

EAST RIVER

ELECTRIC POWER COOPERATIVE

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July 7, 2008

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501-5070

Dear Ms. Van Gerpen:

Attached please find East River's Petition for Declaratory Ruling on the 115 kV Transmission Line Design.

Please contact me if you have any questions or need additional information.
Thank you.

Sincerely,

Robert K. Sahr
General Counsel

RKS/sl

Enc.

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

PETITION OF EAST RIVER ELECTRIC)
POWER COOPERATIVE, INC. FOR)
DECLARATORY RULING ON 115 kV)
TRANSMISSION LINE DESIGN)

COMES NOW, East River Electric Power Cooperative, Inc. of Madison, South Dakota ("East River"), by and through its undersigned counsel, and files this Petition for Declaratory Ruling.

I. APPLICABLE LAW

SDCL 49-41B-2.1 states, in part:

For the purposes of this chapter, a transmission facility is:

- (2) An electric transmission line and associated facilities with a design of one hundred fifteen to two hundred fifty kilovolts, ***if more than one mile in length of the transmission line does not follow section lines, property lines, roads, highways or railroads***, or is not reconstruction or modification of existing transmission lines and existing associated facilities located on abandoned railroad rights-of-way.... (emphasis added).

II. FACT SCENARIO

East River requests the Commission assume the facts set forth herein and, if additional information is needed, the facts contained in two pending East River siting applications: Commission Docket EL 08-010, *In the Matter of the Application of East River Electric Power Cooperative, Inc. for a Permit to Construct Approximately 13 miles of 115 kV Transmission Line* and Docket EL 08-016, *In the Matter of the Application of East River Electric Power Cooperative, Inc. for a Permit to Construct 9.5 Miles of 115 kV Transmission Line in Lincoln and Turner Counties*.

East River can provide additional information if the Commission desires.

1. The transmission line ("Line") is a new 115 kV overhead electric transmission line and is not reconstruction or modification of existing transmission lines.

2. The Line will run parallel to, or generally parallel to, ¹ the center line of county or township roads for its route, except for portions at the beginning and end of the route where the Line commences and terminates.
3. The pole structure is single pole design except for locations where a different structure design is needed, like two or three pole design, due to special engineering circumstances such as crossing an under existing transmission line. When placed in the ground, the poles are approximately two feet in width at or near the surface level. The attached Exhibit 1 illustrates the typical single pole design. The diagram shows two insulators on one side and one insulator on the other side. There may be times when all three insulators are located on one side.
4. The total distance of the beginning and end portions of the Line which do not follow county or township roads (or section lines, property lines, roads, highways or railroads), plus the segments that have two or three pole design, will total less than one mile in length.
5. Except for the beginning and end portions of the Line and where two or three pole design is used, East River will locate the Line and poles in one of two places:

Scenario 1: Private Side

Where East River has landowner permission, the Line is designed to site poles parallel to the road along the road right-of-way line on the private side. The poles are located to generally touch, or, recognizing occasional minor variances that result during construction, be within inches of touching, the road right-of-way (which typically will also be the fence line).

Scenario 2: Public Side

Where East River does not have landowner permission, the Line is designed to site poles parallel to the road along the road right-of-way on the public side. Again, the poles are located to generally touch, or be within inches of touching, the road right-of-way/fence line.

As shown in Exhibit 2, the poles located under Scenarios 1 and 2, are "mirror images" of each other with the only difference being whether or not they are on the private or public side of the road right-of-way.

¹ The Line is designed to run parallel to the road right-of-way center line. There will be points along the Line where, due to the slightly imprecise nature of construction, topography or turns, terrain or other factors, the Line may slightly deviate from a parallel path.

6. The Line described in Scenario 1 is more than one mile in the length. The Line described in Scenario 2 is more than one mile in the length.

III. ISSUE

ISSUE: Does a 115 kV transmission line generally running parallel to the road right-of-way and designed to site the poles in two locations, i.e., on the private side and on the public side alongside the road right-of-way line, with the poles located to generally touch the road right-of-way, meet the standard of “following” section lines, property lines, roads, highways or railroads contained in SDCL 49-41B-2.1(2)?

If, under both Scenario 1 and 2, the lines “follow section lines, property lines, roads, highways or railroads,” then East River believes the Line should be exempt from the siting act.

If either the design described in Scenario 1 or the design described in Scenario 2 “does not follow section lines, property lines, roads, highways or railroads,” then East River believes the siting process must be followed for the Line.

While East River has used a fact scenario in this docket that involves county and township roads, it would be useful for future planning if the Commission considered, and ruled upon, not just the design at hand, but also similar design scenarios where the transmission line and poles parallel section lines, property lines, roads, highways or railroads.

IV. REASONING

A. *The Line, Under Scenarios 1 and 2, “Follows” Boundary Lines*

The Commission has siting authority for a 115 kV transmission line “if more than one mile in length of the transmission line does not follow section lines, property lines, roads, highways or railroads...” SDCL 49-41B-2.1.

Except for the beginning and end portions, the Line is designed to run parallel to the road and to follow the edge of the road right-of-way. At no point, under either Scenario 1 or 2, will the poles or the accompanying Line deviate from the design of generally paralleling the county or township road right of way. For instance, the Line will never angle from the road/the right-of-way and cut diagonally across land adjoining the road right-of-way. Under both Scenario 1 (Private Side) and Scenario 2 (Public Side), the poles will generally touch the edge of the road right-of-way.

East River believes the portions of the Line described in both of these scenarios “follow” the road as they are generally parallel to the road center line and run alongside and generally touch the road right-of-way. A small portion at the beginning and end of the Line may cut across land and not follow any boundary line and a small portion of the Line may involve two or three pole design; however, these distances, when totaled, will amount to less than one mile in length.

So, if the portions of the Line described under Scenario 1 and Scenario 2 are not included in the calculation, then less than one mile of the Line does “not follow section lines, property lines, roads, highways or railroads.” Consequently, the exception to SDCL 49-41B-2.1 is met and the Line does not require Commission siting approval.

B. City of Pierre and West River Electric Association Cases Distinguished

The Commission considered similar, but not identical, issues in 1998 and 2000 cases. Docket EL98-004, *In the Matter of the Petition for Declaratory Ruling Filed by the City of Pierre Regarding a Transmission Line*; Docket EL00-030, *In the Matter of the Petition for Declaratory Ruling of West River Electric Association, Inc. on Whether a Proposed Transmission Line Meets the Definition of SDCL 49-41B-2.1*. The cases, both decided by a two-to-one split vote, required, respectively, the City of Pierre and West River Electric to obtain siting permits for 115 kV electric transmission lines. While there are important differences between both cases and the facts herein, it should be noted that the Commission is not bound by its previous decisions.

In the *City of Pierre* case, there were some factual questions as to where the actual line route would lie “since the line had not yet been designed.” It is unclear to East River whether the Commission made a final determination as to the maximum distance the line would extend from the Boundary Line, but the Commission did discuss distances “up to 20 feet from a property line” in its Order.

The line in the *City of Pierre* case had segments of significant length that did not follow roads and instead cut across parcels of land. While such a design could potentially follow property lines or section lines, it certainly is appropriate to carefully scrutinize such a line with a “cross-country” design.

Significant design differences exist between the current scenario and the *City of Pierre*. In this Petition, the Line is at all times running alongside and generally touching the road right-of-way. Compare this to the *City of Pierre* case where the line and poles could have been “twelve to fourteen” and up to “20 feet from the property line.” *City of Pierre*, Finding of Facts No. 6. In this Petition, the Line will not deviate from roads and will not cut across country except for the

beginning and end of the Line as compared to the “cross-country” design employed in *City of Pierre*.

In the *West River* case, the Commission required siting for a proposed 115 kV transmission line. However, the Commission based this on a finding that “the proposed transmission line would be 19 feet outside of the existing 66 foot road right-of-way.” This 19 foot design is significantly different than East River’s plans to run the line alongside the road right-of-way.

C. Policy Considerations

With a line running alongside/touching the road right-of-way (and not cutting across property, fields and pastures) and with landowner permission where possible, there are significant factual and policy considerations leading to a conclusion that the spirit of the law underlying SDCL Ch. 49-41B has been met.

SDCL 49-41B-1 articulates the reasons why the South Dakota Legislature requires Commission siting of certain facilities. These include producing “minimal adverse effects on the environment and the citizens of this statute.”

The law rightfully exists to protect landowners and other public interests under certain scenarios. It prohibits a utility from cutting across farms, ranches and other properties without an impartial regulatory check. None of these scenarios exist in this Petition.

There are significant safety benefits to locating a pole on the landowner side of the public right-of-way as described in Scenario 1. For example, vehicles traveling along the road will be less likely to strike the poles and farm equipment and other wide loads will have additional clearance with this design. Also, if the county or state does road or ditch work along the line route, poles placed on the private side do not have to be moved while poles placed on the public may have to be moved.

Regardless of whether or not the Commission has jurisdiction, multiple governmental entities will review the proposed Line. From EL 08-010, this will include all affected counties, at least two federal agencies and at least three state government agencies. If the Commission decides that the design in question meets the exception to the siting law, it can rest assured that other reviews will take place.

Finally, the line and pole design used for this 115 kV line looks almost identical to the design for a 69 kV line (which does not require Commission siting). Single pole design--not two pole “H” structure design--will be used. Except to the trained eye, it will be difficult to ascertain any significant differences between 115 kV design and 69 kV design.

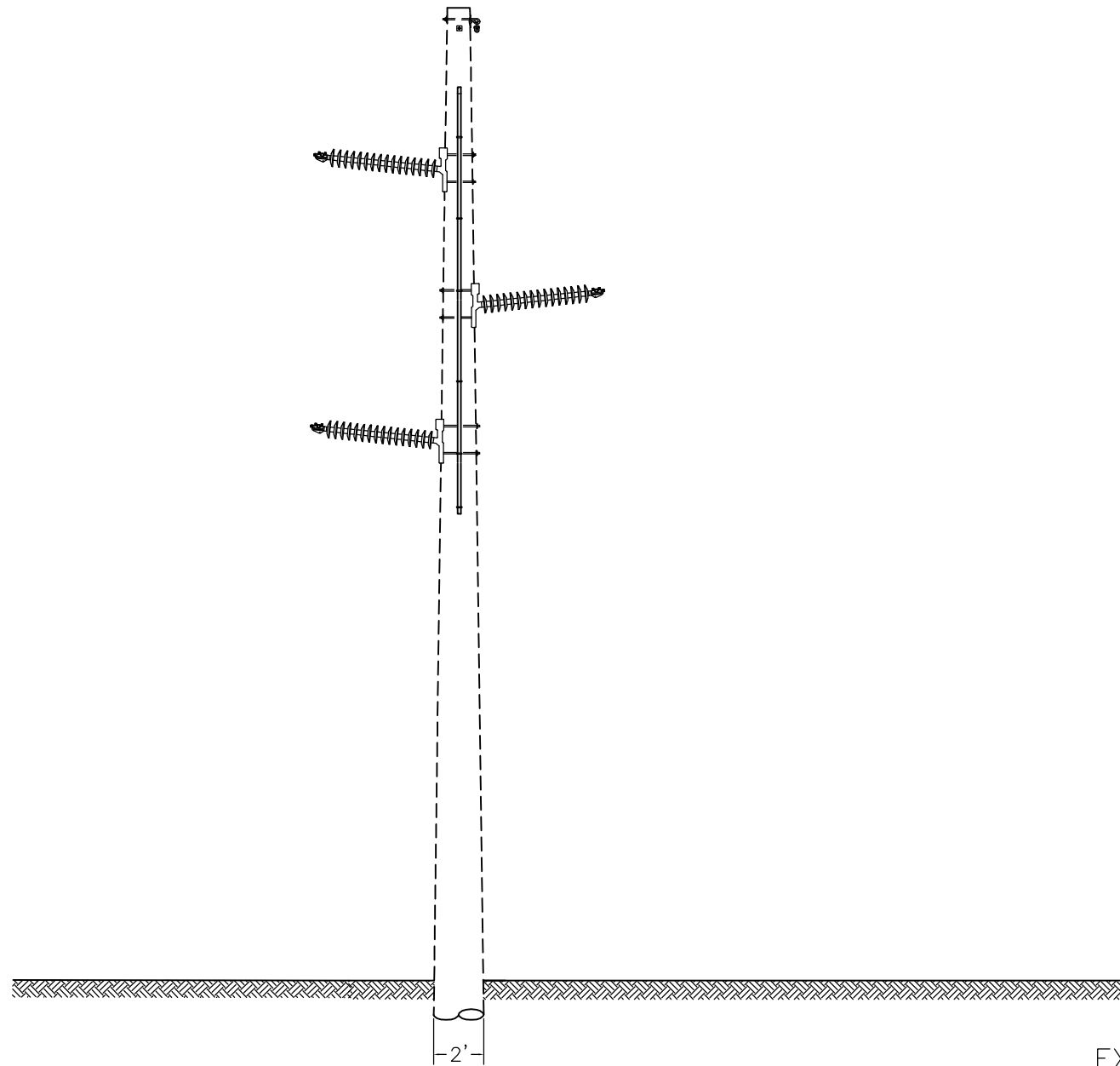
V. CONCLUSION

For all of the following reasons, East River believes the Line described in this Petition should not require Commission siting approval.

A handwritten signature in black ink, appearing to read "Robert K. Sahr", with a long horizontal flourish extending to the right.

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EAST RIVER ELECTRIC POWER COOPERATIVES CHANCELLOR LINE TAP



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OVERHEAD VIEW

