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March 9, 2007

RECEIVED

VIA HAND DELIVERY

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

MAR 09 2007

PUBLIC SERVICE
COMMISSION

Re: Cumberland Valley Electric, Inc. v. Kentucky Utilities Company
Case No. 2006-00148

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten (10) copies of Kentucky Utilities Company's Sur-Rebuttal Testimony in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the additional copy provided and return it to me.

Should you have any questions or need any additional information, please contact me at your convenience.

Very truly yours,

J. Gregory Cornett

JGC/
Enclosures
cc: Parties of Record

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

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MAR 09 2007

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

CUMBERLAND VALLEY ELECTRIC, INC.)

COMPLAINANT)

v.)

KENTUCKY UTILITIES COMPANY)

DEFENDANT)

CASE NO. 2006-00148

**SUR-REBUTTAL TESTIMONY OF
F. HOWARD BUSH, II
MANAGER, TARIFFS AND SPECIAL CONTRACTS**

Filed: March 9, 2007

1 **Q. Please state your name, position, and business address.**

2 A. My name is F. Howard Bush, II. I am the Manager of Tariffs and Special Contracts for
3 E.ON U.S. LLC, providing service to Kentucky Utilities Company (“KU”). My business address
4 is 220 West Main Street, Louisville, KY 40202.

5 **Q. Have you previously offered testimony to the Kentucky Public Service Commission**
6 **(the “Commission”) in this proceeding?**

7 A. Yes. I filed direct testimony on October 6, 2006 and Rebuttal Testimony on January 3,
8 2007.

9 **Q. What is the purpose of your sur-rebuttal testimony here?**

10 A. The purpose of this testimony is to address a number of incorrect assertions made in the
11 rebuttal testimony filed on behalf of Cumberland Valley Electric, Inc. (“CVE”).

12 **Q. Mr. Willhite begins his rebuttal testimony on behalf of CVE by citing to the Pyro**
13 **Case No. 89-349), Highland Mining (Case No. 2002-00008) and Matrix (Case No. 2003-**
14 **00228) cases, and then refers to them again at various places in that testimony. Do any of**
15 **those cases support CVE’s position here?**

16 A. In my opinion as a regulatory witness, they do not. I would urge the Commission and its
17 Staff to carefully review the past orders in each of those cases, because Mr. Willhite takes great
18 liberty in claiming that those cases support CVE’s position here. As I read the orders in those
19 cases, which is the only record of the findings the Commission made with regard to the facts in
20 those cases, the Commission did not address whether a mining operation was a new electric
21 consuming facility, or ECF, in the context at issue here. Specifically, unlike the situation here,
22 neither Pyro, Highland Mining nor Matrix involved decades of mining operations within a single

1 tract of land and seam of coal, all of which were consistently served through a common point of
2 delivery connected to a customer-owned distribution line. For that reason, while each of those
3 cases can and do provide guidance on specific issues relevant to this case, as KU itself has
4 pointed out in past testimony and in discovery, they are not dispositive on the issue of whether
5 Stillhouse No. 2 is a new ECF.

6 **Q. Mr. Willhite also references a settlement in the Shamrock matter (Case No. 90-**
7 **00112). Does that settlement have any application here?**

8 A. No. It is important to recognize that there was no Commission ruling on the substantive
9 issues in that case, because it was settled, and thus the case carries no weight as precedent.

10 **Q. Mr. Willhite characterizes KU's position in this case as one which "contends that a**
11 **new ECF is not created unless a new substation is required." Is that KU's position?**

12 A. No, it is not. To understand the apparent confusion, it is important to back up and
13 recognize that there are really two components involved in resolving the question of when a new
14 ECF is created. First, the Commission must determine what it is that constitutes the ECF. As I
15 have explained in my previous testimony, and as the Commission recognized in its order in *In*
16 *the Matter of: Inter-County Rural Elec. Coop. Corp. v. Kentucky Utilities Co.*, Case No. 94-326
17 (PSC Order of March 14, 1996), that issue is governed by KRS 278.010(8), which defines an
18 ECF as "everything that utilizes electric energy from a central station source." Then, once the
19 scope of the ECF is identified, the Commission must look at whether or not that ECF is "new,"
20 which determination is guided by the facts of the specific case and past Commission rulings, but
21 is not directly defined by statute. Here, because the service entrance and metering equipment for
22 KU's service to BMR is at the KU Lynch Substation, it is KU's position, based on the
23 Commission's past rulings, that substation serves as the central station source for KU's service to

1 BMR in this particular instance. The identity of the ECF here – everything that utilizes electric
2 energy from the central station source – is all mining operations on the U.S. Steel Property in
3 Harlan County, south of Looney Creek, as depicted on Exhibit LEB-1. The question then
4 becomes whether that ECF is new. Because the mining operations that compose the ECF have
5 existed, albeit under changing names and various stages of active operations, and been served by
6 KU from a common point since long before the Certified Territories Act was enacted, it is KU's
7 contention that the ECF here is not new and that KU is entitled to continue its service. However,
8 none of that is meant to say that a substation will always serve as the central station source, or
9 that unless a new substation is required a new ECF is never created.

10 **Q. Mr. Willhite also takes issue with KU's position on the definition of an ECF,**
11 **claiming that there is a difference between an electric consuming facility (singular) and**
12 **electric consuming facilities (plural). What is your response?**

13 A. I believe Mr. Willhite is offering a meaningless distinction that is unsupported in the law.
14 While Mr. Willhite is correct that KRS 278.010(8) defines electric consuming facilities (plural)
15 but not an electric consuming facility (singular), KU's position is based solely upon the
16 Commission's own rulings, which I believe have never recognized any distinction between the
17 plural and the singular in those terms. Indeed, as I pointed out above, the Commission has
18 explicitly used the plural definition set forth in KRS 278.010(8) to define electric consuming
19 facility (singular). *See In the Matter of: Inter-County Rural Elec. Coop. Corp. v. Kentucky*
20 *Utilities Co.*, Case No. 94-326 (PSC Order of March 14, 1996). Of course, the Commission is
21 entitled to significant deference in its interpretation and application of the statutes under which it
22 operates.

1 **Q. CVE also claims that KU is arguing that it is entitled to serve Stillhouse No. 2**
2 **“because the mine will continue to extract Harlan Seam reserves from the U.S. Steel**
3 **Property.” Is that accurate?**

4 A. No. In short, as I explained in both my direct and rebuttal testimony, it is KU’s position
5 that there are a number of ways in which the Commission could analyze this case, and that under
6 any manner of analysis KU is entitled to continue its longstanding service to the mining
7 operations served through the Lynch Substation, including the operations at Stillhouse No. 2. I
8 will not revisit that testimony here, other to invite the Commission’s reference back to that
9 previous discussion. However, as it relates specifically to the fact that mining activity is taking
10 place in the Harlan Seam, KU is not contending that any and all mining within the Harlan Seam
11 should be considered part of the same ECF. Instead, as set forth in my previous testimony, it is
12 KU’s position that the seam in which mining has occurred is one of a number of logical and
13 reasonable factors for use in determining whether Stillhouse No. 2 is part of a larger,
14 longstanding ECF that has always been served by KU.

15 **Q. Mr. Willhite points to the fact that a number of operators mine the U.S. Steel**
16 **Property reserves controlled by BMR or its affiliate. Is that evidence that Stillhouse No. 2**
17 **is not part of a larger ECF?**

18 A. No, it is not. It is true that a number of operators actually mine those reserves, and KU
19 has never claimed otherwise. However, as was held in *Owen Co. Rural Elec. Coop. Corp. v.*
20 *Public Service Comm’n*, 689 S.W.2d 599 (Ky. App. 1985), the fact that there may be different
21 end-users of electricity (from a corporate identity standpoint) does not preclude a determination
22 that a larger operation, served through a common point of delivery, may be a single ECF. It is
23 undisputed that BMR and its affiliate control the reserves on the U.S. Steel Property, and that all

1 mining activity in those reserves is done by an affiliate of BMR or by someone working under
2 contract with BMR. It is further undisputed that all mining activities on that property in Harlan
3 County, south of Looney Creek, are and always have been served through a common point of
4 delivery at KU's Lynch Substation. The corporate identity of those presently mining the
5 reserves should have no impact here.

6 **Q. Let us turn now to a different facet of this case – which utility should serve**
7 **Stillhouse No. 2 if the Commission determines that it is in fact a new ECF. Mr. Willhite**
8 **claims that you “totally ignore” BMR’s facilities in your application of the factors set forth**
9 **in KRS 278.017(3). Have you ignored those facilities?**

10 A. Absolutely not. As has already been explained in my previous testimony, it is not KU's
11 position that BMR's facilities should be “attributed” to KU, as if they were KU's own facilities,
12 despite CVE's repeated characterizations to the contrary. Rather, KU has plainly explained that
13 the Commission should recognize the existence of the BMR facilities, and the fact that, in light
14 of those facilities, KU is capable of providing service to Stillhouse No. 2 through its Lynch
15 Substation, whereas CVE would render service at a different point of delivery closer to the portal
16 of Stillhouse No. 2. It is KU's position that the statutory factors set forth in KRS 278.017(3)
17 should be analyzed in light of the manner in which service would be rendered. Consistent with
18 that position, I have considered the existence of BMR's facilities, and addressed the impact of
19 those facilities, in my analysis under KRS 278.017(3) as set forth in both my direct and rebuttal
20 testimony.

21 **Q. CVE also claims that even if BMR’s facilities are recognized by the Commission,**
22 **CVE is entitled to serve Stillhouse No. 2 under the statutory factors in KRS 278.017(3). Do**
23 **you agree?**

1 A. No, I do not. As I have explained, it is clear that KU and CVE have differing views of
2 how the customer's facilities should be considered. However, no matter which approach is used,
3 KU still prevails under the statute. Under KU's approach, whereby the factors are considered in
4 light of the different points at which the two utilities can render service, the facts as applied to
5 the statutory criteria are as follows:

- 6 • The proximity of existing distribution lines – KU is using, and will continue to use, its
7 Lynch Substation, and the lines feeding it, to serve Stillhouse No. 2, which is
8 immediately adjacent to the customer's point of delivery. An aerial photograph depicting
9 the proximity of KU's facilities to its point of delivery to BMR is attached as Exhibit
10 FHB-6 (picking up from the numbering previously used in my direct testimony). CVE's
11 facilities, on the other hand, are nearly ½ mile away from any point of delivery to
12 Stillhouse No. 2. However, those facilities did not exist at the time Stillhouse No. 2
13 began operations. At that time, CVE's nearest line was well over ½ mile away. This
14 factor favors KU.
- 15 • The age of existing facilities and the date of first service in the area – KU's facilities, and
16 first service, in the area of its KU Lynch Substation, where power is delivered to BMR,
17 date back to 1931. CVE's facilities and service in the area nearest its proposed point of
18 delivery date back to 1949. This factor also favors KU.
- 19 • The adequacy of existing distribution facilities to provide dependable, high quality
20 service at reasonable costs – KU's facilities, as already configured, are capable of
21 continuing to provide dependable, high quality retail service to Stillhouse No. 2 and to
22 the customer's other mining operations, as they have done for many years, and no new
23 facilities would be required. CVE, however, would have to extend its facilities through

1 construction of a 2300 foot line extension – in the area where the customer’s own line
2 already exists – and the addition of a transformer bank, all at a cost of approximately
3 \$40,000 or more. KU is also favored under this factor.

- 4 • The elimination and prevention of duplication of facilities – Because KU would have to
5 construct no additional facilities to continue serving this load, allowing that service to
6 continue will maximize the use of existing facilities and will not duplicate any other
7 facilities. If CVE were to serve the load, though, it would have to add a transformer bank
8 and construct a line extension up to the area where the customer already has such
9 facilities, resulting in the idling of a significant portion of BMR’s existing distribution
10 line and a duplication of facilities, waste of resources and unnecessary encumbering of
11 the landscape. Aerial photos showing BMR’s facilities in the area of Stillhouse No. 2 are
12 attached as Exhibit FHB-7. Again, this factor favors KU.

13 On the other hand, if, as CVE urges, the BMR facilities are treated as KU’s facilities and the
14 facts are considered only as they relate to the physical operations at Stillhouse No. 2, then the
15 facts as applied to the statute are as follows:

- 16 • The proximity of existing distribution lines – BMR’s existing distribution line at
17 Stillhouse No. 2 is directly at the mine site. Before that line was extended to serve
18 Stillhouse No. 2, it was located near the old fan for the Arch Mine No. 37, which was still
19 at the current mine site. The now reclaimed location of that fan is depicted in the aerial
20 photos attached as Exhibit FHB-8. CVE, by its own admission, has never had any
21 facilities on the mine site. CVE’s closest facilities are approximately ½ mile away,
22 although those facilities actually did not even exist at the time BMR began operations at
23 Stillhouse No. 2. This factor still favors KU.

- 1 • The age of existing facilities and the date of first service in the area – BMR’s facilities
2 were first extended to the site which is now known as Stillhouse No. 2 in 1981, to serve
3 the Mine No. 37 ventilation fan. Other KU facilities closest to Stillhouse No. 2 date back
4 to 1966. Because CVE’s facilities and service in the area date appear to date back to
5 1949, this factor would favor CVE if the statute were applied as CVE seeks.
- 6 • The adequacy and dependability of existing distribution facilities to provide high quality
7 service at reasonable costs – As explained above, this factor favors KU when measured
8 using only the facilities of the two retail electric suppliers. However, CVE contends that
9 if BMR’s facilities are included and considered as if they belong to KU, this factor would
10 favor CVE because of the length of BMR’s line. That argument is flawed, however,
11 because it fails to recognize that BMR’s line has in fact been providing dependable, high
12 quality service to Stillhouse No. 2 for nearly two years, and before that provided service
13 to predecessor mining operations for many, many years. Given that, the fact that CVE
14 would have to construct more facilities, and the superior configuration of KU’s Lynch
15 Substation as compared to the Chad Substation utilized by CVE, this factor still favors
16 KU.
- 17 • The elimination and prevention of duplication of facilities – BMR already had an existing
18 line at the site of Stillhouse No. 2, and extended that line approximately 1000 feet to the
19 portal. CVE would have to construct a line extension of nearly ½ mile, and add a
20 transformer bank, duplicating the same facilities which already exist at the mine and
21 idling of a significant portion of BMR’s existing distribution line, including those
22 portions constructed over twenty-five years ago. The end result of CVE’s service would

1 still be a duplication of facilities, waste of resources and unnecessary encumbering of the
2 landscape, and so this factor favors KU.

3 Therefore, no matter how the Commission considers the customer's facilities, KU still prevails in
4 an application of the factors set forth in KRS 278.017(3). Even if Stillhouse No. 2 is considered
5 a new ECF, then, KU is entitled to continue serving that load.

6 **Q. In connection with the last factor under KRS 278.017(3), Mr. Willhite cites to past**
7 **construction by coal mining companies, including BMR, as building lines which led to**
8 **“duplicate facilities and unnecessary encumbering of the landscape,” and urges the**
9 **Commission to take that into account here. Please comment on that testimony.**

10 A. I believe the position is without merit, for several reasons. To begin with, the
11 Commission does not have jurisdiction over customer-owned facilities, so the construction of
12 such facilities is not regulated as may be the case with utility-owned facilities. Furthermore, the
13 customer-owned facilities at issue date back starting in approximately 1931. There is absolutely
14 no evidence offered by CVE, or present anywhere else in the record, that those facilities
15 represented an excessive investment in relation to efficiency at the time they were originally
16 constructed, or at any time thereafter when they were updated or expanded. However, even if
17 Mr. Willhite were correct, and there had been duplication of facilities by coal companies in the
18 past, that fact would not justify allowing CVE to further compound the situation by building
19 even more duplicative facilities in the area. The reality is that there are facilities in place, built
20 beginning decades ago, which have the ability and capacity to serve Stillhouse No. 2. CVE
21 seeks to have the Commission ignore those facilities and allow it to build additional facilities to
22 serve the same purpose, thereby resulting in an idling and duplication of those existing facilities,
23 unnecessarily encumbering the landscape and wasting resources. Such a result cannot be

1 reconciled with the intent of the Certified Territories Act, and should be rejected by the
2 Commission.

3 **Q. If the Commission were nonetheless inclined to consider past construction practices,**
4 **as Mr. Willhite suggests it should, is there any other evidence relevant to that**
5 **consideration?**

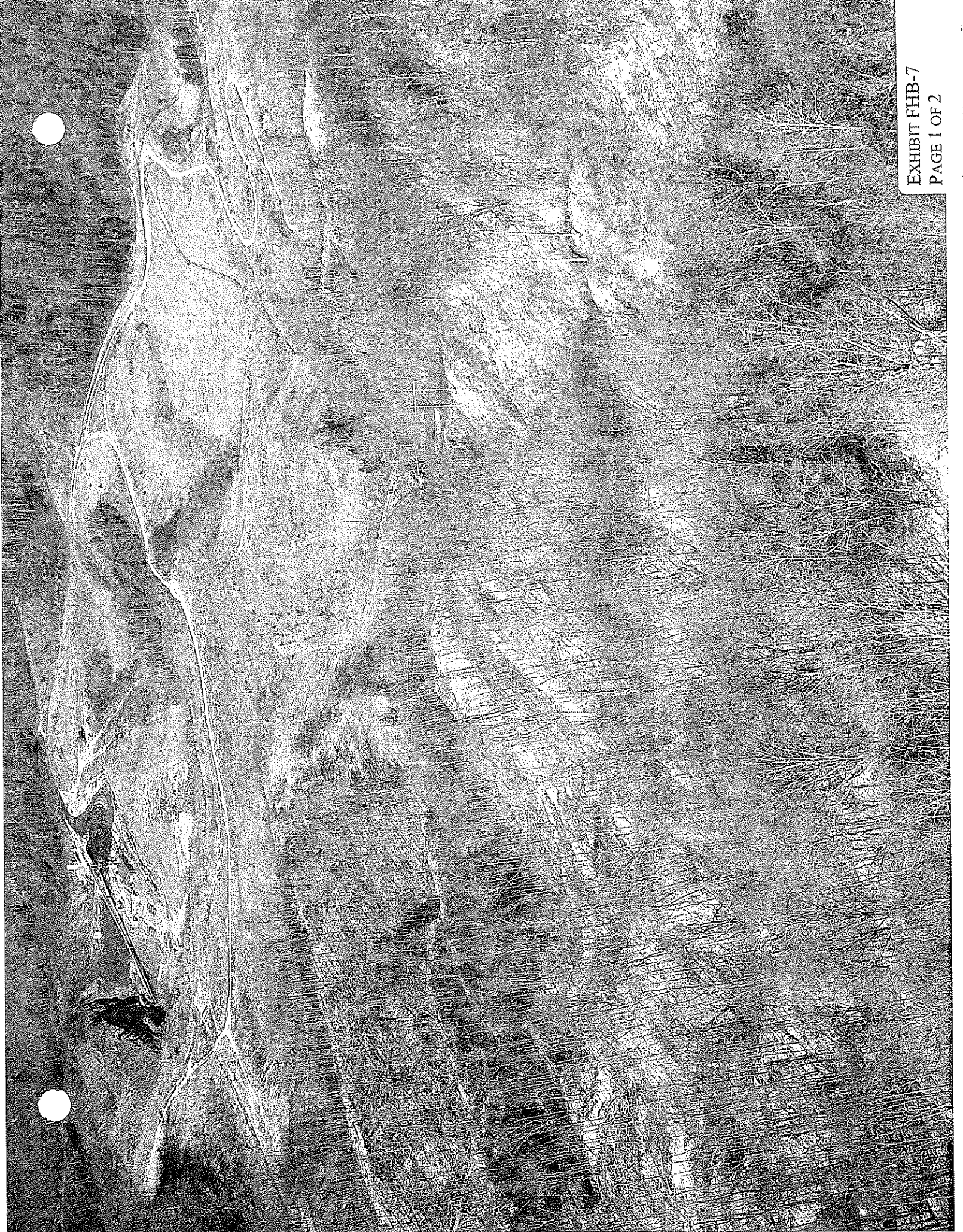
6 A. Yes, there is. If the Commission decides to question the propriety of past construction in
7 the area, then it should closely examine CVE's own actions. Specifically, the Commission
8 should consider CVE's construction of an additional three-phase line located along new US
9 Hwy. 119 near the traffic entrance to the operations at Stillhouse No. 2. That line was completed
10 in May 2006, nearly one year after Stillhouse No. 2 began operations. In its original filing in this
11 matter, CVE claimed that it had "relocated" its three-phase facilities in order to place them in a
12 more accessible location. However, discovery has revealed that the original three-phase line was
13 in fact not relocated, but still exists and still serves the majority of customers it has always
14 served. CVE simply built an additional line, at a cost of over \$300,000, which at its closest point
15 is about 400 feet from the original, still existing line. Photos depicting the "old" and "new" CVE
16 lines are attached as Exhibit FHB-9, with the "new" line or poles in the foreground and the "old"
17 line in the background. As of the date of the most recent discovery responses, CVE revealed that
18 the "new" line has taken on only approximately 85 customers previously served by the original
19 line, and that the original and purportedly relocated line still serves approximately 958
20 customers. CVE has also admitted that the original line is capable, from an engineering
21 standpoint, of serving the 85 customers now served by the newly-constructed line. While CVE
22 claims that it will eventually "retire" the original line, it has provided no certain plan to do so and
23 has produced no documents evidencing the existence of any such plan. In the meantime, CVE

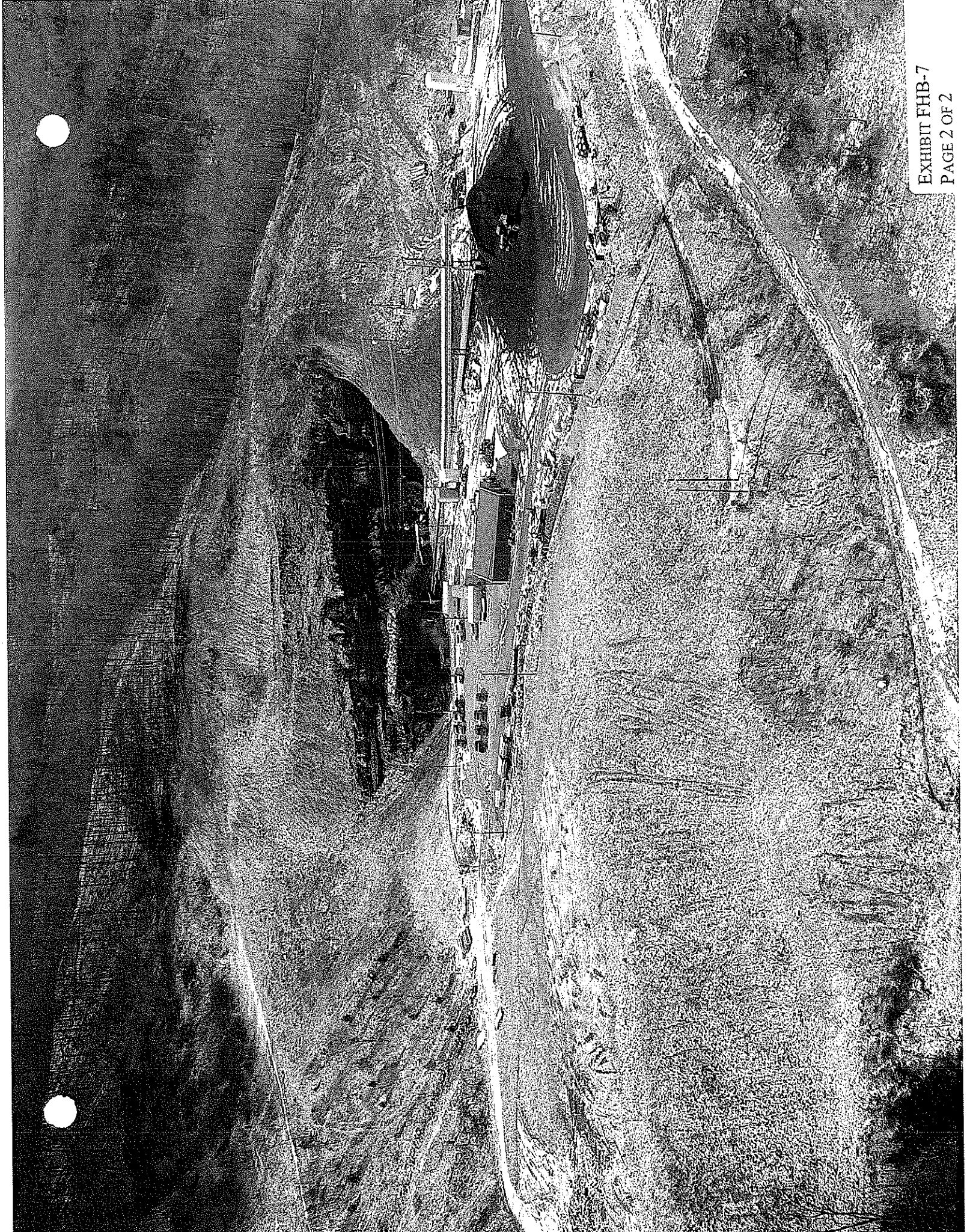
1 has two lines, both capable of serving the same function, within eye-shot of each other. CVE is
2 in no position to criticize the construction activities of BMR and predecessor mining companies,
3 given that its own conduct has resulted in obvious duplication of facilities and cluttering of the
4 landscape.

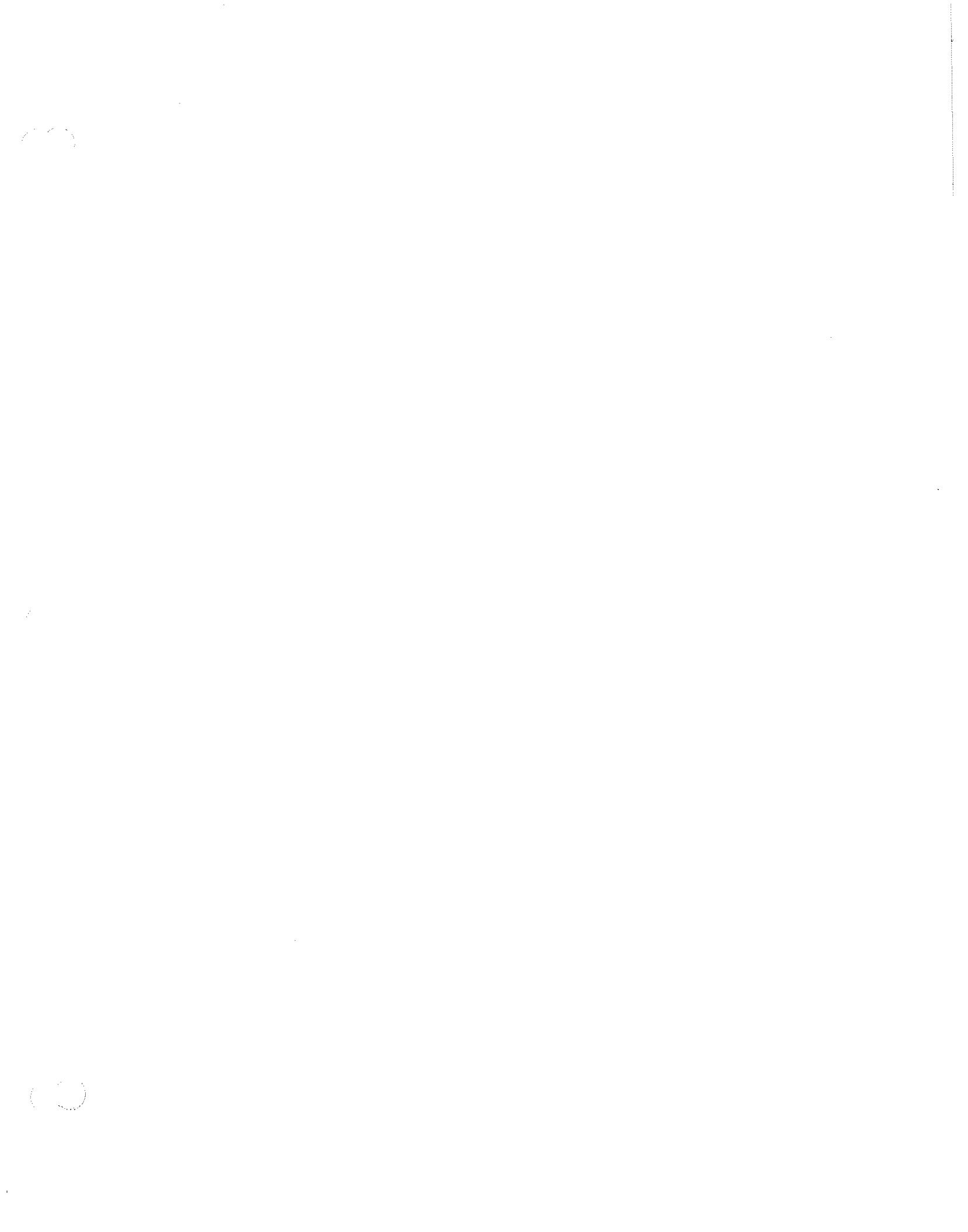
5 **Q. Does this conclude your sur-rebuttal testimony?**

6 **A. Yes it does.**



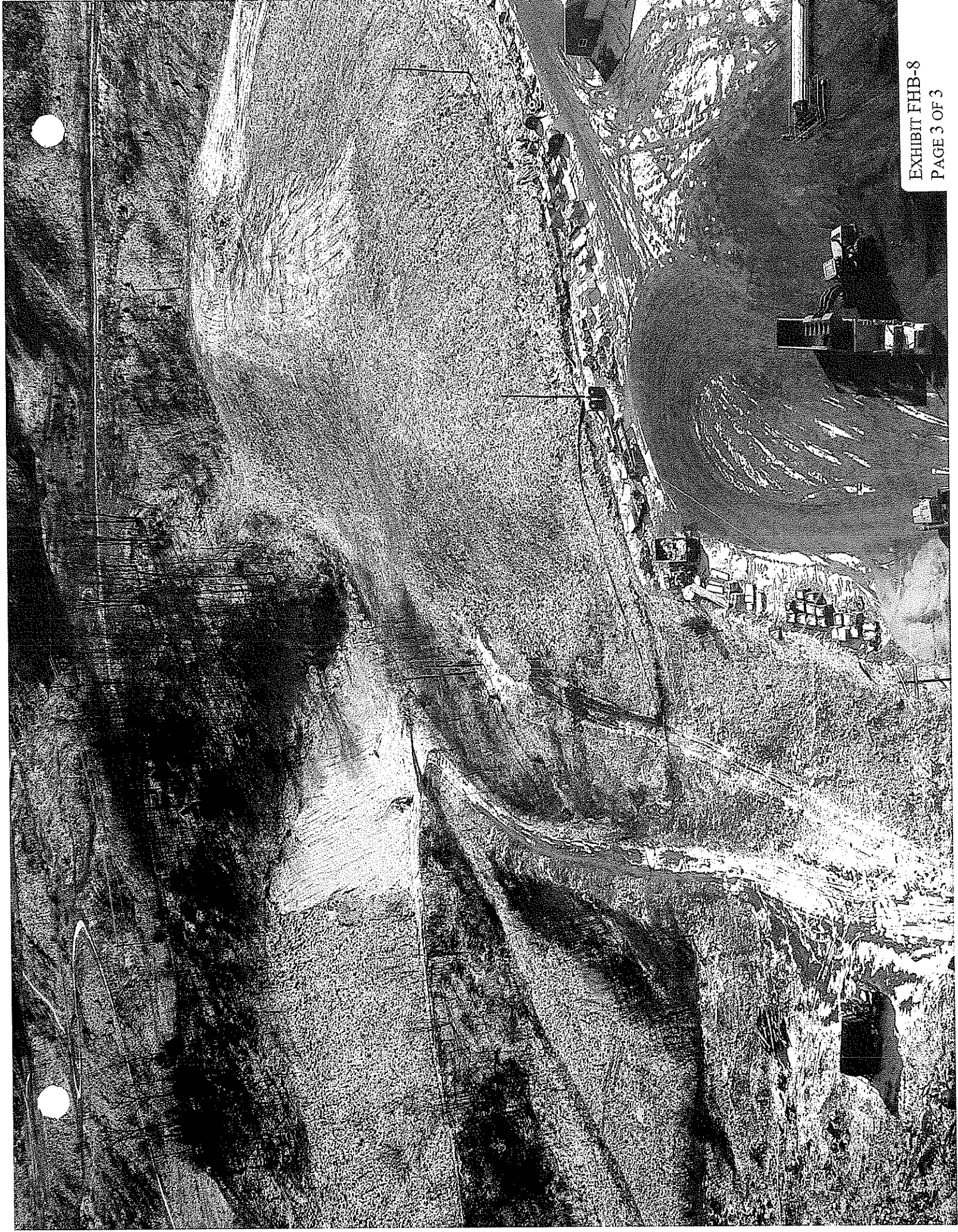




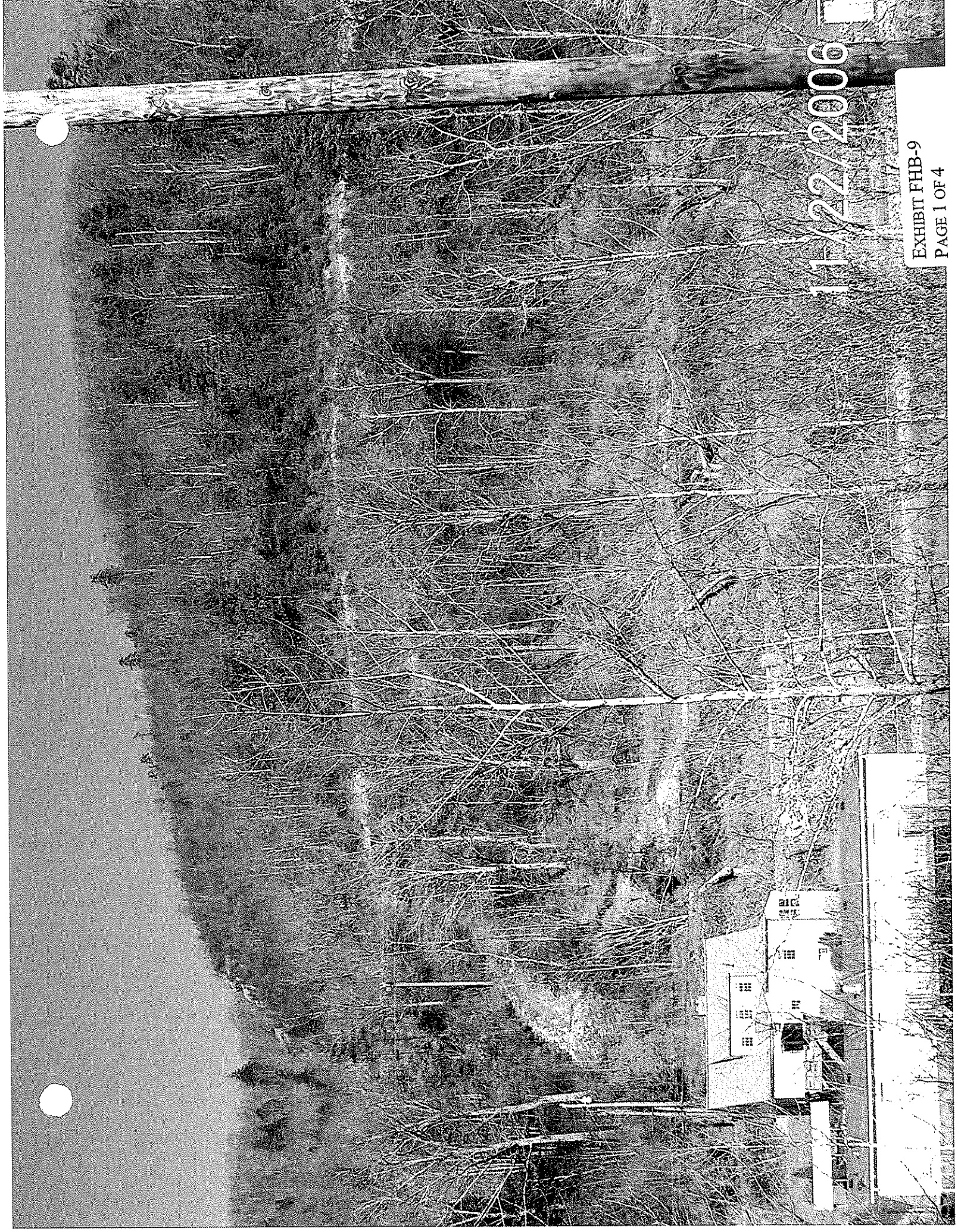








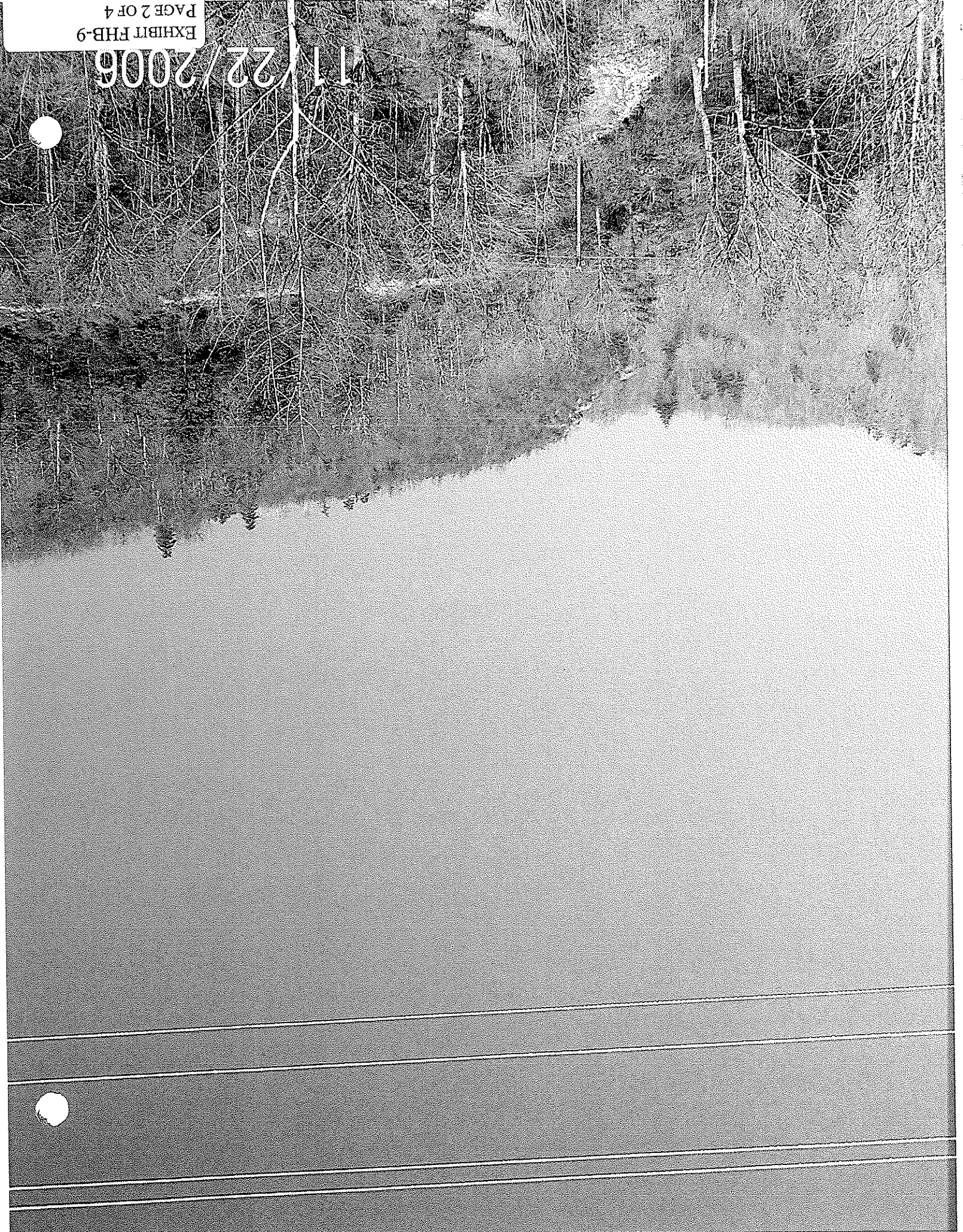


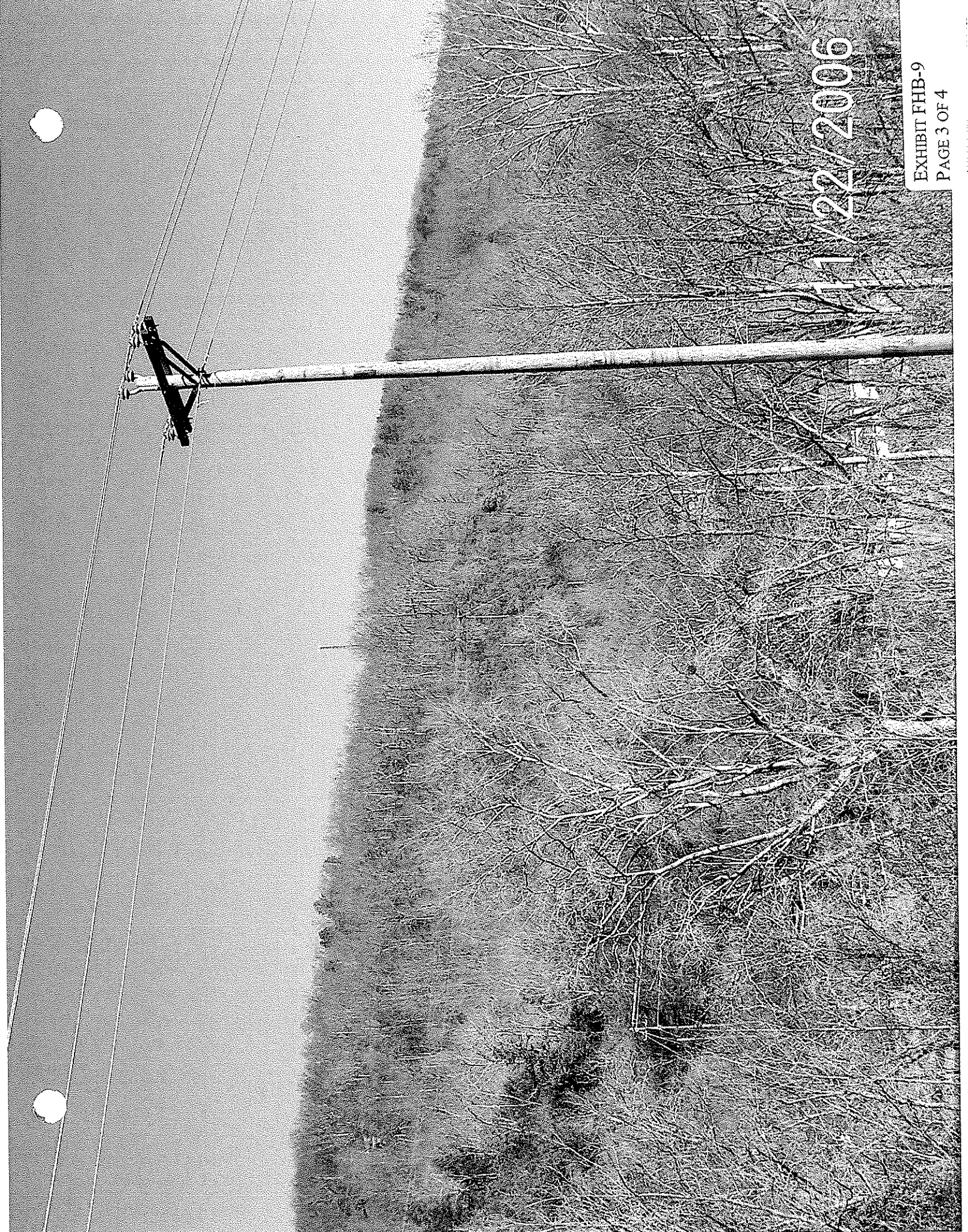


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EXHIBIT FHB-9
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