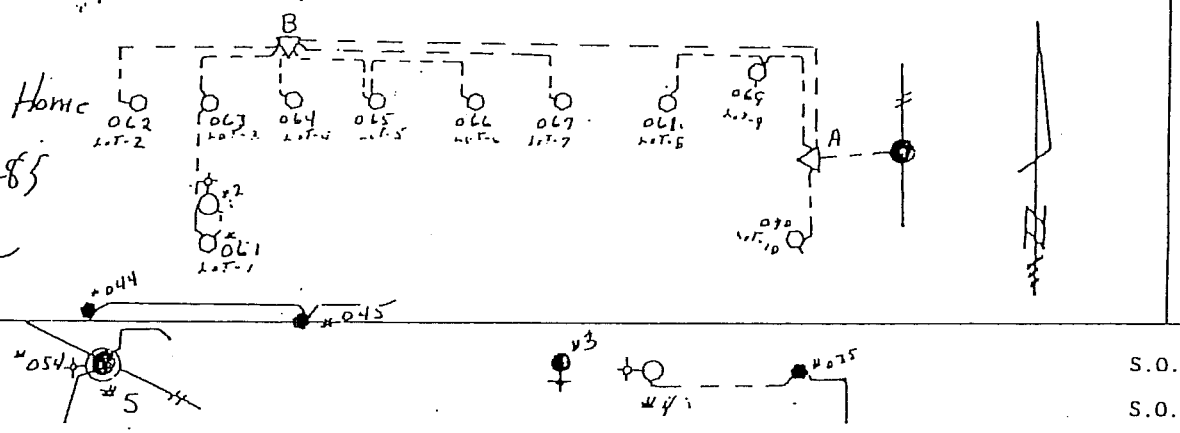
WORK ORDER NO 14617
RETIREMENT W.O. NO.
SHEET NO. 1 OF NO. 2
LINE LEAD
STAKED BY CM DATE 4-2-8
CHECKED BY DATE

PRI-WIRE O.H: SIZE: KIND: RULING SPAN: BURIED SIZE: 1/0 1Ø KIND: 25KV

POLE NO.	U.R.D. UNIT NO.	SPAN	POLES H. & C.	PRI-UNIT O.H.	PRI-UNIT U.R.D	R/W CLEARING	TRANS. "G"	TRANS. "UG"	GR. "M"	GUY NO.	GUY UNIT "E"	GUY LEAD	ANCHOR "F"	SECONDARY O.H. SPAN UNDER-BUILD	SECONDARY O.H. SPAN SEC. ONLY	SECONDARY O.H. UNIT NO	SECONDARY O.H. UNIT J.ORK.	SERVICE O.H. SPAN	SERVICE O.H. UNIT NO.	SERVICE O.H. UNIT K	SECONDARY BURIED SPAN	SECONDARY BURIED UNIT NO	SECONDARY BURIED UNIT "UK" OR "UM"	SEC OR SER. WIRE SIZE	METER LOOP	METER SIZE METER	METER "UMB"	MISC. & REMARKS
X1 40790			35-5	A1-1																								
					UM2-4				11																			
TRANS A		40'						UG225	6-6													2	UM3-1					
Pcd #10									6-6												30'	1	UX100SS2					
Pcd #9									6-6												30'	1	UX100SS2					
Pcd #8									6-6												60'	1	UX100SS2					
TRANS B		275'						UX7374	6-6													1	UX7374-1					
Pcd #4									6-6												20'	1	UX100SS2					
Pcd #5									6-6												60'	1	UX100SS2					
Pcd #6									6-6												90'	1	UX100SS2					
Pcd #2									6-6												110'	1	UX100SS2					
Pcd #3									6-6												70'	1	UX100SS2					
Pcd #1									6-6												115'	1	UX100SS2					
X2 134996			30-6						11												3'	1	UM25					M2L5(100)1
X3			35-6																			1	UM-5					M2L-5(125)
207-7									6-6												155'	1	UX100SS2					

SKETCH OF WORK

SUNNY Side Mobil Home Court
Completed 4-12-85
Dan & 7 roads



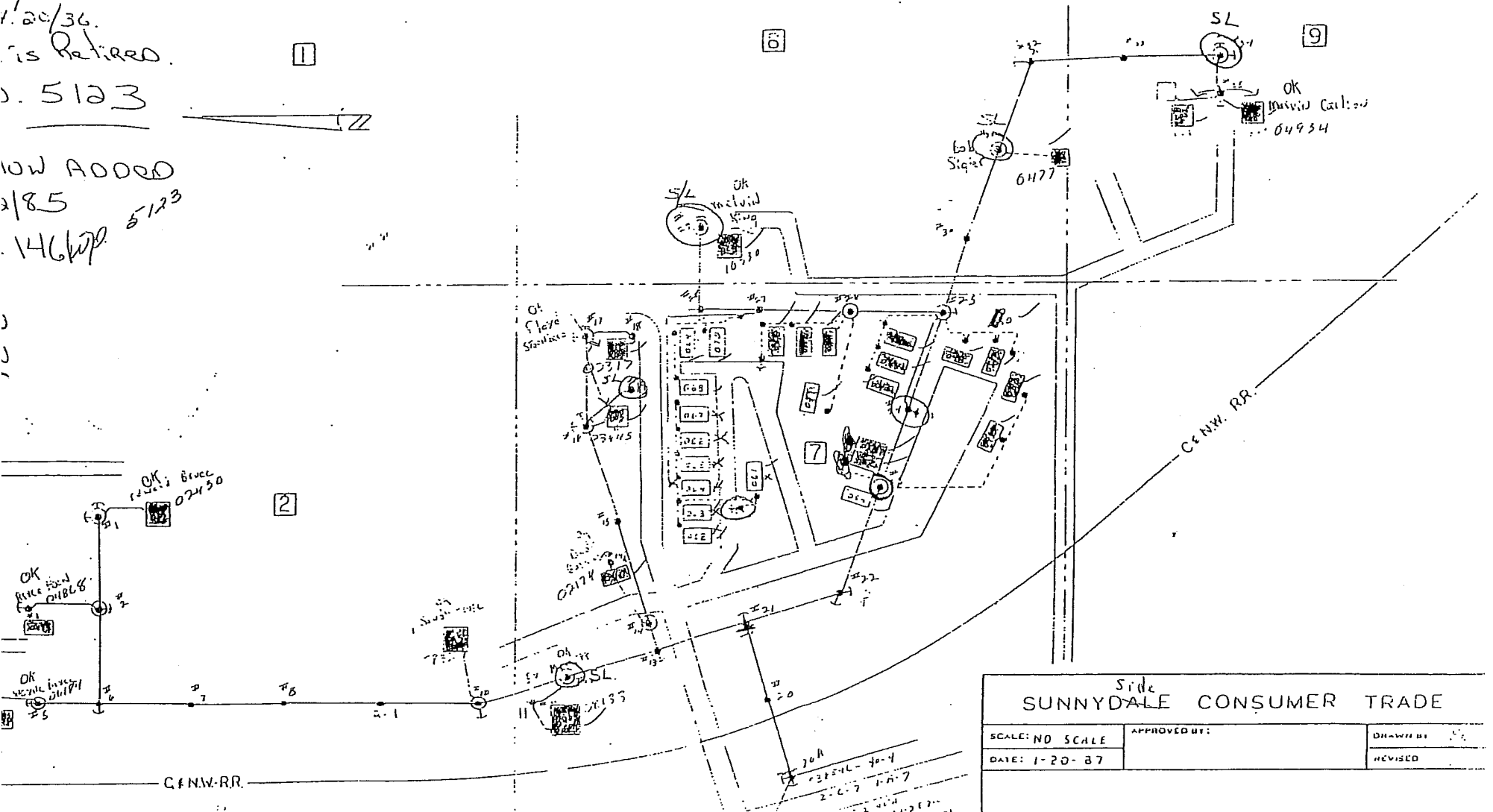
*Denotes Secondary Joint with Primary

	FT.	NO WIRES	LINE FT.	WIRE SIZE & KIND
PRI. O.H.				
PRI. BURIED	315'	1		1/0 25
SEC. O.H.	75'	3	175'	2 UM
SEC. BURIED	605'	7 Pcs		4 UM
SER. O.H.				
SER. BURIED				

S.O.# Temp. Loop
S.O.# 13032 Perm. Loop

m a-11
loops
17
8.18
20/36.
is Retired.
5123

10W A0080
2/85
146 hp 5123



SUNNYDALE CONSUMER TRADE		
SCALE: NO SCALE	APPROVED BY:	DRAWN BY:
DATE: 1-20-87		REVISED

November 24, 1981

Meeting with Black Hills Power & Light

Items covered included:

a) Wapa line
b) Bruch
c) Morris
d) discussed circuit board BHP&L has for sale

Roch service → gave permission to BHP&L to serve this account and if we are able to take it over no KWh's will be exchanged. This is the service for the double wide modular home.

Meeting with BHP&L

11/13/84

1.) They passed out a revised copy of the ~~rules~~ BHP&L and ourselves have agreed to regard the territory between us.

2.) Discuss the Hidden Valley exchange. We will sell the transformers to BHP&L. Agreed to exchange Hidden Valley up to, but not including Kilner. On their line we would exclude Roth. The KWH's we have is 194,529; theirs is 193,710 KWH's. We need to look at line running South from Andersons and let BHP know where we want to terminate. We have set the exchange for Dec. 11. They will replace the [illegible] and return ours.

3.) Discussed the exchanging of territory of the Plains Trailer Court, and the Villa Trailer Court, INC. It was decided to leave the territory as is for now.

4.) ~~We gave BHP&L the [illegible] service for a [illegible] shed.~~

WEST RIVER ELECTRIC ASSOCIATION, INC.

BOX 412, WALL, SOUTH DAKOTA 57790
Tel: (605) 279-2135

BRANCH OFFICE: 3250 EAST HWY.
RAPID CITY, SOUTH DAKOTA 577
Tel: (605) 342-45

November 7, 1984

Mr. Gene Raetz
Black Hills Power & Light
Deadwood Avenue
Rapid City, SD 57701

Dear Gene:

By this letter we authorize BHP&L to provide electric service to a building housing a truck shed on property of Mr. Hubert Roth Sr, in the north ½ of Section 16, R8E, T1N. Because the building is in the certified service territory of West River Electric Association we reserve the right to provide service to this building at a later date when we have facilities closer to the site.

Sincerely yours,

Thorval A. Sautter
Manager

TAS/jb

CC: Mr. Hubert Roth Sr, 4200 Valley Drive
Jim Pahl RC Office

March 2, 1985

Gene Raetz
Black Hills Power & Light
Rapid City District Office
Deadwood Avenue
Rapid City, SD 57701

Dear Gene:

We authorize Black Hills Power & Light to serve a modular home of Hubert Roth being located in the certified territory of WREA in section 16, T1N, R8E adjacent to the home of Dave Roth.

This authorization is given with the understanding that if at sometime in the future we have facilities near this location and wish to take over the service, we can purchase your facilities at thier depreciated value and no KWH would be given in exchange for this service.

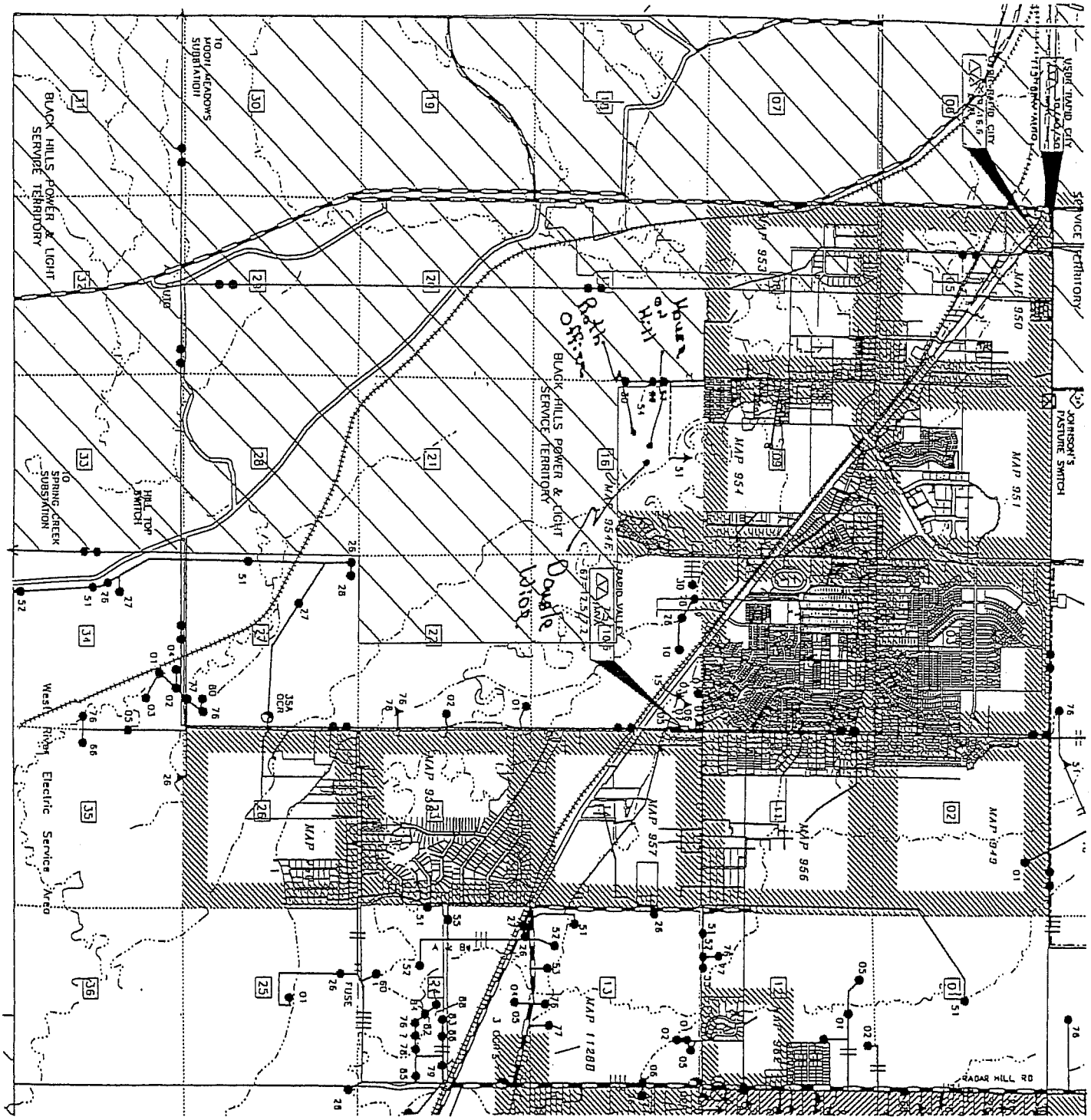
Sincerely yours,

Thorval A. Sautter
Manager

TAS/jb

CC: Jim Pahl

JOINS 1328



JOINS 1229

JOINS 1227

JOINS 1128

DETAIL

COMPILED FROM COUNTY MAPS
RURAL ELECTRIFICATION ASSOCIATION

COUNTY	PENNINGTON
TOWNSHIP	1N
RANGE	8E
MAP	1228

WEST RIVER ELECTRIC ASSOCIATION

WALL, SOUTH DAKOTA
SOUTH DAKOTA 11 PENNINGTON

236

DRAWN BY: A. Blansett
LAST WOI: ---
LAST REV: Jan 2001 Map Book
FILE NAME: WREA DETAIL MAP

RUSHMORE ELECTRIC POWER COOPERA
ENGINEERING DEPARTMENT

Meeting with BHPVL on Territory
5/23/89

1.) We have been unable to contact David Roth regarding the possibility of trading to us. We will continue to try and contact him.

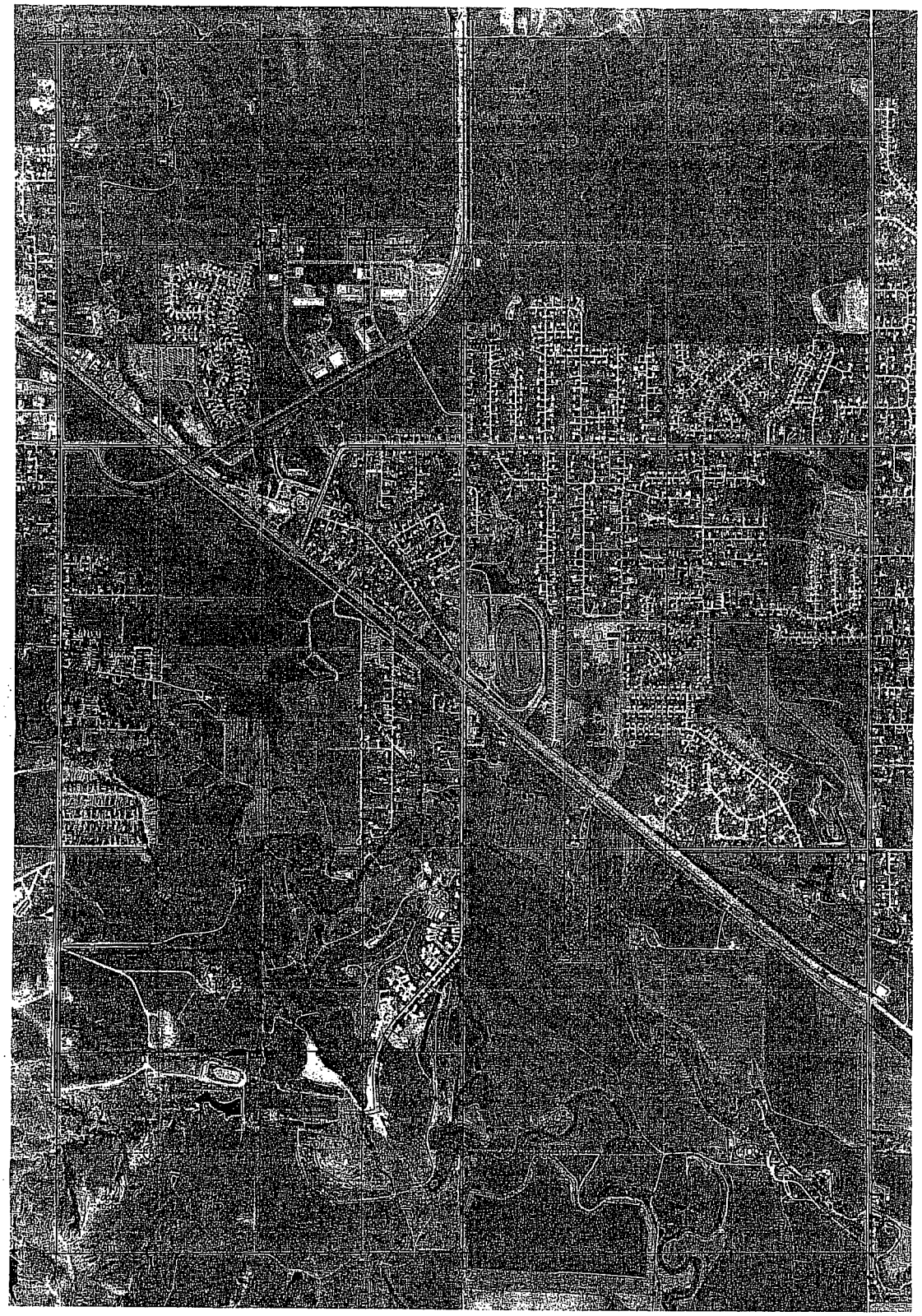
2.) Gene mention the City of Rapid City might be contacting us regarding backup power to the sewer plant.

3.) I passed out an updated list of frozen customers we serve in BHPVL's territory.

4.) Discuss the potential trade of Quiet Mile (International Sh

5.) Gene is going to get the highway easement near Crow's I-90 transferred to us.

6.) Next meeting is July 25, 1989



"A"
PLAT OF LOT A SE1/4 NW1/4 SEC. 4-1N-8E
"B"
RUSHMORE REGIONAL INDUSTRIAL PARK
"C"
RUSHMORE REGIONAL INDUSTRIAL PARK, PLAT OF LOT 4 BLK. 4

"D"
RUSHMORE REGIONAL INDUSTRIAL PARK, PLAT OF LOT 3 BLK. 4
"E"
RUSHMORE REGIONAL INDUSTRIAL PARK, PLAT OF LOTS #1 & 2 BLK. 4
"F"
HOUK SUB., PLAT OF LOTS A & B OF LOT 2 OF TR. A & LOT 3R

"G"
PAUL SUB., PLAT OF TRS. 1 & 2 (PT. VACATED)
"H"
PLAT OF LOT A NE1/4 SEC. 15-1N-8E
"I"
PAUL SUB., PLAT OF UTILITY LOT 1 OF TR 1
"J"
PLAT OF LOT W NE1/4 NE1/4 SEC. 15-1N-8E

"K"
RUSHMORE REGIONAL INDUSTRIAL PARK, PLAT OF LOT 5 BLK. 4
"L"
RUSHMORE BUSINESS PARK, PLAT OF LOT 1 BLK. 1

"M"
RUSHMORE REGIONAL INDUSTRIAL PARK, PLAT OF LOTS A & B OF LOT 1R BLK. 4

Roth

THIS MAP IS NOT INTENDED TO REPRESENT A SURVEY OF THE LAND, NOR TO BE A LEGAL METHOD.

SCALE: 1" = 600'

REVISED 11-1-2000

SECS. 3, 4, 9, 10, 15 & 16 T.1N. R.8E.

Jan 13, 1981

Meeting With Black Hills Power and Light

1) We are ready to proceed with trading the Cal-Gas area. Cal-Gas has agreed to buy the lighting.

2) On the Hidden Valley line to the Lein house BHP+L plans on coming in from a different direction because of ~~[illegible]~~ location of the house.

~~3) We agreed to allow BHP+L install a service for I-90 truck stop underneath their line. If we ever take this service over no Kwh are to be exchanged for this service as it is in our territory.~~

4) We owe BHP+L 52,229 KWH's minus 1,998 KWh's we traded to them (Larry Wilsey & Henry Judd) leaves us owing BHP+L 50,231

5) We traded Larry Wilsey & Henry Judd and the new bar to BHP+L.

DON'T SAY IT - WRITE IT!

Myself From Jim P. Date 12/7

Subject

- ☐ Please Handle
- ☐ Give Me Copy Your Reply
- ☐ Discuss With Me
- ☐ For Comment
- ☐ For Information
- ☐ For Suggestion
- ☐ For Signature
- ☐ Send to Files
- ☐ Please Return
- ☐ Do Not Return
- ☐ Discuss With

Call Gene Raety and told them to go ahead and provide the service the I-90 Truck Stop wants and if we ever take that account over those KWH's used at the new account will not be part of any exchange.

1288Z-C TYPECLINOX PRESS-BOX 199 SHELBYVILLE, INDIANA 46176

R.
W

Meeting with BHP&L on territory
Date - 9/16/87

1.) Madonna Reile - service near Midwestern Homes - BHP&L wants to serve the consumer since its their terit

2.) BHP&L gave us KWH figures for 3 Crow's I-90 truck stop. We are going to consider trading Sunnyside Mobile Home Ctr for Plainview. BHP&L would like Rapid Crystal Ice and the Paper Company in exchange for Crows I-90 Truck Stop.

3.) We also discussed the City Sewer plant, RC Implem They have about 2.2 million KWH's involved at the sewer pl

4.) Get monthly figures for R Crystal Ice, Paper Co & Dog track to BHP&L.

5.) Also discussed our phasing in our rates over 5 years if the situation arose.

6.) Next mtg Oct 15 - Check to see if our room is available.

Mtg with BHP & 2

Nov. 22, 1988

1.) Discussed the Sunnyside Mobile Home Court, Raper Crystal Ice & Crow's I-90 Truck Stop trade.

2.) Discuss the Roth area for a possible trade. Also discussed the Blue Wing & Plainview trailer Ctr. Discussed other areas of potential trade like sewer plant South Valley Drive area & Black Hawk area.

3.) Next Mtg Jan 10, 1989

November 12, 1991

Meeting with BNP&L

1.) Discuss serving the well at Peaceful Pines serving Henry & Carol Maicki at the request of BNP&L.

2.) Discuss new buildings at Dakota Homes.

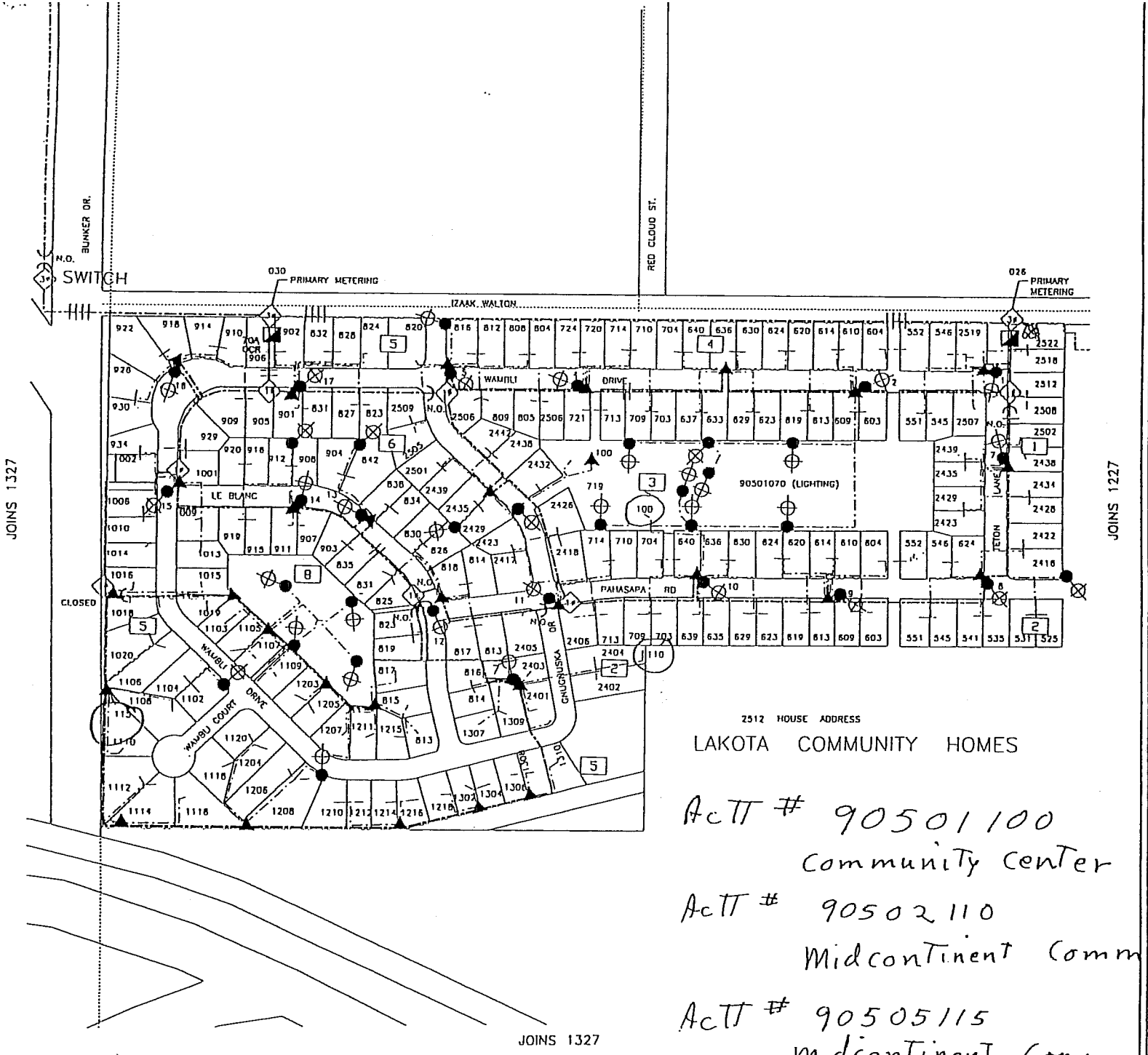
3.) Check to see if BHP&L paid on J&J Trailer Court.

Jan 29, 1992

Meeting with BHP&L

1.) ~~Discuss Tahoto Homes Need to give us letter on new village~~

2.) Need to give us letter on well at Macihi
3.) Gave us information on sewer plat.
4.) WREA put service into metal fabrication. - Need letter from BHP&L.
5.) We need to provide BHP&L a letter on street light at Dorter's Corner.
6.) Discuss the BH Greyhound - BHP&L believes as one the characteristic of service.
7.) Discuss Nel's Rock shop building an all-electric home would allow BHP&L to service it & they give us KWH's for it.
8.) Talked about updating proper customer list.
9.) Next meeting March 17 - WREA



DRAWN BY: A. Blansett
LAST WO#: ---
LAST REV: Jan 2001 Map Bo
FILE NAME: WREA SUBDMAP R

RUSHMORE ELECTRIC POWER COOPERAT
ENGINEERING DEPARTMENT

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

SCALE 1in = 350ft 245

SUBDIVISIO
COMPILED FROM COUNTY MAP
RURAL ELECTRIFICATION ASSOC

COORDINATE	TOWNSHIP	RA
1327	2N	7
SEC	25	
MAP	905	

BLACK HILLS POWER AND LIGHT COMPANY
P.O. BOX 1400 409 DEADWOOD AVENUE
RAPID CITY, SOUTH DAKOTA 57709

STUART WEVIK
RAPID CITY AREA MANAGER
swevik@blackhillspower.com

TELEPHONE
(605) 721-2222
FAX: (605) 721-2573

March 24, 2000

Mr. Dave Semerad
West River Electric Association
3250 E. Hwy 44
Rapid City, SD 57703

Dear Dave:

This letter is to confirm one of our previous telephone conversations. TCI contacted Black Hills Power and Light requesting service to proposed booster stations in the Lakota Homes area. I understand these booster stations are located along Pahasapa Road, Teton Lane, and Wambli Drive. Black Hills Power and Light authorizes West River Electric to provide service to these booster stations.

This authorization is given with the understanding that if at some time in the future Black Hills Power and Light decides to take over this service, we may purchase your facilities at their depreciated value and no kWh would be given in exchange.

Sincerely,

Stuart Wevik

Stuart Wevik
Rapid City Area Manager

246

Jan 29, 1992

Meeting with BHP&L

1.) Discuss Tahoth Homes. Need to give us letter on new bldgs.

2.) Need to give us letter on well at Machi
3.) Gave us information on sewer plat.
4.) WREA put sewer into metal fabrication. Need letter from BHP&L.
5.) We need to provide BHP&L a letter on street light at Dustin's Corner.
6.) Discuss the BH Greyhound - BHP&L believes as me on the characteristic of service.
7.) Discuss Nelo Rock shop building an all electric home & would allow BHP&L to service it & they give us KWH's for it.
8.) Talked about updating frozen customer list.
9.) Next meeting March 17 - WREA

Dr. Allen

Meeting with BHP&L 11-24-92

1) BHP serving 311 customers using 8.3 million KWH/yr at Villa Ranchero
Look at HWH use at Black Hawk and Dakota Homes.

2) Discussed the trade area near Pole Rock Shop. John Allen at Vet Clinic gave impression he was opposed to trade.

3) WREA to contact Dennis Snyder near Black Hawk.

4) Compare sewer plant rate with BHP's proposed rates

Next meeting scheduled for Jan 19, 1993

Meeting with BH P + L on territory

3/16/93

1.) Gene Talked to us about serving 2 accounts in Peaceful Pines by the well we took over several years ago. We agreed to look at it. They are to get with us on looking at it.

2.) BHP&L still doesn't know what their new rate will be for the sewer plant.

3.) Need to get a letter to Gene on S/L for Dr Norris building.

4.) Talked about the need for informing the new individual who will be taking over Gene's position on agreement on the ballfield. softball complex

5.) BHP&L needs to look at the Timberline usage at the RC Implement bldg.

6.) We will still try to contact Dennis Snyder to see if he would be interested in trading.

7.) Gene will look at Thunderbird Homes usage.

8.) BHP&L will look at Lakota Homes.

9.) Next meeting May 18.

Beard Trucking - April 1978
we built & own service -
BH&L serves it

~~Angelbar - another warehouse~~
~~built & served by BH&L~~
~~(we were not consulted - we are terrified)~~
~~May 1978~~

May 1978 service to trailer north
of Mowery house - we put in
drop - to BH&L line & they
serve it.

north of drive in Theater near dry track
BH&L built service & owns it
hooked to our line - service to
old school house (Apr & May - 78)

11/3/84

Customers Served by B&PL in NRE's Territory:

Angel Brothers - [illegible]
~~Angel Brothers - [illegible]~~
Fireworks Service at I-90 Truck Stop - [illegible]
Hubert Rothlin - [illegible]
Hubert Rothlin - Truck Stop
Dan Lindstrom - [illegible]

6/27/79

To let us know on the security light at George Blood.

Harry Sullivan to put together a price on the line we will be buying from BHP&L on the exchange of the Blood area.

Peterbilt line exchange - everybody has okay except Flach-Hoffman. Also to check on the services of Angels Bros that no KWH's will be exchanged. Probably to exchange in August.

If Sickterman sell his house BHP&L would want to finish trading the rest of that line to us.

Discussed KWH's on Gillette Dairy & Paper Co - 815,640 + 48,846 for a total of 864,486 we would have to trade - BHP&L has 743,344 KWH's on the Hills Brake line to exchange. We brought up the fact they would be losing the Dan Dugan account.

Check on light on Box Elder tower at Douglas School - give to BHP&L - We get KWH's.

Well at truck stop needs to be settled for usage.

Lights from J & J & Schaeffer's

Meeting with BHP & L

Blood area – June 18, 1979 – date to trade.

We will loan them a step-down transformer until they can get one.

I am to talk to the two consumers where BHP&L & ourselves each have a service there to see if they will consider one service.

We haven't receive the pole lights from Westwind & Schaeffer. Will be returned end of May.

Hills Brake area 743,344 KWH's

Check on service Box Elder has at the water tower at Douglas School. the trading of those KWH's.

Check on Angel Bros services we should have.

Update frozen list after the Blood area trade.

We will estimate the load at the pump at the Scale house at the I-90 truck stop.

We will check to see if Gillette Dairy & the Paper Co will trade.

253

DON'T SAY IT - WRITE IT

To: Gordon Angel Trailer Service

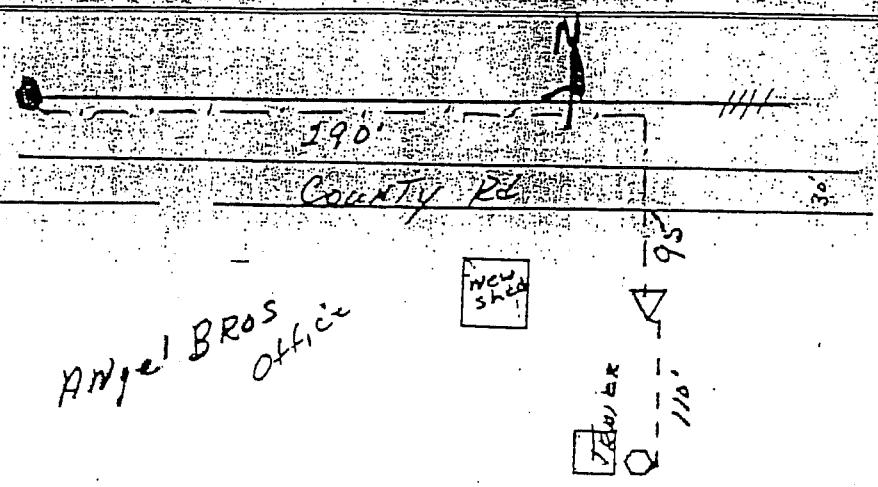
From: Cliff

Date: 10-17

343-5854

- [ ] Please Handle
- [ ] Give Me Copy Your Reply
- [ ] Discuss With Me
- [ ] For Comment
- [ ] For Information
- [ ] For Suggestion
- [ ] For Signature
- [ ] Send to Files
- [ ] Please Return
- [ ] Do Not Return
- [ ] Discuss With

10/17/78
Call Gene Raety & give permission to serve it.



.2-C TIPPECANOE PRESS - BOX 499 SHELBYVILLE, INDIANA 46176

Gene Rados - 342-3200
May 3
Angel Bldg - new bldg
Bldg it's at the gate

☐ For Comment ☐ Send to Files

5/24/

Angel Bros
steel shed - our service
U/G right across the road
Ø service.
BHP&L owns the secondary & meter
& installed it approx 5-3-78.

Dan Philipek
(Burmeis
trailer service
right at the end of BHP&L
line are 700'-800' feet away in
u/g.

5-24-78 - Talk to Gene - write h
letter
We asked BHP&L to serve this acct p
time being - We furnished everything except the me

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11/13/84

Customers Served by BHP&L in NREA's Territory:

- Angel Brothers - Shed in main property
- Angel Brothers - Mobile home in Mar[illegible]
Service at I-90 Truck Stop - Minute of 1-13
Hubert Roth, Sr. - House
Hubert Roth, Sr. - Truck Shed
Dan Lundstrom - House

An Investor Owned Utility
BLACK HILLS POWER and LIGHT COMPANY
SERVING IN SOUTH DAKOTA, WYOMING AND MONTANA

P.O. BOX 1400 RAPID CITY, SOUTH DAKOTA - 57709 . . . AREA CODE 605 . . . TEL. 342-3200

The following are customers in WREA territory which Black Hills Power and Light Company has hooked up and is serving temporarily due to our distribution being closer:

Angel Bros.	Acct. #11.26.9223.1	Meter #68338
~~Dan Filipek~~	~~Acct. #11.26.9318.1~~	~~Meter #62152~~
~~Ron Beaird Trucking~~	~~Acct. #11.26.9359.1~~	~~Meter #68088~~
~~Mike Opitz~~	~~Acct. #11.54.6183.1~~	~~Meter #59540~~

Angel Bros - Shed in main lot.
Angel Bros - mobile home service
Service at I-90 truck stop minutes of 1-13-81
Roth Service

BLACK HILLS POWER AND LIGHT COMPANY
P.O. BOX 1400 625 NINTH STREET
RAPID CITY, SOUTH DAKOTA 57709

http://www.blackhillscorp.com
e-mail: evhoyt@blackhillspower.com

EVERETT E. HOYT
PRESIDENT AND CHIEF
OPERATING OFFICER

TELEPHONE
(605) 348-1700
(605) 348-9749 FAX

August 20, 1999

Mr. Jim Pahl
General Manager
West River Rural Electric Association
PO Box 412
506 Glenn Street
Wall, SD 57790-0412

Re: Rapid City Waste Treatment Plant

Dear Jim,

We have given careful consideration to your suggestion that Black Hills Power (BHP) has somehow violated state law or a prior informal agreement with West River in serving approximately 150kw of load added in 1987 at the Rapid City sewage waste treatment plant located along Rapid Creek east of Rapid City, and I'm sure that it comes as no surprise that we do not concur in your position.

It is my understanding that after a public vote which awarded BHP the right to serve the waste treatment facility, BHP began serving the facility when it was initially constructed in the 1960s. As a part of the implementation of the assigned service area provisions in the 1975 Electric Utility Act, the waste treatment plant was formally considered a "frozen customer", and BHP continued to provide service to the facility under the statute which states "Each electric utility shall have the exclusive right to provide electric service at retail at each and every location where it is serving a customer as of March 21, 1975 . . . ."

It is your contention that when additional load was added at the waste treatment facility in 1987, West River was entitled to serve that load because the load was connected through a separate electrical entrance on the facility and because the frozen customer is located in West River's assigned service area. Again, based on the above statutory provision, we believe that BHP has the right to serve a customer as it needs electric service – including the customer's load growth. We do not believe that the addition of a second electric service entrance for the convenience and cost-savings of the customer in this instance is a determinative factor in the right to provide electric service.

As a participant in the drafting of the 1975 Electric Utility Act, we recognized that it was time to eliminate the costly duplication of electric facilities which had occurred in many situations as competing electric suppliers raced to provide service to new customers, attempting to claim electric service territory in the process. One of the fundamental purposes of the service territory provisions of the 1975 Act was to prevent future duplication of facilities. Your position that West River was entitled to serve the load growth at the sewage treatment plant in 1987 "flies in the face" of the intent of the service territory law in that a situation would be presented in which two electric suppliers would build electric distribution facilities to provide service to the same facility.

I am very familiar, Jim, with the situation in Aberdeen more than 20 years ago where a corporation built an addition to an existing building owned by a separate corporation, and the South Dakota Public Utilities Commission ruled that the electric supplier (NWPS) serving the initial customer and facility was not entitled to serve the second customer and the new part of the building. The decision was purely political at the PUC level, and NWPS chose not to appeal the PUC's decision to the circuit court as there were overriding issues for NWPS at that time. I do not believe that the SDPUC would reach the same result in that fact situation today, and the underlying factual situation has not been litigated.

I appreciate your advising me, Jim, of several instances where our firms have agreed to allow the other supplier to serve new facilities and customers in the vicinity of a frozen customer. I do not believe, however, that agreement of our firms in those instances is controlling in the present situation regarding load growth for the waste treatment facility.

Jim, we recognize that for several years representatives of BHP and West River have discussed a possible trade of the waste treatment facility for other locations more contiguous to BHP's service territory. We are certainly willing to continue those discussions, Jim, but we do not agree with your claim of a right to serve load growth at the waste treatment facility.

Sincerely yours,

Everett E. Hoyt

C: John Nooney