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October 6, 2006

**RECEIVED**

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PUBLIC SERVICE  
COMMISSION

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

**Re: In the Matter of Cumberland Valley Electric, Inc. v. Kentucky Utilities  
Company  
Case No. 2006-00148  
Our File No.: 400001/122720**

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten (10) copies of Kentucky Utilities Company's Direct 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 two additional copies provided and return them to me by my courier.

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

Very truly yours,

  
J. Gregory Cornett

JGC/cja  
Enclosures  
cc: Parties of Record



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

**IN THE MATTER OF:**

**CUMBERLAND VALLEY ELECTRIC, INC. )**

)

**COMPLAINANT )**

)

**v. )**

)

**KENTUCKY UTILITIES COMPANY )**

)

**DEFENDANT )**

**CASE NO. 2006-00148**

**DIRECT TESTIMONY OF  
F. HOWARD BUSH, II  
MANAGER, TARIFFS AND SPECIAL CONTRACTS**

**Filed: October 6, 2006**

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  
4 address is 220 West Main Street, Louisville, KY 40202.

5 **Q. Please provide an overview of your professional qualifications.**

6 A. I have been employed by KU, or by a related entity and providing services to KU, since  
7 1974. In that time and among many other areas of responsibility, I have regularly  
8 assisted KU in evaluating territorial boundary disputes across the Commonwealth. A  
9 statement of my professional experience and education is attached to this testimony as  
10 Appendix A.

11 **Q. Have you previously testified before the Kentucky Public Service Commission (the**  
12 **“Commission”)?**

13 A. Yes. I have testified for KU in fuel clause proceedings before the Commission, and for  
14 Louisville Gas and Electric Company in Case No. 2002-00232 involving its Prepaid  
15 Metering Program. I have also supported various data responses in several previously-  
16 filed Commission proceedings.

17 **Q. What is the purpose of your testimony?**

18 A. The purpose of my testimony is to discuss the issue of whether KU or Cumberland  
19 Valley Electric, Inc. (“CVE”) should be authorized to provide service to Stillhouse Mine  
20 No. 2 (“Stillhouse #2”). My testimony will address whether Stillhouse #2 constitutes a  
21 new electric consuming facility (“ECF”), concluding that it does not and that KU should  
22 continue providing service for the Stillhouse #2 operations. I will also discuss the

1 application of the Certified Territories Act to this case and explain why, even if  
2 Stillhouse #2 were to be considered a new ECF, KU is nonetheless entitled to provide  
3 service to that ECF under the Act. Finally, I will address CVE's claim that KU has  
4 violated the law and then conclude with recommendations regarding the proper  
5 resolution of this case.

6 **Q. Are you sponsoring any exhibits?**

7 A. Yes. I am sponsoring the following exhibits:

- 8 • Exhibit FHB-1, photographs taken on February 28, 2006. These photographs are  
9 a true and accurate representation of the portal and the conveyor belt exiting  
10 underground near the Stillhouse #2 portal.
- 11 • Exhibit FHB-2, photographs taken on February 28, 2006. These photographs are  
12 a true and accurate representation of KU's substation in Lynch, Kentucky.
- 13 • Exhibit FHB-3, photographs taken on February 28, 2006. These photographs are  
14 a true and accurate representation of the customer-owned substation adjacent to  
15 KU's substation in Lynch.
- 16 • Exhibit FHB-4, photographs taken on February 28, 2006. These photographs are  
17 a true and accurate representation of the connection between KU's substation and  
18 the adjacent customer-owned substation in Lynch.
- 19 • Exhibit FHB-5, photographs taken on February 28, 2006. These photographs are  
20 a true and accurate representation of portions of the customer-owned distribution  
21 facilities which currently are used to deliver KU's power to Stillhouse #2.

22 **Overview**

23 **Q. What is the basis for your testimony?**

1 A. My testimony is based on my longstanding experience in the utility industry, my review  
2 of facts relevant to this matter with personnel in KU's regulatory, distribution and  
3 transmission departments, my meetings and discussions with representatives of CVE, my  
4 meetings and discussions with representatives of Stillhouse Mining LLC ("Stillhouse  
5 LLC") and Black Mountain Resources LLC ("BMR"), my visit to the field and  
6 examination of the electric facilities, mining operations and territory at issue here, and  
7 my review of past Commission orders in territorial disputes.

8 **Q. Please describe the service at issue in this proceeding.**

9 A. The service put at issue here by CVE's Complaint is to Stillhouse #2, a coal-mining  
10 operation in Harlan County, Kentucky operated by Stillhouse LLC, a BMR affiliate.  
11 BMR or its affiliates also operate a number of other mining operations in Harlan County  
12 and surrounding areas. Stillhouse #2 is an underground mining operation with a portal  
13 located south of US 119 near Cumberland in Harlan County. While the Stillhouse #2  
14 portal, shown in Exhibit FHB-1 hereto, is wholly within CVE's certified territory, both  
15 utilities have stipulated that the reserves to be mined at Stillhouse #2 are in the certified  
16 territories of both KU and CVE. The location of those reserves, relative to the territorial  
17 boundary between KU and CVE, is depicted on Exhibits Matda-2 and Matda-3 attached  
18 to the direct testimony of Richard Matda on behalf of BMR and Stillhouse LLC. Coal  
19 mined at Stillhouse #2 exits underground on a conveyor, near the portal, and is then  
20 trucked to a BMR-owned preparation plant at Cloverlick, which is wholly within KU's  
21 certified territory. That conveyor is depicted in the photographs attached as Exhibit  
22 FHB-1.

23 **Q. Which utility provides electric service for the operations at Stillhouse #2?**

1 A. KU currently provides electric service for the mining operations at Stillhouse #2, as well  
2 as a number of BMR-affiliated mining operations, through a single delivery point as  
3 discussed below. CVE provides service to a nearby water pump associated with the  
4 mining operations at Stillhouse #2.

5 **Q. Please describe the manner in which KU provides service to Stillhouse #2.**

6 A. KU furnishes and meters 69 kV power to BMR at KU's Lynch Substation in Lynch  
7 Kentucky. That substation, which is wholly within KU's certified territory, is shown in  
8 the photographs marked collectively as Exhibit FHB-2. In addition, the location of KU's  
9 Lynch Substation, and the territorial boundary between KU and CVE, is depicted on the  
10 map attached as Exhibit LEB-1 to Lonnie Bellar's direct testimony on behalf of KU.  
11 BMR owns a substation, known as the BMR U.S. Steel Substation, immediately adjacent  
12 to KU's Lynch Substation, as shown in the photographs attached collectively as Exhibit  
13 FHB-3. BMR's U.S. Steel Substation is connected to a 69 kV line, owned and operated  
14 by BMR, which is used to distribute electric power to various mining operations  
15 conducted by BMR or its affiliates in Harlan County. That line is also shown in detail on  
16 the map attached as Exhibit LEB-1 to the testimony of Mr. Bellar.

17 **Q. How long has KU's Lynch Substation been in operation?**

18 A. That substation has been in existence and providing service to customers since 1931.  
19 From that point of delivery, KU has provided power to mining operations on the U.S.  
20 Steel property, which operations are now conducted by BMR, for approximately 75  
21 years.

22 **Q. How long has BMR's distribution system been in existence?**

1 A. BMR is a successor in interest to previous mining operators who actually constructed the  
2 existing distribution network, so full information is not known. However, we do know  
3 that the network dates back prior to 1931, and that BMR, or its predecessor company,  
4 purchased the system in 1998.

5 **Q. Is the presence of customer-owned distribution lines commonplace in the mining  
6 industry?**

7 A. Yes, it is very common. In fact, CVE itself is serving other BMR operations in Letcher  
8 County which involve customer-owned distribution lines. There are many mining  
9 operations throughout the state, as well as industrial parks and large farms, which utilize  
10 customer-owned distribution systems every day, and it is important to those customers  
11 that they have the discretion to use such systems. The Commission has noted that the use  
12 of customer-owned distribution lines can in some instances be “more economical and the  
13 most flexible” for the customer’s needs. *In the Matter of: Pennyrite Rural Elec. Coop.  
14 Corp. and Felmont Oil Corp.*, Case No. 3483 (PSC Order of September 29, 1954).

15 **No New ECF**

16 **Q. It is KU’s contention, as set forth in its Answer herein, that the operations at  
17 Stillhouse #2 do not constitute a new ECF. Please explain that position.**

18 A. The phrase “electric consuming facility” is defined by KRS 278.017 (8) as “everything  
19 that utilizes electric energy from a central station source.” Here, the central station  
20 source is the Lynch Substation, where KU’s power is furnished and metered for use by  
21 BMR and its affiliates. *Owen County Rural Elec. Coop. Corp. v. PSC*, 689 S.W.2d 599  
22 (Ky.App. 1985). Thus, the ECF at issue here – everything that utilizes electric energy  
23 from that substation – includes all of the mining operations served from BMR’s private



1 distribution system, which is much broader than just the operations at Stillhouse #2. The  
2 BMR U.S. Steel Substation and connected distribution facilities has served mining  
3 operations on the U.S. Steel property for decades – since even before the Certified  
4 Territories Act was enacted in 1972. The mining activities at Stillhouse #2, which is on  
5 the old U.S. Steel property, are in reserves previously mined by other entities and served  
6 by KU through this customer-owned distribution system. Accordingly, this ECF has  
7 been in existence for years. When a new portal was created at Stillhouse #2, there was  
8 no creation of a “new” ECF. Instead, that activity merely resumed previous mining on a  
9 larger, long-existing ECF which has always been served by KU.

10 **Q. Because KU has been providing service to this ECF since before the Certified**  
11 **Territories Act was enacted, is there any basis in law for the Commission to award**  
12 **service to KU on that fact alone.**

13 A. Yes. KRS 278.018 (4) permits a utility serving an ECF as of June 16, 1972 to continue  
14 serving that ECF thereafter, regardless of whether the ECF is wholly or partly located in  
15 territory certified to another utility. Under that provision of the statute, therefore, KU is  
16 entitled to continue serving the mining operations on the U.S. Steel property through the  
17 Lynch Substation.

18 **Q. Has the Commission ever resolved this type of issue previously?**

19 A. Yes. It resolved a similar issue in *In the Matter of: Henderson Union Rural Electric*  
20 *Coop. Corp. v. Kentucky Utilities Co.*, Case No. 9454 (PSC Order of July 8, 1986). In  
21 that case, the Commission addressed service to a group of oil wells in Western Kentucky.  
22 Although the wells were admittedly located in KU’s certified territory, they had been  
23 served since 1951 by the Henderson Union Rural Electric Cooperative Corporation

1 (“Henderson RECC”). The number of oil wells operating at any given point fluctuated,  
2 and there was apparently more than one owner/operator of the wells over that period of  
3 time. However, throughout that time service was provided at a single metering point and  
4 then delivered to the separate wells through a customer-owned distribution system.  
5 When KU sought to serve the oil wells, the Commission denied the request, citing KRS  
6 278.018 (4). Specifically, the Commission considered the cluster of oil wells to be a  
7 single ECF and found that Henderson RECC was entitled to continue serving the ECF  
8 because it was the utility providing service to that ECF as of June 16, 1972.

9 **Q. How is the present case similar to the cited *Henderson* case?**

10 A. Like the oil wells in *Henderson*, the exact number and location of mines has changed  
11 over the years but the operations have nonetheless been clustered in one place, mining a  
12 continuous area of reserves on the U.S. Steel property in Harlan County. And, like in  
13 *Henderson*, service for the underground operations has always been delivered at one  
14 point and then distributed further by a customer-owned distribution line. Finally, the  
15 commencement of service in both cases pre-dated the enactment of the Certified  
16 Territories Act and was active as of June 16, 1972.

17 **Q. Has the Commission previously considered other multiple buildings or physical  
18 facilities to be only one single ECF?**

19 A. Yes. In addition to the oil wells I just referenced, the Commission has previously found  
20 an entire industrial park (even though it would consist of multiple end-users) and  
21 multiple mining facilities (underground mining and an above-ground preparation plant)  
22 to constitute a single ECF where there was service through a central station source.  
23 *Owen County Rural Elec. Coop. Corp. v. PSC*, 689 S.W.2d 599 (Ky.App. 1985); *In the*

1           *Matter of: Henderson-Union Rural Electric Coop. Corp v. Kentucky Utilities Co.*, Case  
2           No. 93-211 (PSC Order of July 29, 1994).

3   **Q.   In his direct testimony, CVE witness Ron Willhite argues that Stillhouse #2**  
4           **constitutes a new ECF because it is a “new mine,” and he cites to Department of**  
5           **Mines and Minerals filings and related facts in support of that argument. What is**  
6           **your response?**

7   A.   Mr. Willhite is incorrectly mixing the concept of a new mine, or an operation by a new  
8           customer, with the definition of an ECF. Mr. Willhite essentially claims that because  
9           Stillhouse #2 was permitted as a new mine, and is being operated by an entity that had  
10          not previously mined at this site, it is a new operation or customer and thus necessarily  
11          must be considered a new ECF. However, neither the designation of Stillhouse #2 as a  
12          “new mine” for purposes of permitting under the Department of Mines and Minerals, nor  
13          any of the other factors he cites regarding the identity of the customer, is synonymous  
14          with the definition of an ECF. In fact, the Commission has noted that the statute  
15          “contains no reference to ‘customer’” but instead “refers exclusively to a new ‘electric  
16          consuming facility,’ which is defined as ‘everything that utilizes electric energy from a  
17          central station source.’” *In the Matter of: Inter-County Rural Elec. Coop. Corp. v.*  
18          *Kentucky Utilities Co.*, Case No. 94-326 (PSC Order of March 14, 1996). Service to  
19          Stillhouse #2 cannot be considered in a vacuum, as Mr. Willhite is attempting to do. The  
20          undisputed facts are that KU has for decades served mining operations in this same seam  
21          of coal, on the same tract of U.S. Steel property, from one central station source. That  
22          the number and location of mine openings has varied, or that the name of mining permit  
23          holders has changed, over the course of time does not transform the Stillhouse #2

1 operation into a new ECF here. Based on the statutory definition of an ECF and the  
2 Commission's ruling in the *Henderson* oil well case cited above, Stillhouse #2 is not a  
3 new ECF.

4 **Q. Mr. Willhite also claims that a finding that Stillhouse #2 is not a new ECF would**  
5 **mean that other facilities, such as grocery stores opened by a national chain, would**  
6 **also not constitute a new ECF. Do you agree?**

7 A. No. The scenario offered by Mr. Willhite is not analogous to that presented here, and his  
8 argument is simply not reasonable. There is a significant difference between a customer  
9 like BMR, which conducts integrated mining operations on one large tract of land  
10 connected by a customer-owned distribution system, and retail business customers such  
11 as grocers, which open new stores that have never before been operated and which are  
12 connected to other such stores in no way other than their common corporate identity. For  
13 that reason alone, a ruling in this case would not have the effect Mr. Willhite claims.  
14 Moreover, each case must be analyzed in light of its own unique facts, and that is  
15 especially true in territorial disputes because these cases are inherently fact-specific.  
16 Thus, in any event a decision here as advocated by KU would necessarily be viewed in  
17 the context of these facts, and would not open the "floodgates" as Mr. Willhite implies.

18 **Application of the Certified Territories Act**

19 **Q. For purposes of the questions in this section, please assume, for the sake of**  
20 **argument only, that Stillhouse #2 could be considered a new ECF, as CVE claims.**  
21 **How would this case be decided in that event?**

1 A. If Stillhouse #2 were considered a new ECF, then the Commission would have to resolve  
2 this matter as a split-territory case under KRS 278.018 (1) and apply the criteria set forth  
3 in KRS 278.017 (3).

4 **Q. Why would this matter be considered a split-territory case in that situation?**

5 A. If Stillhouse #2 were considered a stand-alone, new ECF, the case would unquestionably  
6 involve a split-territory analysis because the reserves to be mined at Stillhouse #2 are in  
7 the territories of both KU and CVE, as accurately reflected on Exhibits Matda-1, Matda-  
8 2 and Matda-3. In territorial disputes involving mining customers, the Commission has  
9 consistently considered the location of the reserves in determining whether or not the  
10 case involves an ECF in the territories of two adjacent utilities, even when the majority  
11 of the reserves are in the territory of one utility. *In the Matter of: Kentucky Utilities Co.*  
12 *v. Henderson-Union Rural Electric Coop. Corp.*, Case No. 89-349 (PSC Order of July 2,  
13 1990); *In the Matter of: Henderson-Union Rural Electric Coop. Corp v. Kentucky*  
14 *Utilities Co.*, Case No. 93-211 (PSC Order of March 3, 1994); *In the Matter of: Kenergy*  
15 *Corp. v. Kentucky Utilities Co.*, Case No. 2002-00008 (PSC Order of October 18, 2002).  
16 Indeed, CVE's witness, Mr. Willhite agrees that Stillhouse #2 is located in the adjacent  
17 territories of both KU and CVE.

18 **Q. Even though there does appear to be agreement on that point, CVE has made a**  
19 **number of references in its filings to date, including the testimony of Mr. Willhite,**  
20 **regarding the fact that the Stillhouse #2 portal is located in CVE's territory. Is that**  
21 **fact dispositive, or even important?**

22 A. Absolutely not. The location of the portal has no real impact on the resolution of a  
23 territorial boundary dispute where the underground reserves are located in the territories

1 of two utilities, as the Commission itself has recognized. *In the Matter of: Kentucky*  
2 *Utilities Co. v. Henderson-Union Rural Electric Coop. Corp.*, Case No. 89-349 (PSC  
3 Order of May 23, 1990); *In the Matter of: Henderson-Union Rural Electric Coop. Corp*  
4 *v. Kentucky Utilities Co.*, Case No. 93-211 (PSC Order of March 3, 1994).

5 **Q. Again setting aside the question of whether Stillhouse #2 is a new ECF for purposes**  
6 **of argument only, what are the factors that the Commission should consider to**  
7 **resolve this dispute, given that the ECF is located in the adjacent territories of both**  
8 **KU and CVE,?**

9 A. KRS 278.018 (1) directs the Commission to consider the following factors set out in  
10 KRS 278.017 (3):

- 11 (a) the proximity of existing distribution lines to the certified territory;
- 12 (b) which supplier was first furnishing retail electric service, and the age of existing  
13 facilities in the area;
- 14 (c) the adequacy and dependability of existing distribution lines to provide  
15 dependable, high quality retail electric service at reasonable costs; and
- 16 (d) the elimination and prevention of duplication of electric lines and facilities  
17 supplying such territory.

18 **Q. CVE contends, through Mr. Willhite's testimony, that in considering those four**  
19 **statutory factors, the Commission should not consider the existence of the BMR-**  
20 **owned distribution line. Do you agree?**

21 A. No. I believe that Mr. Willhite is clearly wrong, both in his ultimate conclusion and in  
22 the grounds he cites in reaching that conclusion, for several reasons. First, while Mr.  
23 Willhite purports to speak for the General Assembly regarding its intent when it enacted

1 the Certified Territories Act, he has no basis on which to do so. The only valid statement  
2 of the General Assembly’s purpose and plan comes from the Act itself. Specifically, in  
3 KRS 278.016, the General Assembly expressly stated that its intent in enacting the  
4 Certified Territories Act was:

5 to encourage the orderly development of retail electric service, to  
6 avoid wasteful duplication of distribution facilities, to avoid  
7 unnecessary encumbering of the landscape of the Commonwealth  
8 of Kentucky, to prevent the waste of materials and natural  
9 resources, for the public convenience and necessity and to  
10 minimize disputes between retail electric suppliers which may  
11 result in inconvenience, diminished efficiency and higher costs in  
12 serving the consumer....  
13

14 Here, a failure to consider BMR’s distribution network would clearly be contrary to the  
15 stated intent of the Act. And, any effort to substitute some further or different “intent”  
16 behind the Act is an improper exercise in speculation.

17 Second, contrary to Mr. Willhite’s testimony, the Commission has never restricted its  
18 consideration of facilities based on ownership in applying these statutory criteria. As I  
19 will explain in more detail later in my testimony, the Commission has considered the  
20 location of customer-owned facilities in two previous cases. In the other mining cases  
21 cited by Mr. Willhite, Case Nos. 89-349, 2002-008 and 2003-00228, customer owned  
22 facilities were simply not an issue. There is nothing in the language of the statute, or in  
23 any past Commission order of which I am aware, which precludes the Commission from  
24 considering the existence of a customer-owned distribution system – which system was  
25 not constructed for the purpose of skirting the law – in this context.

26 Third, and perhaps most importantly, in applying KRS 278.017 (3) the Commission has  
27 consistently considered the relevant inquiry to be the location of the line that “will  
28 actually serve the facility.” *In the Matter of: Inter-County Rural Elec. Coop. Corp. v.*

1 *Kentucky Utilities Co.*, Case No. 94-326 (PSC Order of March 14, 1996); *In the Matter*  
2 *of: Kenergy Corp. v. Kentucky Utilities Co.*, Case No. 2002-00008 (PSC Order of  
3 October 18, 2002). In doing so, the Commission has looked beyond the lines owned by  
4 the utilities before it in the pending proceeding, and has considered the location of lines  
5 owned by other utilities which would actually be utilized to serve the facility at issue. *In*  
6 *the Matter of: Kenergy Corp. v. Kentucky Utilities Co.*, Case No. 2002-00008 (PSC  
7 Order of October 18, 2002). And, in at least two instances the Commission has  
8 considered the location of customer-owned facilities in analyzing the criteria of KRS  
9 278.017 (3). *In the Matter of: Henderson-Union Rural Electric Coop. Corp v. Kentucky*  
10 *Utilities Co.*, Case No. 93-211 (PSC Order of March 3, 1994); *In the Matter of: Matrix*  
11 *Energy LLC for Determination of Retail Electric Supplier*, Case No. 2003-00228 (PSC  
12 Order of May 3, 2004).

13 Finally, I disagree with Mr. Willhite's claim that CVE would be "severely prejudiced" if  
14 the Commission considers the existence of the BMR distribution system in resolving this  
15 case. There is simply nothing prejudicial or unfair about an application of the statute  
16 which takes into account all relevant facts, is entirely consistent with both the language  
17 of the statute and with past Commission rulings, and which serves to further the express  
18 intent of the General Assembly as set forth in the statute.

19 **Q. You mentioned past instances in which the Commission has considered the**  
20 **existence of customer-owned facilities in applying the criteria set forth in KRS**  
21 **278.017 (3). Mr. Willhite has claimed that those cases are distinguishable from the**  
22 **situation here. Do you agree?**



1 A. I should begin by saying that the question of whether any previous Commission order  
2 serves as precedent here is ultimately a legal question for the Commission's  
3 determination. That said, however, and from a lay perspective, I do not agree with Mr.  
4 Willhite. In both of the cases I referenced, the Commission in fact considered the  
5 existence and location of customer-owned facilities in analyzing the case under KRS  
6 278.017 (3). Mr. Willhite claims that the first case, *In the Matter of: Henderson-Union*  
7 *Rural Electric Coop. Corp v. Kentucky Utilities Co.*, Case No. 93-211 (PSC Order of  
8 March 3, 1994), is distinguishable because the Commission noted that consideration of  
9 the customer's facilities neither "benefited nor prejudiced" the cooperative. In that case,  
10 KU's facilities were better suited to serve the ECF at issue whether or not the customer  
11 owned facilities were considered. However, the Commission did not rule that it would  
12 consider privately-owned facilities only where doing so was neutral to the two utilities  
13 before it, and thus the consideration of those facilities there is relevant here. In fact, in a  
14 subsequent case, *In the Matter of: Matrix Energy LLC for Determination of Retail*  
15 *Electric Supplier*, Case No. 2003-00228 (PSC Order of May 3, 2004), the Commission  
16 considered the location of a mining company's own distribution facilities, even though  
17 doing so provided an advantage to Kentucky Power – the utility that was ultimately  
18 awarded service. Mr. Willhite tries to distinguish the *Matrix* case by pointing out that  
19 Kentucky Power also had facilities within the Matrix tract and that the mine at issue there  
20 was to be served by 69 kV power. To begin with, it does not appear that either of those  
21 facts played any role whatsoever in the Commission's decision in *Matrix* to consider the  
22 existence of the customer-owned facilities, and thus those facts do not serve as a basis for  
23 declining to follow *Matrix* here. Moreover, in any event the facts in the present case are

1 actually similar to, rather than distinguishable from, those in *Matrix*. Stillhouse #2 is part  
2 of a larger tract of property referred to as the U.S. Steel property. In addition to the  
3 BMR-owned distribution system, KU also has distribution facilities on the U.S. Steel  
4 property, as shown on Exhibit LEB-1. Thus, like Kentucky Power in the *Matrix* case,  
5 KU does have distribution facilities on the tract of land on which mining activities are  
6 conducted. In addition, while BMR ultimately steps down the voltage before power is  
7 delivered to the operations at Stillhouse #2, the power at the Lynch Substation point of  
8 delivery is at a transmission voltage – just as was the case in *Matrix*.

9 **Q. Is consideration of the BMR-owned facilities consistent with the Certified**  
10 **Territories Act in this case?**

11 A. It certainly is. As I stated earlier, the purpose of the Act is to encourage the orderly  
12 development of retail electric service, to avoid wasteful duplication of distribution  
13 facilities, to avoid unnecessary encumbering of the landscape, to prevent the waste of  
14 materials and natural resources, for the public convenience and necessity and to avoid  
15 inconvenience, diminished efficiency and higher costs in serving the consumer. By  
16 considering the full use of existing facilities – regardless of ownership – all of those  
17 purposes would be served. On the other hand, if the Commission were to ignore the  
18 existence of BMR's distribution facilities, and instead require that service to Stillhouse  
19 #2 be rendered without use of that line as Mr. Willhite suggests, then 2.75 miles of  
20 distribution line, cutting through heavily-wooded areas, would stand idle. The result  
21 would be a waste of materials and natural resources, a duplication of facilities, an  
22 unnecessary encumbering of the landscape, and inconvenience, inefficiencies and higher  
23 costs for the customer.

1 **Q. Is KU seeking a “blank check” authorizing any customer to build facilities to avoid**  
2 **the Certified Territories Act?**

3 A. Absolutely not. While the Commission generally does not have jurisdiction over  
4 customer-owned distribution systems, KU is not asking the Commission to rule that a  
5 customer-owned line can be built in order to get around the provisions of the Act. KU  
6 respects that law and believes that it has served the Commonwealth well. This case is  
7 about the facts presented here, and nothing more, and the facts here do not involve a line  
8 constructed to bring power from one territory for use solely in another territory. To the  
9 contrary, it is clear that the location of the customer-owned facilities here, and the mining  
10 operations they served, initially started solely in KU’s territory, but over time migrated to  
11 a portion of the U.S. Steel property which is in the territory of both KU and CVE. There  
12 was never any attempt to “gerrymander” here, and any case which might involve such  
13 facts is best left to resolution in its own time.

14 **Q. How should the customer-owned facilities be considered in this case?**

15 A. The Commission should acknowledge the existence of those facilities and the fact that  
16 such facilities are common in the mining industry, and should apply the four statutory  
17 criteria in KRS 278.017 (3) in light of those facilities. In doing so, the Commission will  
18 recognize, contrary to CVE’s position, that KU is not required to serve Stillhouse #2  
19 directly at the mine portal, but instead can (and already does) provide service at its Lynch  
20 Substation. By considering the customer owned facilities, it is evident that KU is able to  
21 serve this ECF from a different point of delivery than is CVE, and that KU’s facilities are  
22 much better suited to provide service.

1 **Q. Turning now to the statutory criteria, which utility does the first factor, the**  
2 **proximity of existing distribution lines, favor in this case?**

3 A. KU. As explained above, the relevant inquiry is with regard to the facilities that will  
4 actually be used to serve the ECF. Here, KU is using and will continue to use its Lynch  
5 Substation to serve Stillhouse #2. That substation, and the lines feeding it, is  
6 immediately adjacent to BMR's point of delivery, as explained in Mr. Bellar's testimony,  
7 and as depicted on Exhibits FHB-2, 3 and 4 and LEB-1. CVE, on the other hand, admits  
8 that its facilities are nearly ½ mile away from any point of delivery to Stillhouse #2.

9 **Q. The second factor to be considered is which supplier was first furnishing retail**  
10 **service and the age of existing facilities in the area. Does that factor favor KU or**  
11 **CVE?**

12 A. This factor also favors KU, as the age of its facilities, and the date of its first service "in  
13 the area," as CVE has stipulated, was in 1931 when it began delivering power to mining  
14 operations at the Lynch Substation, which power was then distributed to mining  
15 operations on the U.S. Steel property by the customer-owned distribution network. KU's  
16 other facilities in the area date back to 1966, as set forth in the testimony of Lonnie  
17 Bellar. All of those facilities are shown on Mr. Bellar's Exhibit LEB-1. CVE's oldest  
18 facilities and service, on the other hand, date back only to 1949, as explained in Mr.  
19 Willhite's testimony.

20 **Q. The next statutory factor concerns the adequacy and dependability of existing**  
21 **distribution facilities to provide dependable, high quality retail service at**  
22 **reasonable costs. Does that factor also favor KU?**

1 A. Yes, it does. As an initial matter, it is important to note that although the statute speaks  
2 in terms of “distribution facilities,” the Commission has previously ruled that the inquiry  
3 can also include transmission facilities where such are being used to serve a distribution  
4 function. *In the Matter of: Kenenergy Corp. v. Kentucky Utilities Co.*, Case No. 2002-  
5 00008 (PSC Order of October 18, 2002). Here, KU serves BMR at a transmission level,  
6 and the customer then transforms the power itself as needed. Thus, KU’s transmission  
7 facilities are serving a distribution function and must be considered in the context of this  
8 analysis. As explained in Mr. Bellar’s testimony, there is no question but that KU’s  
9 facilities, as already configured, are capable of continuing to provide dependable, high  
10 quality retail service to Stillhouse #2 and to BMR’s other mining operations, as they have  
11 done for many years. CVE’s facilities, however, would have to be extended through  
12 construction of a 2300 foot line extension and the addition of a transformer bank at a  
13 cost, in CVE’s estimate, of \$41,000. And, as Mr. Bellar explains in his testimony, KU’s  
14 facilities are more dependable for service to this ECF because, unlike CVE’s facilities,  
15 KU’s facilities are not vulnerable to single contingency outages.

16 **Q. Are there any other facts which the Commission might consider in evaluating this**  
17 **third statutory factor?**

18 A. Yes, in limited instances where the case is a close call, the Commission has considered  
19 the rates of the two utilities in reaching its decision. *In the Matter of: Inter-County*  
20 *Rural Elec. Coop. Corp. v. Kentucky Utilities Co.*, Case No. 94-326 (PSC Order of  
21 March 14, 1996). I do not believe it is necessary for the Commission to do so here  
22 because the statutory factors all clearly favor KU. However, to the extent the  
23 Commission decides to consider the rates to provide service, KU estimates that the

1 customer would pay over \$41,000 more per year to take service from CVE rather than  
2 from KU, based on the utilities' available tariffs. Obviously, if that fact is considered,  
3 the balance tips even more heavily in favor of KU.

4 **Q. Finally, which utility is favored by consideration of the last statutory factor – the**  
5 **elimination and prevention of duplication of electric lines and facilities?**

6 A. Again, that factor clearly favors KU. As Mr. Bellar and I have explained, KU's long-  
7 existing facilities – which were the first in the area – are capable of continuing to serve  
8 this territory without any upgrades. Thus, allowing KU to continue to provide service  
9 will maximize the use of existing facilities and will not duplicate any other facilities. On  
10 the other hand, if CVE were awarded service to Stillhouse #2, it would have to construct  
11 a line extension, and add a transformer bank, up to the area of the mine portal where such  
12 facilities already exist. As I described earlier in my testimony, such service by CVE  
13 would render idle over 2.75 miles of BMR's existing distribution line, part of which is  
14 shown in the photos attached as Exhibit FHB-5. Such a result would be a clear  
15 duplication of facilities, a waste of materials and natural resources, and an unnecessary  
16 encumbering of the landscape. So, then, this factor, like the other three set forth in KRS  
17 278.017 (3), clearly favors KU.

18 **Q. In his testimony on behalf of CVE, Mr. Willhite has also addressed each of the four**  
19 **preceding statutory criteria and has concluded that each favors CVE. Can you**  
20 **explain the basis for the difference in your respective testimonies?**

21 A. Certainly. The basis for the difference is simple and clear – Mr. Willhite's evaluation of  
22 the statutory criteria ignores BMR's extensive distribution system and assumes that KU  
23 would have to serve Stillhouse #2 through a different point of delivery from its Arnold-

1 Evarts 69 kV line. While KU *could* serve Stillhouse #2 in that manner, it is not required,  
2 and has no plans, to do so as it is most economical for the customer, and most  
3 advantageous for the public, to utilize the existing customer-owned facilities. For all of  
4 the reasons set forth earlier, the Commission should reject Mr. Willhite's interpretation  
5 and consider the statutory factors in light of BMR's existing facilities.

6 **CVE's Claim of Statutory Violation**

7 **Q. CVE also contends that KU has violated the Certified Territories Act here by**  
8 **servicing the operations at Stillhouse #2 without Commission approval. Has KU**  
9 **violated the Act?**

10 A. No, it has not. Even if the Commission were to accept CVE's argument that Stillhouse  
11 #2 is a new ECF, that ECF is clearly in the certified territories of both KU and CVE, and  
12 thus KU is not servicing a customer located wholly within the territory of CVE, which is  
13 the only scenario generally prohibited by the Act. Indeed, there is no requirement in the  
14 statute that a utility refuse service to a split-territory ECF until first obtaining  
15 Commission approval, and in past cases in which service was commenced to a split-  
16 territory ECF the Commission has not found any violation of the Act. *See In the Matter*  
17 *of: Inter-County Rural Elec. Coop. Corp. v. Kentucky Utilities Co.*, Case No. 94-326  
18 (PSC Order of March 14, 1996). In fact, a claim similar to that of CVE here was made,  
19 and rejected, in the *Matrix* case. There, the Commission expressly stated that because  
20 the ECF at issue was located in the certified territories of both utilities, there was no valid  
21 claim that the servicing utility (situated as KU is here) had violated the law.

22 Moreover, even without those past decisions as a guide, there is no basis for finding that  
23 KU has acted improperly. As has already been noted, KU has delivered power to BMR

1 and predecessor mining operators at the Lynch Substation for over seven decades.  
2 Although KU was not aware that BMR had begun operations at Stillhouse #2 until  
3 advised of such by CVE, it would not have proceeded differently had it known sooner.  
4 KU has no control over a customer-owned distribution line, and it had no legal basis to  
5 refuse to deliver service to BMR at a point of delivery located well within KU's territory.  
6 KU has done nothing other than continue to provide service in the same manner as it has  
7 done since 1931, and there is absolutely nothing unlawful about that service.

### 8 **Recommendations**

9 **Q. What are your recommendations for the Commission?**

10 A. It is my recommendation that the Commission find that KU's delivery of service to BMR  
11 at its Lynch Substation is entirely consistent with the Certified Territories Act and  
12 dismiss this action for all of the reasons set forth in KU's previously-filed Motion to  
13 Dismiss. As an alternative, I recommend that the Commission rule that KU is the proper  
14 provider of service to Stillhouse #2 for either or both of the following reasons: (1)  
15 Stillhouse #2 is not a new ECF, but rather is part of a larger, existing ECF that has been  
16 served by KU since 1931, so that service is proper under KRS 278.018 (4); and (2) even  
17 if Stillhouse #2 were considered a new ECF, each of the statutory factors set forth in  
18 KRS 278.017 (3) clearly favors KU. For all of those reasons, KU respectfully asks that  
19 the Commission enter an appropriate order permitting KU to continue providing service  
20 to the Stillhouse #2 operations, and noting that in any event KU's actions have in no way  
21 violated the Certified Territories Act or infringed upon CVE's rights.

22 **Q. Does this conclude your testimony?**

23 A. Yes it does.







**APPENDIX A**  
**F. HOWARD BUSH**

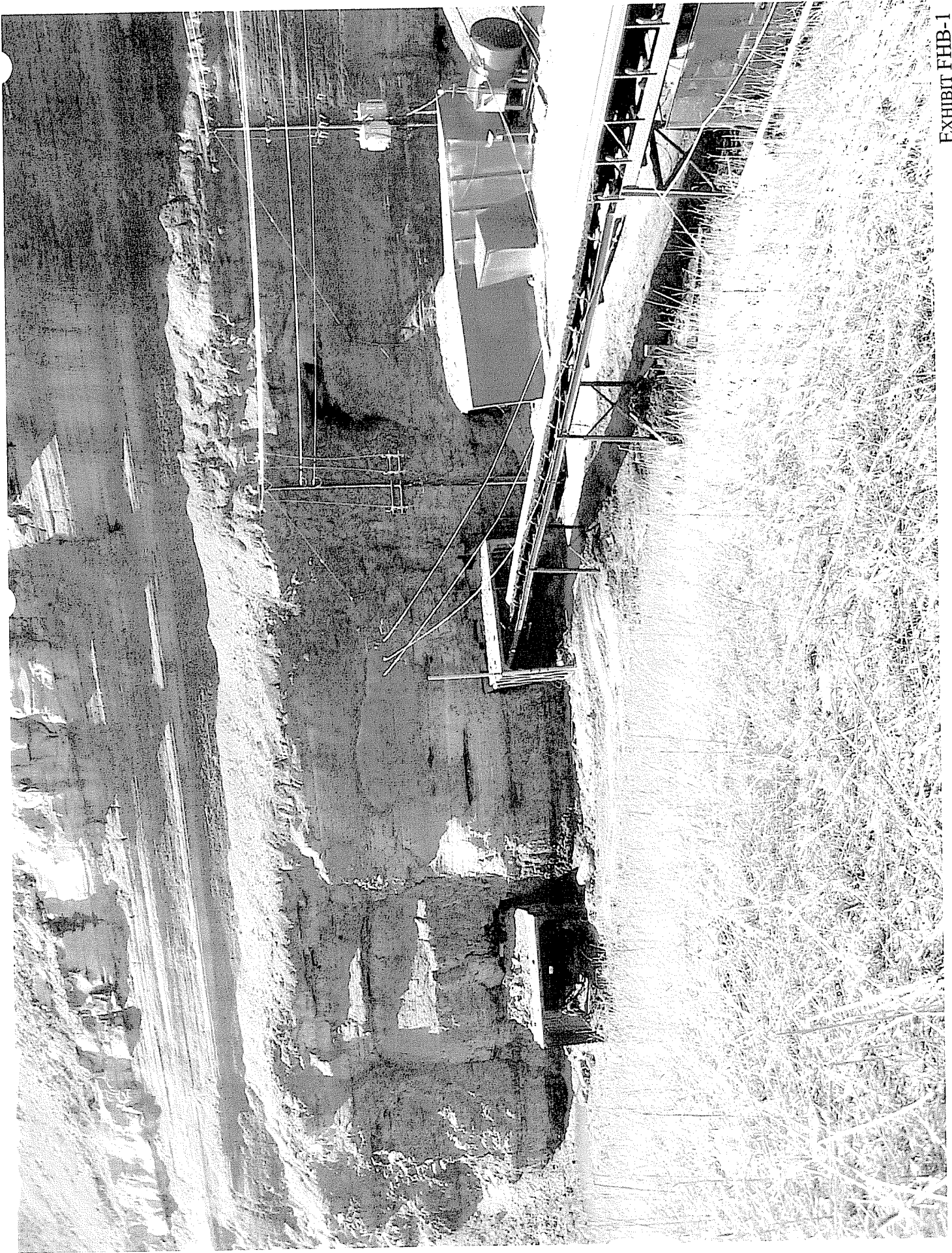
In May 1974, I received a Bachelor's degree in Electrical Engineering from the University of Kentucky. In addition, I have participated in company-sponsored management and computer courses and attended various industry seminars.

I joined Kentucky Utilities Company in the Company's Rate Department as a Rate Engineer. In 1983, I was promoted to Manager of Load Research within the Rate Department. Following a Company re-organization, I assumed the responsibility of Senior Financial Analyst in 1992. When Louisville Gas and Electric Company and Kentucky Utilities Company merged in 1998 my title was changed to that of Senior Rate & Regulatory Analyst. In 2001, I was promoted to Manager of Regulatory Compliance for Louisville Gas and Electric Company and Kentucky Utilities Company a position I held until assuming my current role as Manager of Tariffs/Special Contracts in 2004.

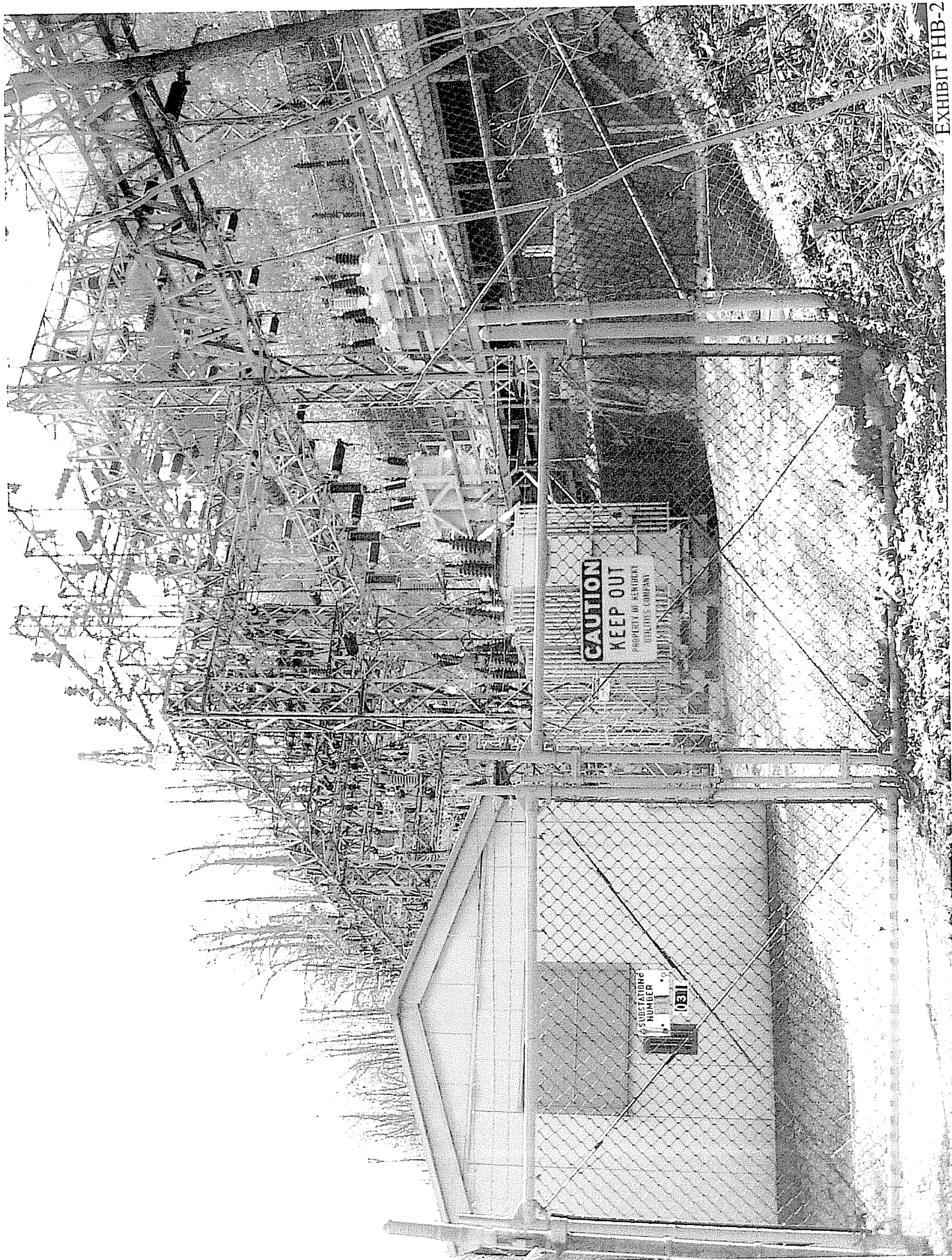




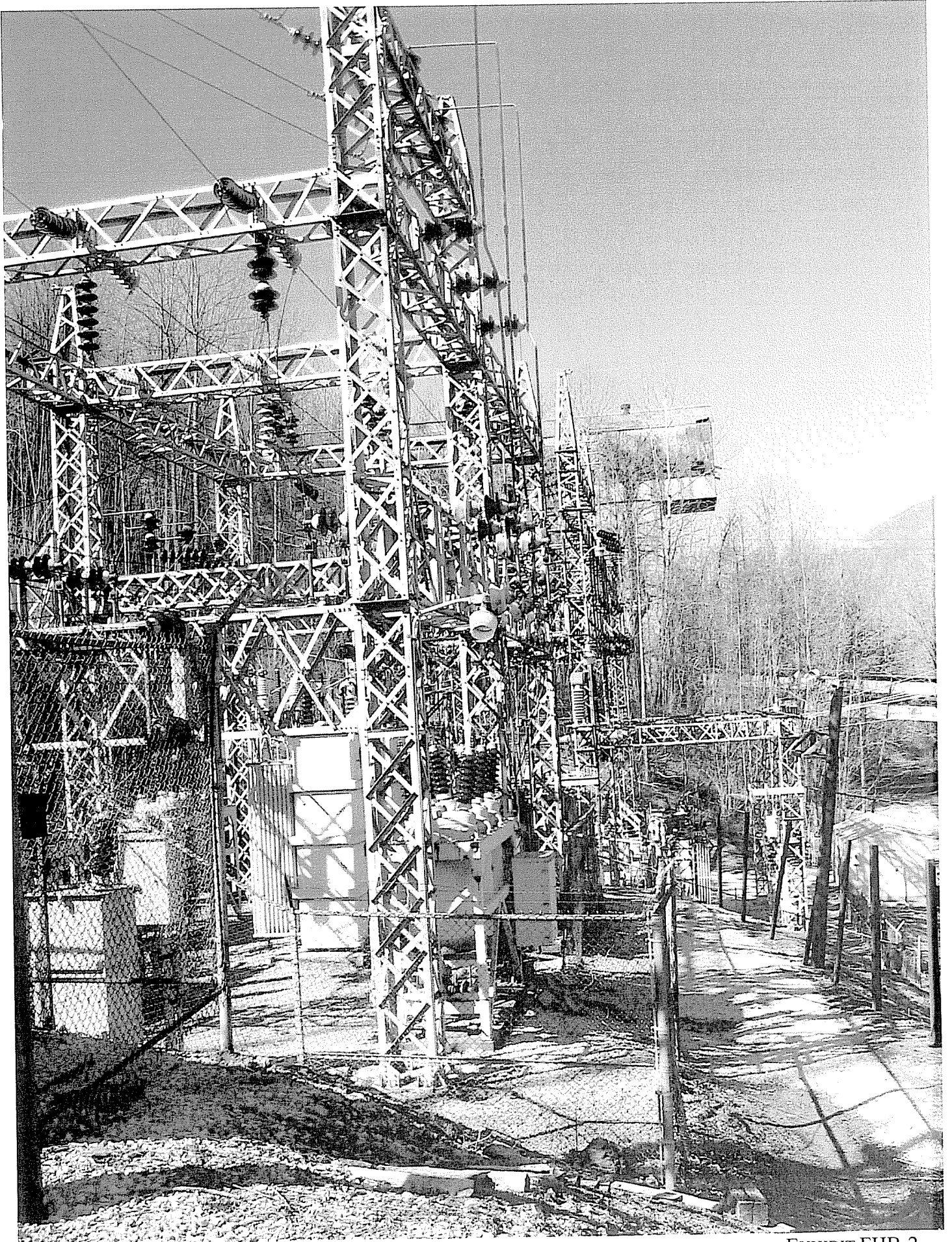














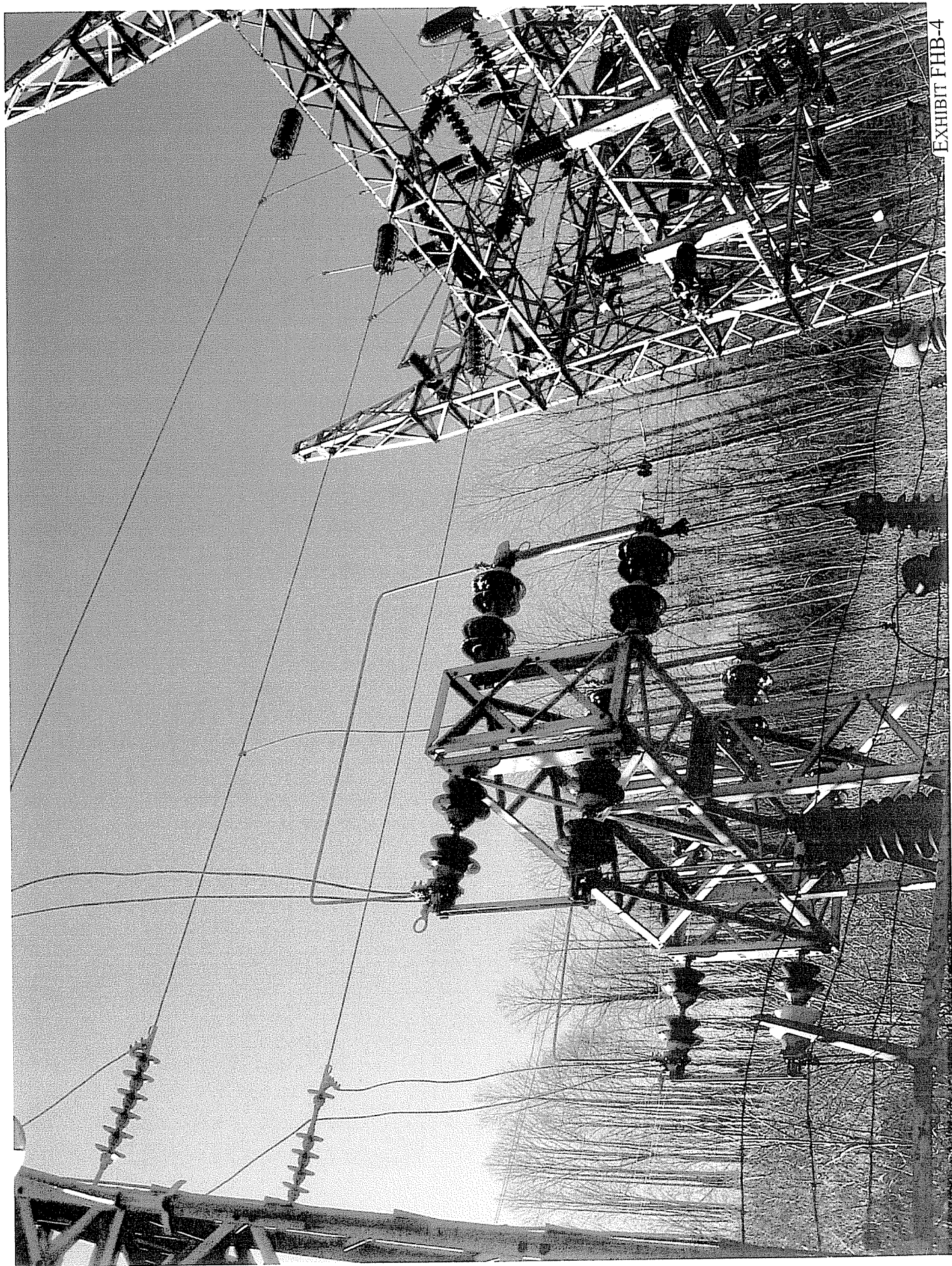




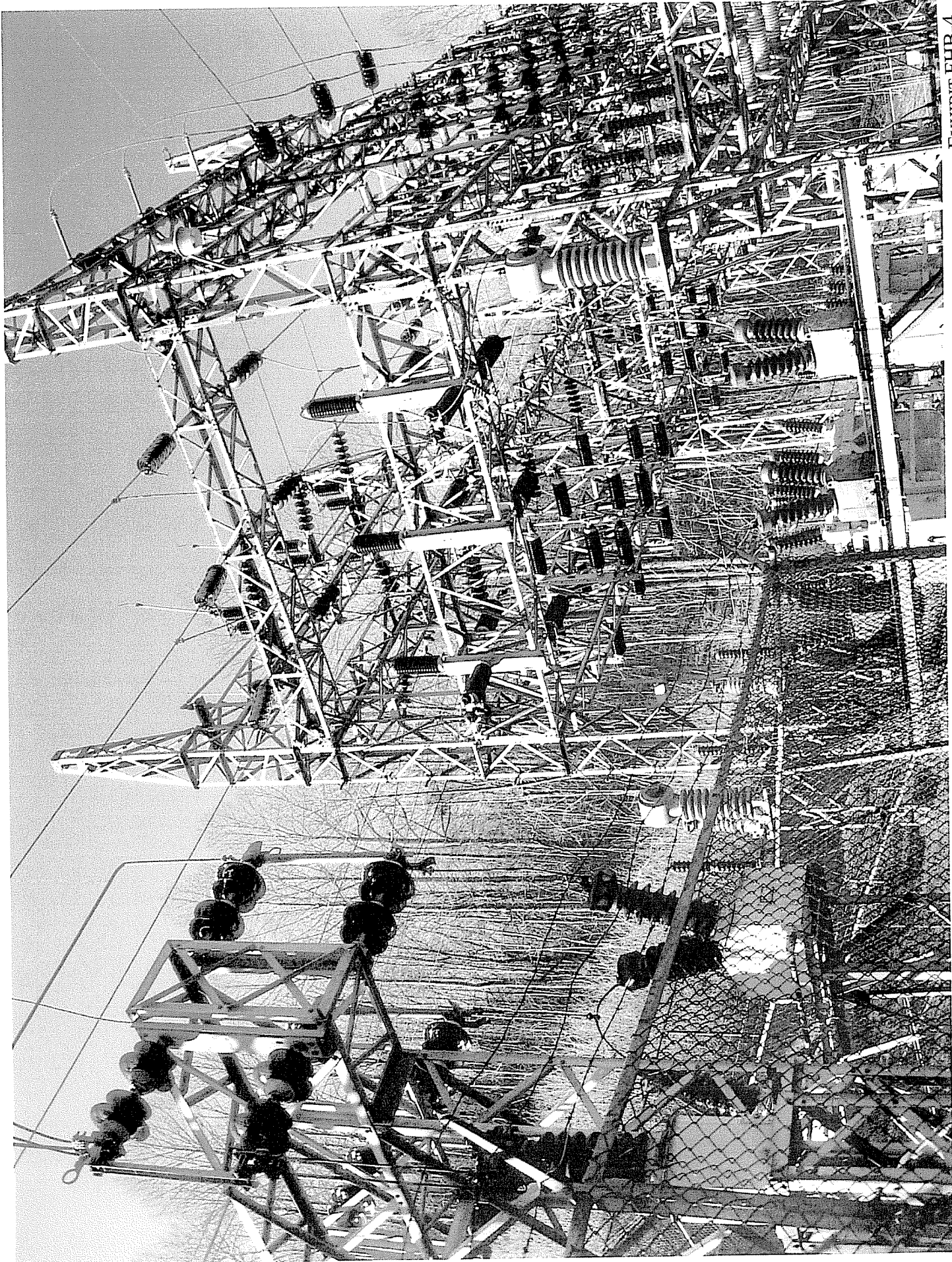








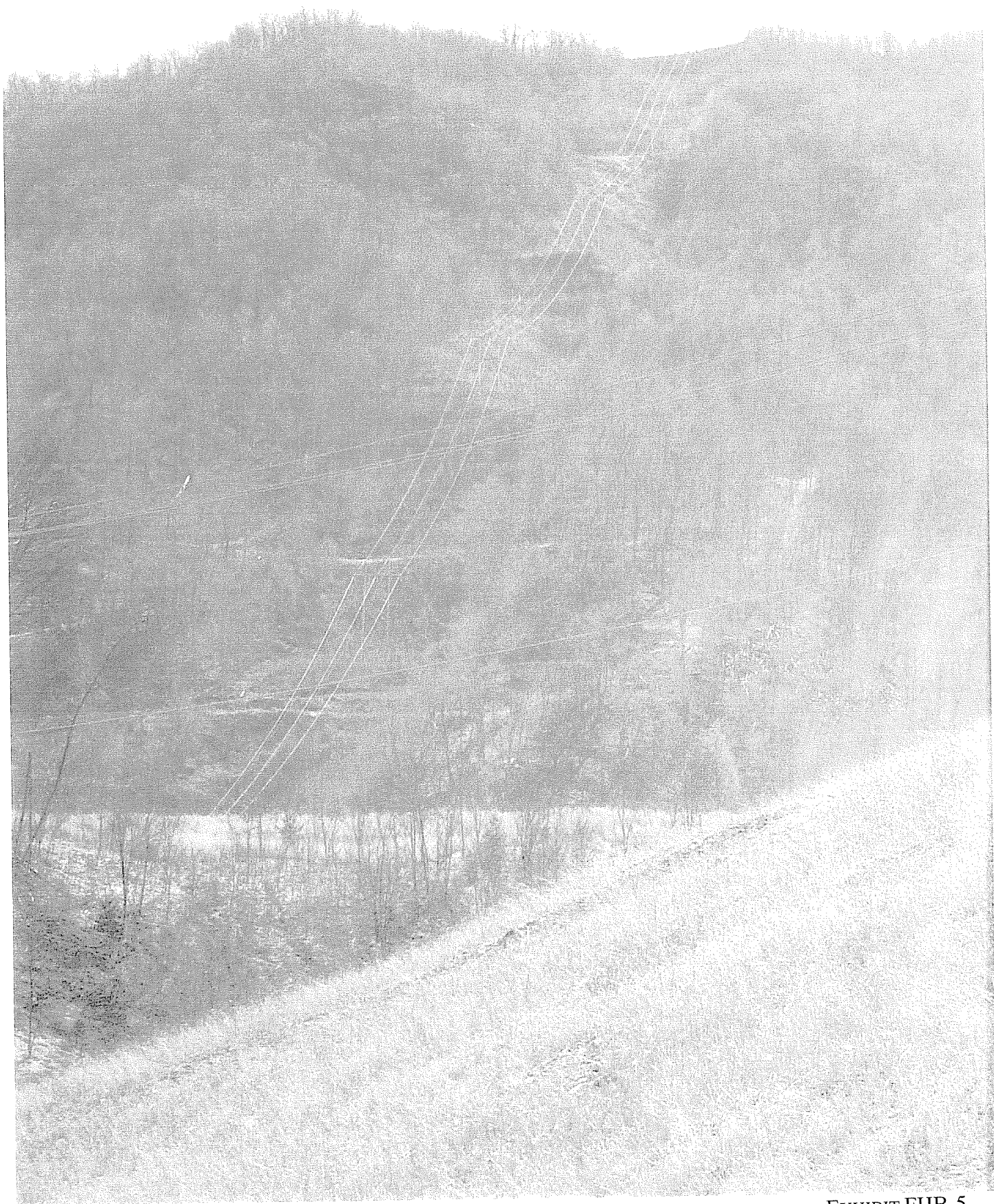




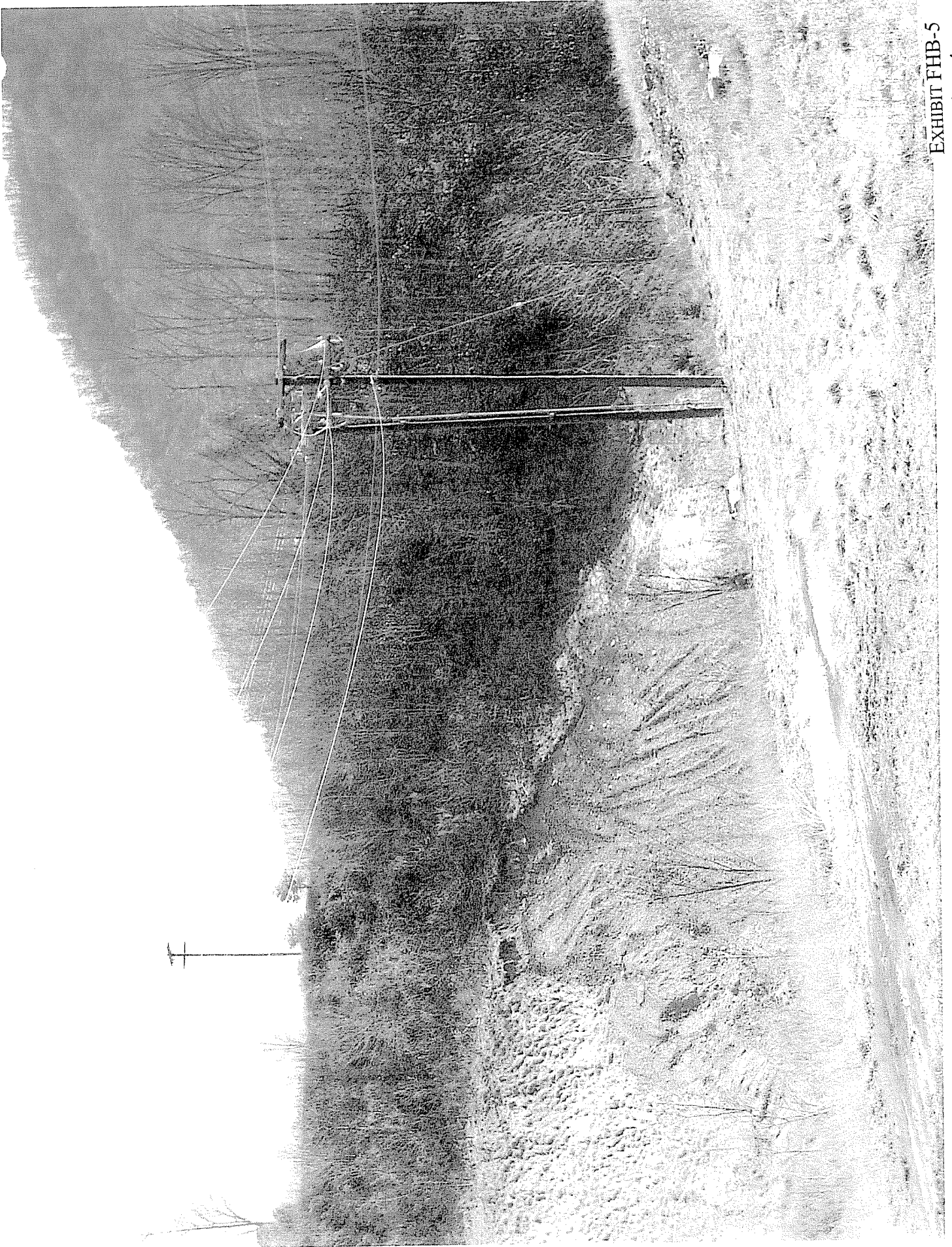
















**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

**CUMBERLAND VALLEY ELECTRIC, INC. )**

)

**COMPLAINANT )**

)

**v. )**

)

**CASE NO. 2006-00148**

**KENTUCKY UTILITIES COMPANY )**

)

)

**DEFENDANT )**

)

**DIRECT TESTIMONY OF  
LONNIE E. BELLAR  
DIRECTOR, TRANSMISSION**

**Filed: October 6, 2006**

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

2 A. My name is Lonnie E. Bellar. I am the Director of Transmission for E.ON U.S. LLC,  
3 providing service to Kentucky Utilities Company (“KU”). My business address is 220  
4 West Main Street, Louisville, KY 40202.

5 **Q. Please provide an overview of your professional qualifications.**

6 A. I have been employed in a number of capacities in the utility industry since 1987. A  
7 statement of my professional experience and education is attached as Appendix A.

8 **Q. Have you previously testified before the Kentucky Public Service Commission (the  
9 “Commission”)?**

10 A. Yes. I have testified before the Commission in several six-month and two-year reviews  
11 of Louisville Gas and Electric Company (“LG&E”)’s and KU’s Fuel Adjustment  
12 Clauses. I have also testified in several proceedings involving LG&E’s and KU’s  
13 applications for certificates of public convenience and necessity to construct various  
14 generation and environmentally-mandated capital projects.

15 **Q. What is the purpose of your testimony?**

16 A. The purpose of my testimony is to describe KU’s service to Black Mountain Resources  
17 LLC (“BMR”), the location of KU’s facilities in the area of BMR’s mining operations,  
18 and the capabilities of KU’s system to serve the mining load at the BMR-affiliated  
19 Stillhouse Mine No. 2 (“Stillhouse #2”).

20 **Q. Are you sponsoring any exhibits?**

21 A. Yes. I am sponsoring Exhibit LEB-1, which is an accurate representation of the location  
22 of KU and CVE’s facilities in the relevant area. Richard Matda, on behalf of BMR, will



1 verify the accuracy of the mines, mining reserves and customer-owned electrical  
2 facilities shown on Exhibit LEB-1.

3 **Q. Does KU presently serve BMR?**

4 A. Yes. KU has served BMR, or its predecessor company, since 1998. In addition, KU has  
5 been delivering power to the same substation that has provided power to BMR and  
6 previous mining companies for over seventy (70) years.

7 **Q. Please describe the KU facilities used to provide service to BMR.**

8 A. KU owns a 69 kV transmission station in Lynch, Kentucky (“Lynch Substation”) which  
9 is used to serve BMR, a KU distribution station and two East Kentucky Power  
10 Cooperative (“EKPC”) stations. The Lynch substation was placed in service in 1931 and  
11 is fed by KU’s Arnold-Lynch, Imboden-Lynch and Pocket-Lynch 69 kV lines. The  
12 locations of that substation and the lines feeding it are accurately represented on Exhibit  
13 LEB-1.

14 **Q. Please describe the manner in which KU provides service to Stillhouse Mine No. 2**  
15 **(“Stillhouse #2”).**

16 A. BMR owns a substation, known as the BMR U.S. Steel Substation, immediately adjacent  
17 to KU’s Lynch Substation. KU’s Lynch Substation feeds BMR’s U.S. Steel Substation,  
18 and the power is metered at the connection between those two substations. From BMR’s  
19 U.S. Steel Substation, power is delivered over a BMR-owned distribution system to a  
20 number of mining operations conducted by BMR or its affiliates in Harlan County,  
21 including the operations at Stillhouse No. 2.

22 **Q. Can KU provide adequate, dependable service to BMR’s operations, including**  
23 **Stillhouse #2, through the Lynch Substation?**



1 A. Yes, without question. The transmission network supporting the Lynch Substation has  
2 adequate capacity to continue serving BMR and the KU and EKPC distribution stations it  
3 presently serves, as it is currently loaded at 50% of its rated capacity of 34 MVA.  
4 Because KU's service to BMR is from the Lynch 69 kV bus, it is not vulnerable to single  
5 contingency transmission line outages. In fact, the Lynch Substation has provided  
6 reliable service to BMR and predecessor mining operations since 1931, and has served  
7 Stillhouse #2 since July 2005.

8 **Q. What other facilities does KU have in the area?**

9 A. In addition to the Lynch Substation and the facilities feeding into that substation, as  
10 discussed above, KU has a 69 kV line, known as the Arnold-Evarts line, located  
11 approximately 3800 feet north of the Stillhouse #2 portal. That line was constructed in  
12 1966. KU also has a 4 kV distribution line located in the area near the portal to another  
13 BMR-affiliated mining operation, which line was built in 1967. The location of both of  
14 those lines are shown on Exhibit LEB-1.

15 **Q. Cumberland Valley Electric, Inc. ("CVE") contends that its facilities are "more**  
16 **adequate and dependable" than KU's facilities for the purpose of serving Stillhouse**  
17 **#2. Do you agree?**

18 A. Absolutely not. As I noted above, KU has been providing adequate, dependable service  
19 to BMR for the Stillhouse #2 operations for over a year now, and KU's facilities are  
20 more than adequate to meet this customer's needs. However, CVE entirely ignores that  
21 service, and the existence of BMR's own distribution network, and assumes that KU  
22 would have to tap its existing Arnold-Evarts 69 kV line and construct a 69/12 kV  
23 substation in order to serve this load. While KU *could* serve the load in that manner, it

1 would make no sense to do so given the existence of the customer's own extensive  
2 facilities. It is also interesting to note that CVE's three-phase distribution line in the  
3 area, which it proposes to use to serve the Stillhouse #2 operations, is served by CVE's  
4 Chad Substation that is fed by KU's Arnold-Evarts 69 kV line. If CVE were to serve this  
5 load, Stillhouse #2 would be vulnerable to single contingency outages of CVE's  
6 distribution line, CVE's Chad Substation and KU's Arnold-Evarts 69 kV line. While KU  
7 has not specifically evaluated the capabilities of those facilities, they are, in any event,  
8 not as dependable as the KU facilities from which BMR is now served.

9 **Q. Does this conclude your testimony?**

10 **A. Yes it does.**





**APPENDIX A**  
**LONNIE E. BELLAR**

In May 1987, I received a Bachelor's degree in Electrical Engineering from the University of Kentucky and a Bachelor's degree in Engineering Arts from Georgetown College. In addition, I have taken undergraduate accounting courses and have participated in company-sponsored management and computer courses.

Also in May 1987, I joined Kentucky Utilities Company in the Company's System Planning Department as a Technical Engineer I and progressed through various engineering levels through 1992. In January 1993, I was promoted to Supervisor of Generation Planning and, in September 1995, was promoted to Manager of Generation Planning. In May 1998, I assumed the responsibility of Group Leader for Generation Planning for the merged Louisville Gas and Electric Company and Kentucky Utilities Company. In September 1998, I became Manager of Generation Systems Planning for Louisville Gas and Electric Company and Kentucky Utilities Company. In February 2000, I was promoted to Director of Generation Services for Louisville Gas and Electric Company and Kentucky Utilities Company and later in January 2001 I was named Director of Generation Services for LG&E Energy Service Inc. In March of 2003 I was named General Manager Cane Run, Ohio Falls and Jefferson County CTs for Louisville Gas and Electric. In April of 2004 I was named Director of Financial Planning and Controlling for E.ON U.S. Services LLC. In August 2006 I was named Director of Transmission for E.ON U.S. Services LLC, my current role.



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