THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appellate Case No. 2016-001037

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-CP-36-00120

RECEIVED
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SC Court of Appeals

Oien Family Investments, LLC.....Appellant

v.

Piedmont Municipal Power Agency.....Respondent

RECORD ON APPEAL

VOL. II OF II

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THE COURT: You sure? Okay. Let's start at 9:00 o'clock. If you have a problem with a witness, we'll cover it.

MR. BANNISTER: Thank you, Your Honor.

THE COURT: All right. Thank you.

(Whereupon, the trial will resume the next morning at 9:00 a.m.)

MARCH 29, 2016

THE COURT: All right. Mr. Pope, I believe yesterday when we finished, you were going to ponder about it overnight as to whether or not you were going to rest or call additional witnesses.

MR. POPE: Yes, sir. We're going to rest, but we are also going to withdraw the claim for public use.

THE COURT: Okay.

MR. POPE: And focusing on the routes stated and challenged.

THE COURT: Very good.

MR. POPE: And Mr. Major is here with the comps.

THE COURT: Did you, do you have those comparables?

MR. BANNISTER: He just gave those to me, yes, Your Honor.

THE COURT: Okay. So you want a few minutes to look over it? What I was thinking is that you might want to look over it. If you have any questions, I'll let you

recall him.

MR. BANNISTER: All right. So I have my appraiser here and if you can give him five minutes to look at them, I think I'll, he'll be my first witness.

THE COURT: Okay. All right. I'll tell you what. I'm going to go back and look at some more cases anyway. Would you send her back when you're ready to go with your guy?

MR. BANNISTER: Yes, sir.

THE COURT: Okay.

MR. BANNISTER: I do want to argue on--

THE COURT: Well, let's go ahead and do some motions, too. I assume you've got some motions.

MR. BANNISTER: Okay.

THE COURT: Do you want to, go ahead.

MR. BANNISTER: Yes, sir. I want to move for a directed verdict on the issue of, so there were two things we decided, withdrawing the first one which is public use. The second one is whether or not there was a clear abuse of discretion. And in this case, Judge, they carried the burden of proving that there was a clear abuse of discretion, so they have to offer some evidence that shows that there wasn't an abuse of discretion. And to do that, they would have to show, in this case, following the southern development, they would have to show an alternate

route. They would have to do an analysis of that route and present it to Your Honor in such a way that they prove it was a more favorable route wasn't considered. In the testimony, you heard us that there were other routes that were considered by PMPA, but those routes were rejected and the center line was chosen for a variety of reasons. They didn't offer any evidence as to construction costs. And so without evidence related to the construction costs on the southern route, you're not in a position to second guess indemnity of the decision to go the middle route. The testimony that's in the record is that the condemning authority through Mike Frazier, PMPA, considered all the factors necessary to determine that the middle route was the favorable, was the route that they should use. To prove that that is not a route that should be used, the burden is on the Plaintiff to present evidence as to the other routes and all the factors associated with them. So failing to have an engineer who's done a study and actually put the cost of that line in the record fails to meet the burden of proof and the Defendants in this case would be entitled to a directed verdict on the issue of clear abuse of discretion. So on just the engineering by failing to offer credible evidence on the actual engineering costs associated with the alternate route, the Plaintiff fails to meet their burden of proof.

THE COURT: Let me, may I interject something here, please, sir?

MR. BANNISTER: Yes, sir.

THE COURT: It seems to me that although his records could be somewhat confused by the first, I am inclined to allow Mr. Pope to move that evidence into the record. I didn't think, by stipulation, the Defendant and Defense had entered all of this stuff, exhibits into evidence in the case. So there is some evidence in the record as to the cost of the southern line and the middle line, is that not correct?

MR. BANNISTER: Judge, actually and you're, the report is in and I went back and reread the report last night. It clearly states that it's not related to this actual line. It's related to another line that the expert had been involved in. And so even the report acknowledges that it's not related to this line. It is the cost based on a different kind of line, installed by a different electric company and a different project. So even the report itself doesn't have any actual comparison of actual costs. It has comparison of costs as it would have been installed somewhere else. So there's no analysis that has been offered by the Plaintiff as to the cost of construction on this other route with the pond. There has been no engineering. There's been no survey done of the

southern route by the Plaintiff to show that it's feasible. The Plaintiff's got to prove that it's a feasible route. They got to prove, they got to offer to you what it would cost to build that route and failing to do that, they don't meet their burden of showing there was an alternate route that was feasible and that the cost would be less than the middle route. And, therefore, the theory of their case fails for having not met that one issue. So it would be our position, Judge, that the case has been about what the property that's being condemned is worth. They want to say it's worth a lot more than what our expert says it's worth. That's the crux of their argument is we abused our discretion, because we don't agree with their appraiser and his evaluation of the middle route for the condemnation. To be a clear abuse of discretion, they would have to show that we did not rely on an expert to determine the condemnation costs. We have an appraisal which is in the record for you to see that we relied on this data prior to our condemnation. This is vastly different than the appraisal offered by the Plaintiff. Two, the appraisal offered by the Plaintiff wasn't offered until after the condemnation was started, and so you can't abuse your discretion, because you didn't consider information that wasn't available to you. So no appraiser, no expert, no landowner said this is going to

cost you $180,000.00 to take the center route until after we had taken it. The condemnation started, and then we were presented with an appraisal by Mr. Major saying, now, y'all messed up, we think it's worth a lot more than that. I'm not, I understand at this point in the trial I can't argue with you about the believability or accuracy of Mr. Major's appraisal. I'm not asking you to consider that. What I'm asking you to consider is the fact that when the decision was made to condemn the property, there was no appraisal for Mr. Major. There was an appraisal from a highly-trained expert who is recognized in the field by even their experts as being a good appraiser who said that condemnation costs, fair market value, is much less than what they say it is now. And that's not proving a clear abuse of discretion. It's not whether they're right or wrong; it's whether or not we made a decision that was arbitrary and capricious. And you have the appraisal we relied on and if you rely on that, if you look at that value which is what was available to PMPA at the time, Judge, there was no, they're entitled to rely on their expert. There's no reason why the Plaintiffs have pointed to, that that expert was not a reasonable expert to use. And Mr. Rogers testified that you always rely on your experts when locating lines as it's related to the taking value. You don't rely on the landowners expert. And so

we're asking you to direct a verdict in favor of the Defendant, denying the injunction, and basically recognize that they failed to meet the burden of proof which is on them to prove that there was a clear abuse of discretion in the selection of the middle route for the rolling of the transmission line.

THE COURT: Mr. Pope.

MR. POPE: Yes, sir. Southern Development was somewhat revolutionary and counsel did not address some of the things stated in that case. It said in that case that indemnity authority either didn't consider or improperly considered certain criteria. One of those criteria is aesthetics. In that case, they said that had they looked at aesthetics, they would have seen that line in that case was visible from several golf holes that were going to be put on that site. And that was an important decision, aesthetics. And in this case, there's been no consideration of that. Another thing they said is that no property owners were contacted before the route was chosen regarding anticipated use. That's exactly what happened here. The Oiens had an anticipated use that does not appear anywhere in that claim or in their consideration, they never talked to him. They never looked at his home plans. They just brought him to a meeting. They said that in that case they failed to consider the cost to

acquire the land. Well, if they had talked to him, the cost of acquiring the land would have been different in our view. The Court also said in that case that the, that there's no factual basis for the route selection, then that's an abuse of discretion, and the witness can't talk about abuse of discretion, that's a legal term. But if you don't have a factual basis and that's what Mr. Rogers said, there's no factual basis, because he didn't do a route study. He said that the industry standard and the best practices of right-of-way acquisition is to do an alternate route study. And so he could see exactly where the criteria scale will score, and so you can compare route one with route two and route three.

THE COURT: Well, let me ask you this. I think Mr. Rogers conceded on the stand yesterday that if the fact their, PMPA did consider the factors as set forth in this case, the seven different factors that you look at, although it might not be the right and I think he said I don't see how you can do it with 72 different properties or something along those lines if you, in fact, did it, that would not necessarily constitute abuse of discretion.

MR. POPE: He said that he found that it would be impossible to do that without a written study.

THE COURT: Well, he, I think he found it unbelievable that they, in fact, did do alternate route

studies based on the lack of written, I guess, memorial or no reports.

MR. POPE: Yeah, no notes, no reports.

THE COURT: Right. But if, are you aware and I know that you've been involved in this a lot, is there any requirement after that you're aware of that says that you, besides best practices that you have to have it in-writing in order to meet the standard of considering alternate routes?

MR. POPE: There is no case and Southern Development didn't address it and there is no case that says it. Mr. Rogers identified best practices. He identified the standard in the industry. SCE&G, Duke, Progress Energy, they all do it the way he does it in almost identical fashion.

THE COURT: And, you know, I guess the question seems to be assuming that PMPA did not adhere to best practices, does that equate into an abuse of discretion?

MR. POPE: Yes, sir.

THE COURT: All right. And I assume that's your argument in this case?

MR. POPE: We think it is. Otherwise, every condemning authority could, after the fact, say I identified and checked, I considered that route and I considered this one and no proof of anything--

THE COURT: Isn't that more of a credibility issue than meeting the standard of whether or not there is an abuse of discretion?

MR. POPE: Well, I think, I don't think it's credibility, but I think he has identified the industry standards and that industry standard has to be met. If it didn't get met, it's an abuse of discretion.

THE COURT: All right. Now, the costs?

MR. POPE: The same thing. I mean, you have to have documentation. He identified the southern route as being the preferable route.

THE COURT: But, as you know, the burden is on your side of the case to prove lack of cost consideration. I mean, there's no alternate route cost in the record--

MR. POPE: That's right.

THE COURT: --potentially or at least alleged by the Plaintiff, and what is your response to that?

MR. POPE: I would probably say when you have the only person that's going to testify in this case about the standards of right-of-way transmission acquisition and he set the standard and that is proof that they did not adhere, that is proof of arbitrary and capriciousness. There is no factual basis.

THE COURT: I'm going to take that under advisement. Do you need a minute or two or is your guy ready to go?

MR. BANNISTER: We call David Graydon to the stand.

David Graydon, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bannister:

Q Mr. Graydon?

A Yes.

Q What do you do for a living?

A I'm a real estate appraiser.

Q All right. And who do you work for?

A I'm affiliated with Wilkins Norwood Appraisal and Associates.

Q All right. And tell the Court briefly what your qualifications are to do appraisals?

A I am a state certified appraiser which is what the government requires and at the state certified level, you are enabled to appraise any property type.

Q So you can do commercial/residential?

A Right, as a state certified appraisal. I'm also an MAI, which means I'm a member of the Appraisal Institute. That's our own governing body similar to a CPA, as to an accountant, and there are approximately 70 or 80 of us in South Carolina.

Q All right. And do you have to take extra classes to be--

A We have to take continuing education.
Q Above and beyond what a general real estate appraiser would take?
A Yes.
Q To kind of what the standards are and what you have to do to do an appraisal properly?
A Correct.
Q Okay.
MR. POPE: Your Honor, I stipulate that he's a qualified real estate appraiser.
THE COURT: So stipulated in the field of appraisal?
MR. POPE: Sir?
THE COURT: In the field of appraisal?
MR. BANNISTER: Appraisal and land evaluation.
THE COURT: And land evaluation.
Q Mr. Graydon, were you hired to do an appraisal by PMPA before and after a piece of property they represented they were going to acquire a right-of-way over?
A I was.
Q And that's already in evidence, but tell the Court when did you do that?
A I did the appraisal in 2013.
Q All right. Did you update it after that?
A I have not updated it.
Q All right. Look, you got your appraisal there?

A I do.
Q Let's make sure, I hope it's the right one. Did you do it in January of 2014?
A Yes. Yes, I did. I'm sorry I said 2013, but I had done some in--
Q I just want to make sure I'm looking at the right one.
A Right.
Q Did you, tell the Court what you did to appraise the property.
A In the process, the first thing I did was I studied the engineer drawing I was provided to see what the right-of-way would be on the subject property. After I did that, I inspected the property, and I analyzed the highest and best use of the property and came, and I looked at comparable sales. I was appraising land in this assignment. I looked at comparable sales, and I came up with a value per acre and after studying the plans, I applied that to the size of the acquisition and came up with a value of $21,075.00.
Q All right. As part of that appraisal, did you have an opportunity to walk out on the property?
A Yes, sir; I did.
Q Did you go through the house that's out there?
A I did not go inside the house, but I saw the house.

Q All right. Did you see the pond?
A I saw the pond.
Q Did you see the Duke Power transmission line?
A Right. There's an existing Duke Power transmission line that traverses the property on the east side.
Q Let me, I'll point to Plaintiff's exhibit number 44. This is the transmission line that is in existence?
A It is.
Q All right. Is this the Plaintiff's property over here?
A It is.
Q So they, how many acres is that about?
A It's approximately 15 acres or so on the east side of the existing power line.
Q All right. And so, and I'm just making sure I got this right. There is currently a transmission line that cuts through a portion of the Plaintiff's property?
A Yes, sir.
Q All right. In valuing the 15 acres over there, did you decrease the value of that since it was cut off from the rest of the property?
A No. That was an existing condition.
Q And but did you take that into account?
A I did take that into account, and it's a large enough tract on that side that it could be used. It's not being

affected any by the new right-of-way. And so I don't think that there is any consequence of that existing condition.

Q Okay. So when you appraised the property, determined the fair market value--

A Right.

Q --of $5,000.00 an acre?

A Yes, sir.

Q You determined that that transmission line as an existing issue, you didn't make an adjustment for that?

A No. No, I did not, because it, that existing transmission line did not have an impact on the property to the extent that it would have lowered its value from $5,000.00 per hour.

Q Are there places on the property you could see it, though?

A Yes. Yes, you can. When you are, you know, in the area of that line and when you are close to the entrance of the property on the east side.

Q In other words, when you come in the cul-de-sac where the property stops/starts, you have to drive under the transmission line, don't you?

A You do.

Q So once you're on the Plaintiff's property, you drive under the transmission line to get to the rest of the

property?
A Yes, sir.
Q Okay. And tell me about the, did you determine that there would be any detrimental effects by the transmission line running through the middle to the remainder of the property?
A I did for the proposed transmission line.
Q All right. For the proposed transmission line, what did you determine the damage to be to the remainder?
A I determined that there would be no damages to the remainder.
Q Okay. And why is that and it cuts it into two tracts, right, a 60-acre tract and a 40-acre tract?
A It does. But it is a distance from the house that's there. In my studies, I have found that unless a house is within 300 feet or less to a transmission line, that it is, does not have any loss in value. And it has, as it divides it and it divides it pretty close to that existing tax map line on the property, that the size of each of the tracts north and south of the existing, or excuse me, the proposed transmission line is sufficient that there is no loss in value.
Q Okay. So what about, were you aware when you did the appraisal that the owners had graded a homesite, I'm pointing to it on exhibit 44, were you aware of that?

A Yes, I was.
Q And that there was, I saw in your appraisal that you reported there was a well or septic tank, underground electric utility that ran out there, were you aware of that when you did your appraisal?
A Correct.
Q And knowing that there was a homesite planned, you did not determine in your professional opinion that there was any damage--
MR. POPE: He's leading the witness; objection.
THE COURT: Rephrase, please.
MR. BANNISTER: Sorry.
Q Did you have that information?
A I did.
Q Okay. And what did you determine would be the damage to that homesite?
A I don't think that the homesite is damaged. It's far enough away from the new proposed transmission line that there are no damages to it.
Q All right. Now, Mr. Graydon, I'll just believe that there was testimony that this was a high-end residential homesite. Do you have any experience appraising high-end residential homesite estates?
A I do.
Q All right. And in your experience, would this be

one?
A It certainly has the potential for it.
Q What, what kind, tell me about your experience. What size property does it take to be a, is it like a 100 acres or is it 50 acres?
A No.
Q What size do you have to get to before you're a high-end estate?
A It has to be large enough where, you know, there is sufficient land around the house. Recently, I've had the pleasure of working in the Cedar Creek area in Richland County, and it's a very hilly, wooded area that is atypical of what you think of Columbia. And in that area, there are lots that are anywhere from, most of them are close to 20 acres up to over 30 acres, and they have existing transmission lines that run through them and the lots sold with the existing transmission lines on them. And it did not keep those lots from being developed with value ranges of approximately, some of them starting around $500,000.00 to a million dollars. Some of them also have built barns and equestrian facilities on the properties.
Q And you're telling this Court that some of those tracts you've appraised had existing power line running through them and sold anyway?

A They sold anyway.
Q Did you have the opportunity to investigate the marketability of those or see how long it took them to sell?
A Yes. Yes, I did. I saw what the sale prices of the land was and also some of them had been, you know, listed for sale and I've studied them and they do not have any loss in value because their sites are 10 or 20 acres, that's sufficient for them to be developed as a rural estate site. Even though they're approximately 10 miles from Columbia, they are, have a rural setting and they, the land is very similar to say the foothills region in South Carolina.
Q So and your opinion then is the transmission line crossing the middle of this property exclude it from being a high-end residential real estate estate?
A No, sir; it doesn't. The part that is south of the proposed line according to my calculations would be 49.68 acres. The area that is north of the transmission line would be 62.60 acres. Those tracts have no reduction in their being functional and able to be developed.
Q Okay. Mr. Graydon, did you have a chance to look at any other proposed routes that crossed the property, the southern route or the northern route?
A No, I did not. I based it on the plans I was

provided.
Q And did you have the opportunity to review some of the comps that were provided this morning by Mr. Major that he used to support his evaluation of the property?
A I did.
Q Was there anything remarkable about those comps when compared to the evaluation that Mr. Major put on the property of $5,200 an acre?
A I saw that those comps had adjusted values from $3,000.00 plus per acre to over $4,000.00 per acre and none of them were as high as $5,000.00 per acre.
Q If you had relied solely on those comps in forming your opinion of value, what would your per acre value have been?
A Approximately $4,000.00 or so per acre based on their adjusted values.
Q All right. And generally accepted rules of good appraisals, if you're going to value something at $5,200 an acre, do your normally have to have some comparables that would support that kind of value per acre?
A Yes, sir.
Q If an appraiser opines that a piece of property in his opinion is $5,200 dollars an acre and the only supporting comparable sales he has are the sales that you were provided, could you explain how he added that

$1,200.00 dollars per acre to the value?
A No, sir.
Q Would it be appropriate for a appraiser to contact an auctioneer in Kansas City and ask him what he thinks it should go for?
MR. POPE: Object to the form.
A I don't think so.
THE COURT: Just one second.
MR. POPE: He can't pit one witness against another.
THE COURT: I sustain that objection.
Q Is there anything in the rules covering how you're supposed to do an appraisal that would allow an appraiser to seek the opinion of someone who is not familiar with the property to get information to ask their opinion of what it's worth? Can you rely on somebody else's opinion about what the property is worth?
A An appraisal has to follow USPAP standards and for any type of assumption or limiting conditions that are made in the appraisal, the appraisal has to be appropriately supported.
Q All right. And is it appropriate support to contact an auctioneer and ask his opinion?
A I couldn't understand how that would give a valid answer.
Q All right. Let me ask you another one. Does the

USPAP allow you to use contested jury trial verdicts as a basis for valuation?

A Typically, no. Because that is under the threat of condemnation and also it doesn't meet the requirements of market value where you have a willing value and a willing seller.

Q So the answer to that would be no?

A No.

MR. POPE: Object. He's leading the witness and we move to strike.

THE COURT: Overruled.

MR. BANNISTER: Thank you, Your Honor.

Q And in your consideration of the property value, well did you value the timber?

A Pardon?

Q Did you value the timber?

A No, sir. I'm not a timber cruiser and my value is just of the land only.

MR. BANNISTER: No other questions.

THE COURT: Cross-examination.

CROSS-EXAMINATION

By Mr. Pope:

Q Mr. Graydon, you represent primarily, you work for condemning authorities, correct?

A I do.

Q Would you agree there would be over 90 percent of your work is for condemning authorities?
A No, sir.
Q But it's the vast majority of your work is for condemning authorities?
A No, sir. A portion is, but I also work for property owners, and I also do appraisals, typical appraisals for banks. I don't do just solely imminent domain work.
Q Yes, sir. Well, excluding imminent domain work, though, you work mostly for condemning authorities?
A Yes, they hire more appraisals than individual homeowners do.
Q Now, you never talked to, this is Mr. Lynn Oien's wife, June, here. You never met them?
A I never did.
Q And do you agree that having knowledge of the planned developed and usage of a property is very important?
A It depends on what that is. If something has not been developed on a property, then there's no payment for it. I've always been, had the understanding that frustration of plans is non-compensable.
Q Yes, sir. We're not talking about hypothetical. I'm not talking about speculation. I understand that. I'm talking about if a landowner has a specific plan for the property and has committed over $100,000.00 towards that

plan, you'd want to know about it, wouldn't you?
A I would want to know about it.
Q But you didn't know about it in his instance?
A I knew that there was a future homesite when I went, I went out there and when I inspected it, I was accompanied by their representative, Mr. Major.
Q All right. But you didn't see the plans for a home?
A No, I didn't see the plans for the home.
Q And you didn't know that they had put $100,000.00 in the homesite, grading the homesite, paying $78,000.00 for the materials on a down-payment--
A And it--
Q --and digging a well at the cost of $3,500. You saw the well, but you didn't know what the plans were, did you?
A No, I did not know about any details of the plans. I know it's still a considerable distance from the existing or from the new power line right-of-way.
Q Yes, sir. And you said about 300 feet or so or less wouldn't have an effect, but if it was closer than that, it would?
A It could; yes, sir.
Q All right. Well here, you've got a power line through the middle and you've got what looks like 300, 200 feet of cleared ground making the visibility issue much

more obvious, correct?
A I have that the distance from the existing residence is approximately 500 feet from the proposed restaurant, excuse me, residence is approximately 670 feet. So they are over 300 feet away from the proposed line.
Q And you understand that aesthetics is an important part of appraisals, that aesthetics, poor aesthetics from transmission lines?
A It can be.
Q All right. Now, do you recognize that, you know Bill Rogers from formerly Central Electric Power Coop?
A I do.
Q And you recognize him to be a prominent expert in the field of right-of-way acquisition?
MR. BANNISTER: Objection, Your Honor.
A I know he does a lot of acquisitions, yes.
THE COURT: Just one second. Just one second. You have an objection?
MR. BANNISTER: His opinion about another expert is not relevant.
THE COURT: I agree. I sustain the objection.
Q Have you worked with Mr. Rogers?
A I have. I've worked for his company.
Q You know, we talked about the existing Duke line, but we can see here that it's heavily wooded on each side of

that transmission line that pre-existed this situation?
A Yes, sir.
Q So even if you got 150-200 feet away, you don't see it much, do you?
A And correct.
Q Were you asked to compare or were you asked to read the values of running a southern line or a northern line or any other route?
A No, sir.
Q And you agree, I take it, I'm not sure, I want to know, but do you agree that the Oien property is quiet special? And let me point out some factors and see if you agree or not. First of all, it's a large tract very close to the City of Newberry?
A It is.
Q And for a retirement home, there's very little noise out there, correct?
A I don't know if there, you know, how much noise there is.
Q Well, you drive down a dirt road for a mile or a paved road for a mile to get to it, correct?
A Well--
Q Is that right?
A Yes.
Q And it dead ends in there, so there's no through

traffic or cross traffic--
A Right. Right.
Q --or worry about traffic, correct?
A It's at the end of a cul-de-sac.
Q Now, that would make it ideal for someone who wanted to retire and build a nice home would it not?
A I think, yes. I think it's a good location for it.
Q Now, you've testified in condemnation cases?
A Yes.
Q And you are aware that juries have the right to determine what damage to remainder there is, correct?
A Correct.
Q And you've seen them return damage to the remainder even though one witness said there wasn't none, right?
A I don't know what individual witnesses have said.
Q You've never experienced that in court?
A Between what different witnesses have said, I don't know what has transpired between them.
Q All right. So you deny that there have been cases tried in this courtroom where one witness said there was no damage to remainder and the other witness said there was and the jury awarded substantial damages?
MR. BANNISTER: Your Honor, I'd object to a lot of questions about what's happened in other cases about other property in other condemnation. I don't think that's

relevant to what the issues are in this case.

THE COURT: What is the relevance?

MR. POPE: Well, he's on cross-examination, Your Honor, and--

THE COURT: I understand that.

MR. POPE: --and I think damages to the remainder is a prevalent concept, because of what juries do.

THE COURT: Say that again.

MR. POPE: Damages to the remainder are prevalent because of what juries do.

THE COURT: Well, and it would seem to me, although a factor that I have to consider or PMPA should consider is cost to build or cost to acquire, but what a jury may do in a subsequent suit would not be relevant to this hearing today as to the right to condemn. I mean, it seems to me that it's just apples and oranges and I'm not sure if what juries have done in the past have any relevance to this case today. So tell me what the relevance is.

MR. POPE: Well, I was going to ask him if he's testified in cases and juries have awarded damage to remainder where he said there was none.

THE COURT: Well, I'll give you a little leeway, but let's go ahead and but I'm not sure it's very relevant.

MR. POPE: Sir?

THE COURT: I don't, I'm not sure it's very relevant,

but go ahead.

MR. POPE: Okay.

A I cannot name any cases where a jury awarded damages when I said that there was none.

THE COURT: Okay.

Q Now, you arrived at a value for the right-of-way area of $5,000.00 an acre, correct?

A Yes, sir.

Q Okay. Are you aware of what the Oiens paid for the property 10 years before in 2005?

A I am.

Q Wasn't it something like $3,600.00?

A It's in that vicinity, it is.

Q Now, the comparable sales grid that you have from Mr. Major from yesterday, do you have that? Have you looked at it?

A I did.

Q These tracts, there are pictures of them attached, the four comparables. These tracts are inferior to the Oien tract, correct?

A I don't know. I have not seen these tracts in-person. I do not know if they are inferior.

Q So you can't tell us whether or not these are not, also they're not estate type high-end residential tracts?

A No, I cannot.

Q Do they appear to be from the photographs timber tracts?
A They certainly seem to have timber on them, yes.
Q And your assessments of those comparables would lead you to conclude that those properties are worth the average of somewhere about $2,500 dollars an acre?
A Right. Yeah. If they were average, that's where they might come in at, but that's improper to average comparables. Typically, what should take place is the ones that are more similar to the subject property are weighed more heavily.
Q But the standard is what a willing buyer or a willing seller would agree on, is that right?
A That is the basis for market value.
Q And when an auctioneer sells property, you got a willing seller and a willing buyer? It might be an awkward concept, but it's the same thing.
A And there's other stipulations--
Q Is that right?
A --in that there is no atypical financing that neither party was under duress when the tract sold. It's more than just a willing buyer and willing seller to meet the definition of market value by USPAP.
Q Okay. But an auctioneer is looking for top dollar and there's no duress involved, correct?

A But it's not when that auctioneer sells a property, it has not been, it has not necessarily been exposed on the market for a reasonable marketing time.
Q All right. When there's an auction of real estate, people show up, interested buyers, correct?
A Well, yes.
Q So the concept is the same. When the property is auctioned, some willing buyer out there offers the bid that they're going to bid and it's sold for that price?
A No, sir; it's not.
Q It's not?
A No, sir; it certainly isn't. And I'll be glad to read the definition of market value for you.
Q Well, go ahead.
A And that is that the buyer and seller are typically motivated. There's no atypical motivation. The buyer and seller are well-informed and well-advised and each is acting in what he considers his own best interest. A reasonable time is allowed for exposure in the open market and with an auction, there is no guarantee that there's been reasonable time. And so that's why I don't think that an auction meets the criteria of market value.
Q So you did not compare the cost to acquire any other route against the Oien property?
A No, sir.

Q And if you used the comparables on this sales grid that Mr. Major handed up this morning, you would come up with a value that was somewhat close to the value of this property after a power line, wouldn't you?
A I don't know. I haven't done that and I haven't looked at his comparables. I haven't compared them to the subject property, and I don't know. I haven't done that.
Q But in Newberry County, you would agree that Newberry County property is substantially different from properties in Columbia that you alluded to in terms of the market and in terms of usage?
A Those land tracts that I referred to at Cedar Creek, they all sold somewhere in the range of and from around $3,000.00 to $8,000.00 per acre. These are close to the Fairfield County line, although they're in Richland County. And so for these rural tract sales in Richland County, their values are similar to similar-sized tracts in and around Newberry.
Q You have never seen any route studies about this property that were generated by PMPA, is that right?
A I haven't.
Q And how much have you been paid for your work in this case?
A I believe it was a thousand dollars.
Q Including today?

A I have not determined what my fee is for today.
Q So you charged a thousand dollars to do this eighty-page report?
A Yes.
Q How many hours did you spend?
A I don't know.
Q Well, estimate for us?
A I probably have somewhere between 10-15 hours in it.
Q What's your normal hourly rate?
A It varies from $100.00 to $200.00 per hour.
Q What is it in this case?
A For today, it's $200.00 per hour.
Q So your rate is normally $200.00 an hour and you've charged them a thousand dollars for an eighty-page report?
A Yeah. It was part of a project. It wasn't the only property I appraised, and the fee would have been more if I had just done one appraisal.
Q Have you used the same comps in most or many cases?
A No, it varied.
Q Did you use any of the same comps you used here on these other tracts?
A Yeah, most likely I did.
Q And you used them in the case of the tract up here, right here.
A I don't recall.

Q How about Kibler, is that his name?
A Yes, that's sounds, that sounds familiar.
Q Did you ever meet Mr. Kibler?
A I believe I did, yes.
Q Where's he from?
A I don't, I don't recall. This appraisal was done two years ago and details about, you know, a property owner was from, I may have not never found out.
Q Did they live in Newberry?
A He may have. I don't recall.
Q Do you remember what you said to him?
A I don't, I don't recall.
Q Well, did you know that Mr. Kibler lived in San Diego, California or did they live in Newberry?
MR. BANNISTER: Judge, I won't to object to the relevance of where the neighbor lives.
A I mean, I just, I don't remember.
THE COURT: Stop, stop, stop, please. Go ahead.
MR. BANNISTER: I object to the relevancy of the neighbors and where they live and the line of questions about anything that happened that's unrelated to this problem.
THE COURT: All right. Overruled.
Q He lives in San Diego, California. Did you know that?

A Well, I do now. I don't recall that.
Q All right. But you did all the appraisal work for this project, 15 different landowners, correct?
A That sounds about right.
Q All right. Well, your comparable sheet on Mr. Kibler, I'll show you his. Is those familiar, the same comps, 21 acres on Old Whitmire Highway? Is that one of yours in the Oien case?
A Right. I did use that.
Q All right. Did you use SC Hwy 219, 10.49 acres?
A I did.
Q Did you use Highway 773?
A I did.
Q Did you use New Hope Road, 35 acres?
A I did.
Q Did you use US Hwy 121; 14.1 acres?
A That's the subject property.
Q Excuse me. I'm sorry. Morningdale Drive, that was, sorry. Morningside Drive, did you use that one?
A I did.
Q Did you use Saint Luke's Church Road, 10.8 acres?
A I did.
Q Did you use Highway 395, 36.57 acres?
A Yes.
Q Did you use Highway 395, 21.59 acres?

A Yes.
Q So you used the same twelve comparable sales for Kibler tract, as well as the Oien tract, is that right?
A No, sir.
Q You used every one I just named, that was all you did?
A You said the same twelve sales. I didn't use twelve sales in his report.
Q How many did you use in the Oien?
A I used twelve.
Q There are also twelve in Kibler, correct?
A No, there's not.
Q That's what it says?
A That's sale number twelve.
Q That's right. Comparable number twelve?
A Right, that's comparable number twelve.
Q You used 12 comparables in Kibler?
A No, sir; I didn't.
Q But that's what it says?
A No, sir. That's not what it says.
Q All right. You tell me what it says?
A Well, then I need to hold the report.
Q Okay.
A I used, all of these same sales were used in Oien.
Q Okay.

A But I used eight of the twelve sales.
Q Okay.
A You asked me if I used--
Q So you only used eight in Oien, but they're the same eight that were listed in Kibler?
A Right.
Q All right. And Kibler's tract is nothing like the Oien tract, is it? It's a skinny, long, rectangle shown on exhibit 44 as 338-2. It's kind of a trapezoid or rectangular long tract, correct?
A It has an irregular shape to it.
Q It's on Highway 121?
A Yes. It has, it's, it has highway frontage.
Q It's not an estate high-end residential top use, is it, highest and best use?
A It's large enough. I don't see why it couldn't be.
Q All right. So you think a high-end residential house would be one like Kibler on 121 which has what, 200 feet or 300 feet of frontage on 121?
A It has the potential for commercial development. Typically, tracts that have highway frontage sell for more per acre than those that do not.
Q Did you use those same comparables you used in Kibler on all the other 13 tracts?
A No, sir; I did not.

Q Is that just a consequence that you picked Kibler and you used all of those same comparables in Kibler that you used in Oien?
A Well, they're similar. They would have different adjustments made to them, but they're comparables that can be, a comparable is not just isolated to one subject property. A comparable can be used on various tracts.
Q But isn't it, you charge a thousand dollars for each one of your appraisals, almost 15 landowners that were subject to this transmission line?
A That's what I believe my fee was.
Q All right. So you got it, you did it at a discount because you were using the same comparables on all of them?
A We base it on time and if there are--
Q Sir? Why do you keep looking at counsel? Please look at me.
A Okay.
THE COURT: No, no, no, no. We are non-jury.
MR. POPE: Excuse me. I'm sorry, sorry.
A There, you use the best comparables that are. If the comparables should be used on more than one tract, then you use them.
Q And you used the same comparables and equivalent on Oien and you used them also on the other 13 landowners?

A No, sir; I did not.

MR. BANNISTER: Judge, I know--

THE COURT: Let me ask Mr. Pope something. In this proceeding--

MR. POPE: Sir?

THE COURT: In this proceeding today.

MR. POPE: Yes, sir.

THE COURT: You know, I know there are a number of factors that PMPA is supposed to consider as costs, cost to build, cost to construct, cost to acquire.

MR. POPE: Yes, sir.

THE COURT: But we have a gentleman which you stipulated is a state-certified appraiser and a MAI appraiser.

MR. POPE: Yes, sir. I'm not talking about--

THE COURT: As long as the power company used somebody to give them appraisals--

MR. POPE: Yes.

THE COURT: --wouldn't that not be more relevant to any subsequent action to determine damage to remainder but not whether or not the power company used its discretion in making its determination of the line location?

MR. POPE: It would be relevant in both I'd say, because his methodology is, I stipulated he's qualified, but his methodology in this instance, I think, is subject

to cross. And I'm not going any farther.

THE COURT: I'm going to sustain the objection. I think that we are going a little far afield.

MR. POPE: All right, sir.

MR. BANNISTER: Thank you, Your Honor.

Q Exhibit 4 is a picture of the home that Mr. Oien has paid $78,000.00 for plans and down-payment on. Have you seen that before?

A No, I haven't.

Q Thank you.

THE COURT: Redirect?

MR. BANNISTER: Just briefly.

REDIRECT EXAMINATION

By Mr. Bannister:

Q After they put in the center power line, will the property still be close to the City of Newberry?

A Yes, sir.

Q Will it still be quiet?

A Yes.

Q As it is now?

A Right.

Q Will it still be an ideal location to retail and the highway and Newberry?

A Right.

Q When you do appraisals, do you generally factor in

what a jury might do, is that part of the USPAP considerations?

A No.

Q Did you take into consideration in your evaluation the fact that there is a site that was cleared, that you knew there was a site that was cleared and you took that into account, did you not?

A Right.

Q And the persons who escorted you on the property was who--

A It was Mr. Major.

Q All right. And so you can't make the property owners come out there with you, can you?

A No, sir.

Q That's not one of the things you're empowered to do as a licensed appraiser?

A Correct.

Q So if the property owner sends a surrogate, you got to take what you're given?

A Correct.

Q If the property owner thought it was important that he be there, he could have been there, right?

A Yes, sir.

Q Okay. Is there a reason why you used twelve comps instead of four?

A I had the data, and I thought that those comparables merited using in the appraisal and I did.
Q In every piece of property, you made separate adjustments based on the comps and that particular property and the way it factors?
A Correct.
Q So you adjust for the pond, you adjust for the existing house, you adjust for the existing homesite, size, road frontage, acreage, all that. Each one is unique, is it not?
A They are.
MR. BANNISTER: And no other questions, Your Honor.

RECROSS-EXAMINATION

By Mr. Pope:
Q Do you use the comparables for Kibler and the comparables for this one, you're saying that the Oien, do you assess value because it's backed up to the Sumter National Forest?
A I took its location into consideration.
Q All right. Now, would you agree or disagree that a transmission line that goes through the middle of a high-end residential highest and best use property is a red flag--
A It does not necessarily mean that there is damages, but damages need to be, should be taken into

consideration.
Q All right. Did you have any notation in your appraisal that you then considered damage to the remainder?
A If I had included damages, it would have been spelled out in the report.
Q But you did not say there are no damages to remainder?
A No, but I cited the differences from the improvements on the, existing improvements on the property. And that's what I based my decision on that if there are not damages based on that and those decisions were based on the case studies that I have studied about transmission lines and those case studies indicate that typically within 300 feet, there are, or even up to 500 feet there are no damages.
Q And there is not one word in your 80-page report that says damage to remainder or no damage to remainder?
A No, I did not put that in the report, because I do not thing there were damages to the property.
Q And you saw no studies in this case by PMPA about these routes, is that right?
A Yes, sir. I saw no studies. That's what I previously told you.
Q Okay.

THE COURT: Todd, T-O-D-D?

MR. BANNISTER: Cobb.

THE COURT: Cobb?

MR. BANNISTER: C-O-B-B.

THE COURT: All right.

ALAN COBB, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bannister:

Q Mr. Cobb, what do you do for a living?

A I am a professional engineer.

Q Who do you work for?

A I work mostly for municipals that own their own utility systems.

Q Okay. You got your own company?

A Yes, sir.

Q How, what part of your practice is devoted to doing municipal utility work?

A Probably ninety-nine plus percent.

Q Ninety-nine percent. All right. Are you licensed in South Carolina?

A Yes, sir.

Q You do work in South Carolina?

A Yes, sir.

Q And were you involved in the transmission line

project for PMPA--
A Yes.
Q --in the City of Newberry?
A Yes.
Q All right. If you can, walk the Court through the steps that happens when a city like Newberry decides they want to have a transmission line and a substation. Who locates the substation location? Is that something you do as the engineer or is that something the City of Newberry does?
A We do it together. It's a collaborative effort.
Q So you would work with the City of Newberry to locate the property for the substation?
A Yes, sir.
Q All right. And then who at the City of Newberry would you work with?
A I'm sorry?
Q Who at the City of Newberry?
A Mark Regier and Todd Guy.
Q Anybody else?
A And not to my knowledge. Actually, my partner worked out most of the substation, actual location with the City of Newberry.
Q All right. And then the next step would be the transmission line, right?

A Yes, sir.
Q Do you know how long ago they started talking about a substation?
A I've seen some of my drawings back in earlier mid-2000 that we've been looking for property and trying to upgrade their system.
Q So 2000 to 2005, they were talking about long-range plan of upgrading the system?
A I was actually, spent a day here looking at maps and looking at sites trying to, with the previous utility director trying to find a suitable substation site at that point.
Q Okay. And now I'm talking about this project which is the running of the transmission line from somebody with power to the substation. Walk the Court through the steps that you take as you try to determine transmission line locations; what do you do first?
A Good old Google Earth and GIS. We take a broad brush and look and say, okay, we know where point B is. The first thing we have to do is find a transmission line, and then once we find that transmission line and in that process I'm working with Mr. Frazier at PMPA, we have to approach Duke and say, number one, can we tap this transmission line somewhere with this kind of load projection, long-range. And once they say yes, then we

say okay we've got a line.
Q All right. In this case, were there, was there only one line you could tap or were there two?
A In this case, they actually said they could, we could tap either the west side or the east side.
Q And that's because you got to make sure Duke has enough power to feed your transmission line and your substation?
A That is correct.
Q So if they were close to their max where they couldn't produce enough, they would tell you no?
A They could, yes.
Q All right. But in this case they told you either of those two lines would work and that you look at the options, the east line versus the west line?
A Yes, sir.
Q All right. Tell me about the, which one did y'all project?
A The west side.
Q The west side. All right. What was wrong with the west side?
A Well, it would have been about twice the length, number one.
Q It was further away?
A Sir?

Q It was further from the--
A Yes.
Q --substation.
A It was fraught with issues. It was certainly more urban and commercial property in the area. A lot more twists and--
Q There were more homes and structures?
A Yes.
Q Okay.
A And we searched, I thought we had a couple of three corridors that we might could get through from the west and I spent time down here. Todd and I rode around one day looking.
Q Now, wait a minute. So on the west side, you would have identified a couple of routes, three?
A We looked at three possible ways to get through there. We don't really have a route yet. I mean, this route--
Q All right. You start with the Google Earth and the GIS map?
A Yes.
Q And you figure out where you might be able to go, and then you came to Newberry?
A Yes, sir.
Q And you looked at those three routes and what did you

find about those three routes?
A Well, part of the process is we got to go from point A to point B. Then, okay, we can get from here to here. Okay. Then, if we are somewhere in this area, how do we get from here to here, and then somewhere in this area and every time you shift this way or that way in one section, it impacts that you're trying to do in another section. So there were places we could have probably made it work but when we got into town, especially having to come across Newberry Property to get to the substation site, we finally just said this is not feasible to do it, especially when we look at the east side.
Q Okay. Give me an example of one obstacle that you would have had to have overcome that made you rule out a particular route from that side?
A Lack of right-of-way space, expensive right-of-way space.
Q And what would be expensive right-of-way, like you'd have to go through somebody's house?
A We would have had to in some cases gone, had to gone through places that had already been subdivided with planned subdivisions. We had one area where we really needed to get through and when we sat and looked at it on the ground said there's no way in the world that we can make this work.

Q And you say no way in the world you can make it work from an engineering standpoint?
A Yes. From a right-of-way standpoint, it's just sometimes you can't--
Q From a right-of-way or from an engineer or is that kind of the same?
A You've got to look at both. I mean, you can't engineer a line to go in there if you can't get the right-of-way, I guess.
Q All right. So on the route, so you, on the route from the west side where you determined that you had to go through a space where there was insufficient space to do a right-of-way, did you hire an appraiser to come out and tell you what that line was going to cost if you did condemn the house and bulldoze it and relocate the people?
A We did not.
Q All right. And did you from your own experience rule out that route based on--
MR. POPE: Objection. He's leading the witness.
THE COURT: Rephrase, please.
Q How did you rule it out, then?
A Well, aside from the extra length of the line, there was no opportunity to go from point A to point B, obviously, in a straight line which is the most preferred. And looking at all the twists and turns, the angles that

we would have to put in. Just every time we looked at it, we were just running up against more and more complications and, finally, it doesn't matter if somebody gives you the property, it's too expensive to build the line.

Q And who would have been involved in that decision-making to rule out one of those routes, you by yourself or other people?

A Me, the City, and PMPA.

Q So y'all didn't compartmentalize the decisions, y'all all got together and talked about it?

A Absolutely.

Q And did you, the engineer, and the City and PMPA get together and determine that there was no route from the west side that would be acceptable based on what factors?

A Primarily, when compared to the east side.

Q Compared?

A Compared to the east side routes.

Q Compared to the east side routes?

A Yes.

Q So they weren't as good as the east side routes?

A No.

Q So then you come to the east side. How many potential routes did y'all find starting on the east side?

A We looked at initially 10 to 12 plus, at least.

Q 10 to 12 routes?
A Yes.
Q And when you looked at those routes, do you, who, who would have been in the meetings looking at those routes?
A Well, it depends. I mean, there were times, my first job is, okay, once we decide we're coming from the east side is, again, the objective without regard to who owns the lands or this or this. I take a good hard look. I talked with Mr. Frazier. We talked with the City folks.
Q All right. So let me redirect you a little bit.
A Okay.
Q The way you start off locating the route, you don't care whether it's a Newberry farmer or a rich guy from Florida, you're just looking at the map?
A I don't even care to know property owners. I can't be objective.
Q So you don't look at the names or where they're from or what they do for a living?
A No, sir.
Q So when you were doing this initial route evaluation, you did not know you were crossing the land of Mr. Oien?
A No, sir.
Q You ever met Mr. Oien?
A Had I or have I?
Q Had you?

A I had never met him.
Q Did you know any of the landowners of any of the proposed routes to the substation?
A No, sir.
Q Okay. So you just objective, looked at the map to figure out what was appeared to be possible?
A Correct.
Q All right. And then did you visit those routes on the ground in Newberry?
A At some point. Some of them ruled themselves out prior to--
Q Give me an example of how a route rules itself out?
A Looking at, okay, we might can go this way. Well, it was a good thought, but we're going to end up--
Q I'm going to show you Plaintiff's exhibit 14, I think that's 14, that's got some alternate routes on there.
A Yes.
Q I guess those are in red?
A Yes.
Q I guess it's marked PMPA 12. It's the, maybe the third to the last. That's not all the routes you considered for the east side, is it?
A No, sir.
Q There were other routes that were excluded before you got to that list?

A There were actually other routes that cropped up in other areas. Even after this point, we were still searching and trying to find the most suitable route.
Q All right. So the Judge needs to understand how this works.
A Okay.
Q So after you do the objective map layout then what happens, do you have a meeting with the City of Newberry, do you go out to the property and look at those routes, or what do you do?
A Primary, initially, Mike and I are talking since I'm working primarily for PMPA, and then once we come--
Q So what do y'all talk about?
A We talk about what I think about each of these individual route segments, what he thinks. At some point, once we got through this, we came down and actually walked the properties and looked.
Q All right. So would there be instances where a route, once you got to really examining it, would have some problem like it crossed somebody's house?
A Probably, that's possible, but not most probable. It could be terrain-related. Most of the time, we can work that out, but wetlands, coupled with the rain can be an issue from an installation standpoint and a long-term maintenance standpoint.

Q All right. So construction costs and maintenance, accessibility would be something where you would get to a line and say we're not doing that because that's going to be too expensive or not?
A Right.
Q Or like on the east side you thought you had enough room, but it turns out, the structures are too close and so you can't go that way?
MR. POPE: Your Honor, he's leading the witness.
THE COURT: Rephrase your question.
Q Was there ever anytime that a route was ruled out because of structures?
A Yes.
Q Structures would be one of those things that you'd gotten to one that it was a proposed route that would make that route not acceptable?
A Absolutely.
Q Okay. And Mike Frazier was your contact at PMPA and y'all would meet, is that right?
A Yes.
Q And how many routes did y'all discuss as being potential routes, from the east side?
A That's a tough question to answer, because there are actually route segments that we look at. Okay. How do we hit, again, from here to here. We know we got to get

point A to point B. We need to negotiate this part, this part, and this part and this part, and then pull all the pieces together and mix and match sort of like putting pieces of a puzzle together.

Q So it's not like you have line A and line B and they're completely separate?

A Right.

Q Do you start at the substation and go toward the line or you start at the line and go toward the substation?

A You got to, you've got to keep both in mind. You've got to say, okay, I've got to find a place to start, because I already know where I need to end up.

Q How many meetings did you have with the City and PMPA or discussions or email exchanges about the location of the line, the preferred route?

A The preferred route probably Mike, Mr. Frazier and I would have telephone conversations. These things are somewhat complex and it's tough to relay information through emails a lot of times, so we would have telephone conversations discussing pros and cons. He would send me a sketch. I would send him a sketch. We'd both be looking at the same thing and well, let's try this, try this, try this. I'd work that up. We'd talk about. Once we had several possible options that we thought could be feasible, we ended up meeting. I know we had one meeting

in Newberry with Mike, myself, Todd and Mark. We were in the Newberry conference room.

Q Sure. Let me make sure I got them right, you, PMPA, Mike Frazier, Todd Guy, the City of Newberry--

A And Mark Regier.

Q Mark Regier of the City of Newberry?

A Yes. And we had all these, we had these drawings and we had them up on the high-def big screen so we could get very detailed looks at it.

Q And that's in the City of Newberry?

A Yes.

Q In their conference room?

A Yes.

Q And you would have brought your lap top?

A Yes.

Q Looking at the big screens and y'all looked at the routes that you talked about?

MR. POPE: Now, he's continuing to lead the witness.

THE COURT: Rephrase it.

Q Anybody else in that meeting?

A Not that I recall, and I'm not even sure that we only had one meeting. That would be a question for someone else, but I believe it was just one. I know there are other meetings that took place, but I believe we only had one for that specific purpose.

Q Tell me the factors that you consider and y'all discussed in that meeting related to each of the alternatives?
A Cost, obviously.
Q The cost of construction?
A Cost of construction. Where we think the route needs to go and why based on costs. And this is, again, looking at primarily the preferred route. So now we're starting to get into specific discussions about more detailed land use, property owners and that sort of thing. I mean, it's a very small short line. It progresses fairly quickly.
Q Let me show you what's been marked as Plaintiff's exhibit 15.
THE COURT: 15?
MR. BANNISTER: 15.
A Yeah.
Q Is this your report?
A Yes, sir.
Q All right. And in this report you say that you consider environmental impact. That's on page PMPA 170 and it's the third page.
A Okay.
Q Is that something y'all discussed in that group, City, PMPA?
A Yes.

Q The engineer?
A Yes.
Q And you talked about that for each of the lines?
A Yes.
Q How about the land use?
A Yes.
Q Each of the options. Did you discuss land use?
A Yes.
Q How about the impact of individual property owners?
A Yes.
Q You've discussed that?
A Yes.
Q How about the cost of the route?
A At that point, we looked at a lot of options but from a cost of construction, primarily at that point, we could make minor changes in the line and not impact the cost enough from an engineering construction standpoint to make it significant to consider.
Q All right. Visual and impact of the line, did y'all talk about where it's going to be and what it was going to look like?
A Yes.
Q And was one of the things you considered the right-of-way purchase?
A To a point. We weren't at the point that we had any

way to know just exactly what that might be.
Q And that's when you were talking in a group, in those initial meetings that you tried to settle on a route?
A Right.
Q Okay. And so y'all had those meetings, and then did you settle on a route?
A To be perfectly honest, I can't say for sure at that meeting.
Q Well, not at that meeting. You said you had several meetings.
A I had--
Q What would you have done after that meeting?
A Well, I would have taken that information and gone back. I believe, that the City was going to look, talk to some of the property owners impacted, and I was going to go back and try to fine tune that route.
Q Okay. So after the meeting with the City, PMPA and you, you would have gone back home or back to the office to work on the engineering and the City would have gone to physically inspect the property?
A Yes.
Q Perhaps talk to landowners. Did you talk to any landowners.
MR. POPE: Judge, I object. He's asking what he would do, maybe he should ask him what he did. I think

that question is inappropriate, because it implies--

MR. BANNISTER: All right.

Q Did you go back to your office and working on the engineering?

A Yes, sir.

Q All right. And do you know whether or not the City of Newberry went and did a physical inspection and talked to the landowners?

A I know over time they did. I can't say who, when, what, where, but I recall numerous conversations, emails and discussions about that.

Q And as a result of those discussions, did y'all change the location of the line either dramatically or make small adjustments?

A Only as it pertained to the Oiens property.

Q Okay. So when did you prepare this report?

A February of '13.

Q February 28th, 2013?

A Yes, sir.

Q And then did you present that at some point to the PMPA or City of Newberry for approval of the transmission line when they were going to vote on it?

A Yes.

Q All right. And so at that point, you would have identified the preferred line, the preferred location of

the transmission line?
A Yes.
Q Okay. Then, what happens? Did you, were you done, you didn't have any more involvement or was there additional things that you were asked to do by PMPA or City of Newberry?
A We were asked to at some point to look at what ends up being called the southern route.
Q So at some point, who asked you to do that, do you remember?
A I'm sure it was a collaboration of Mark and Mike, the City of Newberry and PMPA.
Q Would it have been over the phone or would it have been in a meeting, how would they have contacted you and asked you to do that?
A It could have been either of those. I can't recall that.
Q All right. So when considering the southern route--
A Yes.
Q What's the first thing you have to do to see whether or not it's feasible?
A The first thing is to say, okay, do we think it's reasonable for Duke to give us a tap point at that location.
Q And did you make that inquiry to Duke and did you get

an answer?
A Not at that point in time, because I was reasonably certain based on experience that that would not happened. They have subsequently gotten back to us and they said no, we will not give you a tap there.
MR. POPE: Objection on hearsay.
THE COURT: Sustained.
Q Based on your conversations with Duke Energy, did you come to the conclusion that a tap where they, where the Oiens asked for it was not feasible?
MR. POPE: Your Honor, objection. Leading.
MR. BANNISTER: Judge, he's an engineer; designed the line.
THE COURT: I overrule the objection.
MR. BANNISTER: Thank you, Your Honor.
A First off, it's not within my scope of services here to communicate with Duke. Their contract is with PMPA, so Mr. Frazier with PMPA.
MR. POPE: Your Honor, excuse me. Can he talk louder, I can't hear him.
A Oh, I'm sorry.
THE COURT: Pull a little bit closer.
A I don't have direct contact--
Q Let me start over.
A Okay.

Q You said the first step would be to determine whether or not the tap was feasible?
A Yes.
Q And did you determine whether or not the tap was feasible?
A Initially, as I stated from experience, I was reasonably certain that we would not get a tap there and at that point in time, Duke had made it clear when we had a meeting on-site that they wanted us as close to mid-span as possible. That was their preference.
Q And you were initially asked to give your engineering opinion related to or engineer the southern route based on what location, off a pole or mid-span?
A We were expecting we would have to be as close to mid-span as possible just as Duke had recommended.
Q And that was from an on-site meeting that you were in?
A Yes, sir.
Q Did you meet Mr. Oien when you were out there--
A I did not.
Q --on the Duke right-of-way?
A Did not. That was a day with Duke representatives and we were walking the right-of-way looking at possible tap locations.
Q And that was not the same day Mr. Oien referenced he

had--
A I have no idea.
Q Okay. All right. So were there problems with the tap point or not on the southern route?
A Based on Duke's preference and what they had told us at that point; yes, sir.
Q Okay. And then did you look at the number of turns that would be necessary to do the southern route?
A We did.
Q And based on your experience, could you determine what additional costs would be added to the project if you did the southern route?
MR. POPE: He's leading the witness again.
THE COURT: Overruled.
Q And you can go a piece at a time if you want to. What are the additional pole costs?
A I would say roughly $200,000.00 just in pole costs and installation costs.
Q Pole costs and installation. Does that include costs to negotiate the wetlands?
A No, sir.
Q And could the wetlands create a problem for the installation of the poles?
A They could.
Q Now, when I say wetlands, I think about

environmentalist who, you know, snapper snails and stuff you got to not touch.

A Yes.

Q Is that what you mean when you say wetlands or are you talking about just like the physical characteristics.

A Talking about both. I mean, you never know. Hopefully, you don't find a snail larder or something in there, but we would ultimately have to get an environmental scientist in there--

Q Is that--

A --to issue a report.

Q In your experience, is that free?

A No, sir.

Q Did you need that kind of environmental scientist in the middle route?

A Yes, sir.

Q Where?

A About I'd say four to six locations, but they're minor. They're just crossings and they're essentially perpendicular or angular crossings and we just have to, he just has to satisfy the U.S. Corp of Engineers that we're not going to adversely impact a wetland area.

Q Okay. So the additional construction costs, if I heard you correctly, would be $200,000.00 for poles and installation?

A Yes.
Q Could that be higher if the wetlands created additional problems you're unaware of?
A It could be.
Q Did you do a full analysis of the wetlands once you determined how much more expensive that route was going to be?
A We did not, because at some point, I was told that the property owners did not want the southern route.
Q Okay. At some point, did you do the engineering for the, a northern route?
A Yes, sir.
Q And does that add actual construction costs to the project?
A Yes, sir.
Q Can you give the Court your estimate of what those additional engineering costs would be if you went the northern route?
A Probably less than $100,000.00.
Q Less than $100,000.00?
A Yes.
Q Were you subsequently told to stop working on the northern route?
A I was told that the property owners rejected the northern route.

MR. POPE: Objection. That's hearsay.

THE COURT: Sustained. Lay a foundation first.

Q Did you finish doing all the final engineering on the northern route or did somebody advise you that that was no longer a, were you told to quit working on that?

A I was told to stop work on it. We just essentially drew a line on the map and said, okay, here's where we think we can tap the line. We can come over, turn, stay as far away as possible, stay as close to the edges of the property that we reasonably could, and it turned out that the property owners said that they did not want that route. It was too close.

Q Okay. If you would, for the Court, can you come down to exhibit 44 and point to where those extra turns were going to be on the southern route and while you're doing it, discuss the angle of the turns and any other problems that you see related to the southern route line.

A As it stands right now--

Q Speak as loud as you can so everybody can hear you.

A As it stands right now we planning on tapping about this location, coming down and the straight line except for this angle.

Q All right.

A I have actually taken a look at it and the poles, the equipment that was bought from here could actually be slid

down and I don't see a problem. I say that it's important, because self-supporting poles are engineered poles that are specific to angles. So then we would come from this point just like we would here.

Q Now, are you going to be that close to the property line or would you be next to the driveway?

A At that point, we'll be at the driveway.

Q At the driveway.

A There will be, from what I, it sounds like there are going to be three additional poles sitting along the driveway as you coming out the property, Duke will give us a hand-off at the edge of their right-of-way---

MR. POPE: Your Honor, can we have the record reflect that he's pointed to the southern boundaries.

THE COURT: It so reflects.

A And then we're required, more than five degree angle and that has to be a lot of tension, no more than 600 pounds. So we'll come over some 40 or 50 feet west of the right-of-way and come right into the, tap pole at the base of it and that'll be our first pole. Then, we can turn. That's when we can turn and start towards the southern route.

Q All right. So without input from this particular landowner, would you normally put that many poles next to somebody's driveway?

A I wouldn't. I would prefer not to.
Q Okay. But that's the southern route. So tell, point to the other angles you'd have to make to continue on the southern route?
A If we're making the assumption that we're going to follow the property line as closely as is reasonable, we're going to have somewhere around a 30 to 40 degree angle right here.
Q Now, do you go straight to that angle or do you go down to the property line and turn?
A I would expect at this point having not done any more than a cursory review, we will come down and look at the property line if we needed to.
Q And so the first turn would be when you get to the property line?
A That's correct.
Q And then the next turn would be where?
A It would be in this area and you can see that we have, that may back up or go along somebody else's property. I don't, I'm not sure. I would have to take a hard look at it. The only thing I know at this point, the line will end up turning in this general area, but I can't just tell you exactly.
Q All right. That's the second turning pole?
A Yes.

Q And then is that it for a job?
A Well, we've got to negotiate a, problem somewhere in this area. We got to, fairly steep angle because keeping in mind, we end up in this area. So we come, another turn down here, intercept our location here, and then we turn here.
Q So four--
A Traverses.
Q --four poles?
A Four poles.
Q You can sit back down. In your experience, what do those poles cost?
A They vary. Our additional straight-line poles are not much more.
Q Just talk about the ones that are on the southern route.
A Right. If we have any additional straight-line poles.
Q When you get to the property line and you make that first turn, how much is that pole?
A That's probably installed cost barring any foundation issues, because these are engineered poles with the caisson foundation, I would say somewhere between $40-$50,000.00 installed.
Q All right. How about the second pole where you're

turning down there in the wetlands?
A I would say that would be fairly close. Maybe $40 range on that one.
Q How about the third turn?
A That would be in the $60-grand plus.
Q All right. And how about the final pole turn to connect to the line?
A I would have to say that would be another $60-grand plus. And these are based on actual poles we bought for this Newberry job plus recent labor prices we've gotten for drilling and pouring caissons and installing poles exactly like these.
Q So in the meeting with the City of Newberry and PMPA and you talking about the cost of the different options, you would have looked at the straight-line option which is shorter than the southern option, is that right?
A Yes, sir.
Q It has less poles than the southern option?
A Yes.
Q And does it come fairly close to the lake cabin down there?
A Fairly close.
Q How would you describe it? Can you see it from the existing house?
A I would, to be honest if it were my pond, I probably

wouldn't want the transmission line that close, you know, but that's from my point of view.

Q Sure. Prior to locating the line in the middle of the Oiens property, did you, City and PMPA look at the southern line and rule it out?

A Yes, we did.

Q And was that based on factors that are in your report that you consider to determine which line was to be the preferable line?

MR. POPE: Object to the form. He's leading the witness.

THE COURT: Rephrase.

Q Did you make that decision individually, you, yourself, or did y'all do it as a group?

A We did it as a group. We actually walked the property and then, subsequently, when we found that we may have an issue with the water and the wetlands, we actually had the surveyor go in and give us edge of water all the way around so we could see at that point in time where all the water we would have to deal with was, the major areas, and so then we looked at that. In fact, I got a call from the surveyor and he says, Alan, I've got bad news.

MR. POPE: Judge, object--

THE COURT: Sustained.

Q Now, don't tell me what the surveyor said, but did

you ultimately get a survey of the water?
A Yes, sir.
Q Was it more or less than you thought it would be?
A Quite a bit more.
Q Quite a bit more.
A In this case, it was bad.
Q Now, were there any terrain issues? We looked at a flat map. Is it all flat out there? There's some gullies and ditches and rises and falls, anything about it?
A Well, yes, sir. But, you know, we have to build transmission lines across country. We just have to deal with that and some areas are better than others, some worse than others.
Q Were there terrain issues coming the southern route that you would not have in the middle route?
A There are some.
Q Were there, I think you testified there were some environmental issues with the southern route that you would not have with the middle route?
A That's correct. That's what we expect.
Q In your proposal to PMPA regarding the transmission line you say that you consider the cost of the route, the right-of-way purchase. How did you figure the right-of-way purchase, did you get the input from the City of Newberry on what they thought per acre?

A I did.
Q And what did they think per acre?
A As well as I remember it was--
MR. POPE: That's hearsay.
Q Because their position is they didn't consider it and so--
THE COURT: Well, I understand that. The objection is hearsay. I'm going to sustain the objection.
Q Who all did you talk to, well, what is that break? A hundred thousand dollar cost break and what is that?
A Roughly, $5,000.00 an acre.
Q $5,000.00 an acre.
A On average.
Q Did you have a chance to review the proposal of David Graydon before today?
A It's been quite a while.
Q Were you surprised to see that his professional opinion--
MR. POPE: No, no. This is beyond the scope.
Q --was $5,000.00 an acre?
THE COURT: Sir?
MR. POPE: He's not an appraisal expert. It's beyond the scope of testimony.
THE COURT: Please give him the foundation where he can respond to that, please, sir, without pitting the

witness.

MR. BANNISTER: All right.

Q In the discussions that you had with the City of Newberry, PMPA, yourself about the location of the line, did y'all talk about acquisition costs?

A We did.

Q Okay. And is that the basis of where you got the $5,000.00 an acre from those discussions in your opinion?

A That was actually an elevated number on my part that was considerably above what I was told the land might be worth.

Q Okay. The last questions I got is the changes that you consider to the middle route, preferred line, that the Oiens requested, did that change everybody else's lines down the path?

A No, actually that, it had both a negative and a positive impact on the line.

Q Some people came out better and some people came out worse?

A Well, that was really about the only impact was the cost. It didn't impact any other property owner. That was our focus, hopefully, that we kept this local and try to accommodate them as best we can. So we were able to straighten out one very slight angle as we, that was initially there when we were leaving the Oiens property

going west. But we had to add an angle pole, a more severe angle pole to get down to the property line as they requested, so plus or minus, it was plus maybe $20 grand.

Q And in the final drawings and how you crossed the Oiens property, did you adjust that line at the request of the Oiens?

A Yes, sir.

MR. POPE: Objection, well, he never talked to the Oiens. I object to any hearsay.

THE COURT: Rephrase.

Q Okay. So did you do the engineering to put a zag in the line down to the property line?

A Yes, sir.

Q All right. Is there any engineering purpose for that zag that you know of other than to accommodate a request by the landowner?

A No, sir.

MR. BANNISTER: Judge, no other questions.

THE COURT: All right. Cross-examination.

CROSS-EXAMINATION

By Mr. Pope:

Q Mr. Cobb.

A Yes, sir.

Q Exhibit 15 that you talked about earlier is a report you made in February 2013?

A Yes, sir.
Q When you made that report, it was based on Google Earth and GIS photos, correct?
A Yes.
Q You had not been on the property?
A I don't believe so, sir. No.
Q All right. And you had certainly not talked to Mr. Oien, is that right?
A I don't think but, no.
Q Sir?
A No, I have not.
Q All right.
A I had not.
Q And you have a list of the factors here on page PMPA-170, but there is no commentary about those factors or how they were used, correct?
A That's correct.
Q All right. And you have no documentation or notes reflecting anything about environmental impact, is that right?
A Not at that point.
Q All right. And you have no notes or report about land use, is that right?
A Not at that point.
Q And you have no report or notes about impact to

individual property owners, is that right?
A That's right.
Q And you have no notes or report about the cost of the route or any alternate routes, is that right?
A That's correct.
Q And you have no notes or report about visual impact, is that right?
A That's correct.
Q And you issued no report after February 2013, correct?
A Other than reporting to my boss at PMPA.
Q I'm not talking about conversations. I'm talking about reports.
A Not a written report; no, sir.
Q All right. And you have no notes after exhibit 15 that reflect you did any analysis on alternate routes and the factors you have listed in this report in 2013 and that are compared to alternate routes nor was any analysis made, is that right?
A Just emails and phone conversations.
Q And, excuse me, did you see the route rating, have you seen the report from the right-of-way acquisition expert that testified yesterday?
A I did.
Q All right. And you saw where he analyzed the cost of

the line, the tap, the access, the aesthetics, the wetlands, the structures and the environmental?
A Yes.
Q And you compared one route with another?
A Yes, sir.
Q Do you have any document that shows such information?
A No, sir.
Q All right. Do you have any notes that reflect any data about that information? The reason I ask, none have been produced in this case.
A And not to my knowledge.
Q All right. So you did you say a verbal effort to compare alternate routes, is that right?
A More than verbal.
Q Well, it's either written or verbal, so which was it?
A No, I can mentally compare those, sir.
Q Sir?
A I can mentally compare those.
Q Yes, sir. So there was mental?
A Yes.
Q All right. There's no document that shows what the results of the analyses were, is that right?
A That's correct.
Q Okay.
A Other than emails and phone conversations.

Q Now, you're, your office is in Charlotte, of course?
A Yes.
Q And you're president of your firm?
A Yes, sir.
Q And what percent of your work is in South Carolina versus North Carolina?
A What percent?
Q I mean just roughly. Are you eighty percent in North Carolina; fifty/fifty?
A Well, the problem is we work in more states than North and South Carolina.
Q What percent of your work is not in South Carolina?
A Probably, at least seventy or eighty, I would think, would not be in South Carolina.
Q All right. Thirty, twenty to thirty is not South Carolina?
A Could be.
Q Have you, the decision of routing is done by your client, PMPA, is that right; they call the shots?
A I have recommendations, sir.
Q Yes, you worked with them, but as far as the decision on a route, one route versus another is done by PMPA?
A It is.
Q Okay. Now, had you ever heard of the Southern Development case of our Appellate Court?

A No, sir. Before this issue?
Q Yes, sir.
A No, sir.
Q And you've heard about it in connection with this litigation?
A Yes, sir.
Q Okay. Now, did you do any written route analyses from Duke's Power source coming from the west side? I realize this project is from the east, correct?
A Yes.
Q All right. Did you do it, any assessment on the routes coming from the west?
A Yes, sir.
Q Did you write them down?
A No, sir.
Q And you never contacted the Oiens; that wasn't your job, was it?
A No, it's not a part of my job.
Q And you didn't meet them until this case that we're here about today?
A I met them at a meeting--
Q Excuse me, November of 2013?
A I think. Yeah, that's when we met.
Q And you recognize that aesthetics to a landowner is an important factor, correct?

A Yes, sir.
Q And there's nothing unusual about considering alternate routes on every landowner affected by a transmission line project, is that right?
A Within reason.
Q But I say it's not unusual to consider two, three, four, route options on each landowner, correct, depending on the size of the tract, of course?
A It depends on the length of line, number of property owners. But it would be unusual to consider for the most, for the most of this line to my line and the route we took. The line was only adjusted from the Duke transmission line to the western boundary of the Oiens property--
Q Okay.
A --per property owner request.
Q And was the starting point for this entire project was the Oiens property; in other words, you wanted to get to the Duke transmission that runs through the edge of their property?
A Yes, sir.
Q So that was the starting point?
A Yes.
Q So it sounds like you have a line coming from landowner on either side of the Oiens, they're the first

ones on the property?
A Absolutely.
Q So you had lots of options, because you had a long 1,500 or so feet of transmission line by Duke?
A Just on first blush. Yes, sir; it appears that.
Q And have you ever seen this picture of the home that they had invested $78,000.00 down on building on the site?
A No, sir.
Q Had you ever been told that they had invested $100,000.00 on their homesite?
A At some point in the process, yes.
Q And that was during this case, is that right?
A I can't remember when I first heard it to be honest.
Q Well, you've seen information that they spent, that they built a garage and over here and have you ever seen that garage?
A I've seen the garage.
Q It's a big 7,000 square foot barn, I think?
A Yes.
Q And the homesite is just above, just west of that barn. Did you ever see that homesite?
A Possibly.
Q You don't recall it specifically?
A No, sir.
Q Did you ever see the well that they had paid to have

drilled on the homesite?
A No, sir.
Q All right. Would it be fair to say that that information was really something that PMPA would have known about and should have known about, not you?
A At that point in the process, whether there's a well or if I saw a well, that doesn't necessarily mean that it's intended to be used for, it was serving a residence.
Q Were you aware--
A I wouldn't know.
Q I'm sorry. Go ahead.
A I wouldn't know at that point.
Q All right. At what point?
A At the, and initially.
Q I'm sorry?
A Initially.
Q Well, I mean, you didn't know about it later before you did the final line, did you?
A No.
Q Were you aware that they had underground electricity to the homesite?
A Most everybody has underground electricity this day and time. No, I mean, there would have been no need for me to know that.
Q All right. I didn't say there was, but you didn't

know they had underground electricity?
A No, sir.
Q And you didn't see the PVC pipe sticking up with stickers all over them?
A Possibly.
Q But you don't remember?
A I don't recall.
Q Now, one of the things that you like to do as an engineer is go straight on a straight line, don't you?
A Yes, sir.
Q It makes your job a lot easier, doesn't it?
A And it keeps the client's pocketbook a little fuller.
Q Sir?
A It doesn't cost quite as much either.
Q Yeah. And so you initially saw as the straightest line for you is just go right through the middle of the Oien property and based on the maps, that's what you did?
A Based on looking at two separately deeded pieces of property; yes, sir.
Q And it was based on the maps, initially?
A Yeah.
Q Correct?
A Correct.
Q All right. And then later after you'd done more work, the line essentially is right through the middle

still? I mean, it's 10 feet here or there?
A It's on the property line, yes.
Q And it's right through the middle?
A If you say so.
Q Well, do you disagree?
A It's on the property line of two adjacent properties and that, but it turns out that seams, that their intent was to essentially keep the properties together--
Q Well, they used--
A --and treat them as one, how about that?
Q Yeah, but treat them as one, but I'm just talking about the route of the line is give or take three acres, it's right through the middle of the property?
A I would say yes.
Q Now, you said you were at a meeting November 2013?
A Yes, I think that's what it was.
Q That was down at the City Hall in Newberry?
A Yes.
Q And do you understand that Mr. and Ms. Oien were there?
A I met them there.
Q And Mr. Major was there?
A I think he was, yes.
Q All right. And PMPA was there?
A Yes.

Q Mr. Frazier, Mr. Smoak?
A Yes.
Q And did you understand that the Oiens had been very frustrated, because they wanted, because they had never met with PMPA before?
A I had heard those conversations, and I was there. I don't remember verbatim what went on--
Q Yes, sir.
A --in the meeting.
Q But you had either read or heard that the Oiens were upset, because PMPA never contacted them from February when you did your report all the way to November of 2013?
A I can't remember when, honestly, I started here that, but at some point in the process; yes, I did hear that.
Q And but part of that meeting was to discuss options, show them preliminary, very preliminary pole locations, and we were expecting to discuss why we would need them to be there as opposed to somewhere else, is that what you said?
A Yes.
Q Okay. Now, the length between spans on the poles, yeah, on this project was approximately what, 600 to 800 feet?
A I would say probably 400 to maybe 700. Somewhere in that range.

Q And how many poles did you say go through the middle route that you selected the straight shot across the middle?
A I'm thinking probably four to five.
Q But four to five go through the middle route and if I heard you right, the same number of poles go on the southern route?
A No, I did not say that, sir.
Q But you counted them again for me. You said four or five on the middle route and how many on the southern route?
A We were talking about angle poles at that point. I haven't done enough detailed analysis to know. It could take maybe one or two more poles, state line poles--
Q On the southern route?
A --could, but it may not. But those at roughly $10,000.00 a pole, that's not a significant cost. That's, it's the angle poles that are the issue.
Q So it involves two more poles to go on the south, is that what you're saying?
A It might involve one or two straight-line poles.
Q Well, I'm talking about total poles. It takes two more poles on the south or more than that?
A More than that.
Q Well, tell us.

A Well--
Q Did you not do a route study of the southern route?
A Yes, I did.
Q You didn't do it in-writing, so tell us today what you, how many poles on the south?
A Do you want me to come back down there again like I did a while ago or just?
Q Yes, sir. If you want to.
A Thanks. What I said is it takes a pole here that's--
Q That's one at the, lowest part.
A This would be our first angle, somewhere in this area.
Q At the corner?
A At the corner.
Q Below the pond?
A Assuming we're going to follow the property line this far.
Q If I'm just going the, I'm just identifying for the record. That's in the area of the pond?
A Right. We'll have to come back here and over here. I don't even know that we can do it and stay on this property. I don't know that yet, but I do know that's roughly $40,000.00 pole.
Q The one at the corner?
A Yes.

Q All right, sir. And then there's another up here?
A There may be one here but that's, that's, we got those up here. Then, we got roughly a 90-degree angle through there in the neighborhood of a $60,000.00 pole which, earlier, and then we'll come back here and intercept.
Q Up here at the Kibler property?
A Right.
Q Take back towards the Kraft property.
A And our discussion a while ago was about the fact that we're actually adding these angels.
Q Three of them?
A Yes, sir.
Q But you didn't do any written costs assessment of the costs of the southern line there?
A Sir, when I've got a state line of poles, with my experience, and I take that line and turn it into essentially it looks like a bowl instead of a straight line, it's curved, I know the line's going to be to some extent longer and the construction costs and the material costs are going to be more expensive.
Q But you didn't quantify that in any report along the way, did you?
A I did not, because it turned out not to be an issue.
Q And wouldn't it be obvious to you that the southern

route would be more aesthetically-pleasing to someone, homesite in terms we just talked about?

A Based on what I know today, I think you could certainly make that argument.

Q So you agree with that?

A It's like I said earlier, if it were my--

Q You need to agree or disagree.

MR. BANNISTER: Judge, I'm going to object. I don't think he's qualified to offer an opinion about--

THE COURT: Tell me what your specific question is.

MR. POPE: My question was, does he agree that aesthetically, the southern route is preferable to the middle.

THE COURT: I overrule the objection.

A Could you say that again now?

Q Do you agree that using the southern route is aesthetically better than the middle route if you use, if you're talking about the homesite that you didn't know about?

A To me, I'd have to try to decide what tradeoffs I could really deal with, because I don't know that I would necessarily want the line going around my pond. But, like I said earlier, that's a personal preference and it's not my property. I don't have those plans for it.

Q And is it fair to say that aesthetics is a

consideration where your client's specific problem is, not yours?
A It's a collective problem and, I mean, we all certainly want to think about aesthetics, but not everybody things a transmission line looks good.
Q Now, it was talked about earlier in your report you have drawn six alternate routes coming off the Duke line: A1, A2, A3, B1, B2, B3 and our exhibit 15.
A I can't read the drawings in exhibit 15.
Q Sir?
A I can't read the drawings in this exhibit 15.
Q I'll take these. Let me give you a better copy. Actually, this is 14. It's attached as PMPA 12 on exhibit 14, Plaintiff's 14.
A Is that one right here?
Q That's the same one you have. Can you see yours all right?
A Yes, sir.
Q You didn't have glasses?
A No, sir.
Q Okay. You see here you've got A1, A2, A3. They're all southern routes that were drawn based on Google Maps, Google Earth, correct?
A No, sir.
Q They weren't?

A They're all southerly, more southerly routes, not all the southern routes and it was also utilizing Newberry County GIS system.
Q Okay. All right. So A1, A2, A3 were done in February 2013 based on Google Earth and the GIS?
A Yes, sir.
Q All right. And then you also on this same page, exhibit 14, PMPA 12, you also have B1, B2, B3 which is a route that, for the line that would go on a southerly property owner. Not the Oiens, but the property owner below them, is that right?
A Yes, sir.
Q And you didn't do any route analyses of either A1 through A3 or B1 through B3, correct? You didn't do a route cost analysis or route studies, compared the factors?
A I did.
Q And it's not in-writing?
A That doesn't mean I didn't do it, sir.
Q I'm just saying is it in-writing?
A No, sir.
Q Are there any notes about A1, A2, A3 or B1, B2, B3?
A Not that I know of.
Q So can you reconstruct that analysis for us in detail? What, how much was it going to cost to run the

line on B1?
A Well, number one, and like I said earlier, some of these routes tend to rule themselves out just by default, I guess. We don't need to do a cost analysis on every one of these routes to determine whether it looks to be valid. In some cases, what you did just to show options when you revisit it, it just absolutely makes no sense to do it to start with.
Q Do you even remember what you analyzed about B1 or route number 1, B1?
A I do not at this point.
Q Do you have any idea what the land acquisition cost of B1 would be?
A I would say, where is B1?
Q I'll point to you if you don't mind my pointing?
A I don't mind.
Q All right. B1 is that long line that's above B2.
A Looking at that, I expect that already subdivided property more landowners, more property owners.
Q There's no home up, and according to this map, there is no home anywhere near B1, is that right?
A That's not true. There are, it goes behind residential lots.
Q Say again?
A Sir?

Q Say that again. I'm sorry.
A I said it goes behind existing residential lots.
Q All right. But it doesn't go through any property owners that have a house on it?
A I don't believe so.
Q All right. And you can't tell us what the land acquisition cost for that was or the construction costs, can you?
A Except that I think in both cases it would exceed the route that we ended proposing.
Q Well, did you, what about the aesthetics of B1 and B2?
A In lots of cases, it would possibly rank better. In other cases, it would not.
Q Did you ever walk B1, B2 and B3?
A I walked some of that area, but not all of it, sir.
Q You never talked to the property owner or any of the property owners that had you routed as B1, B2 or B3?
A Sir?
Q I said you never talked to any of the property owners involved in routes B1 and B2 and B3?
A No.
Q And you don't remember anything today about what you saw when you went down and looked at the routes B1, B2 and B3, is that right?

A Well, it's like I said earlier. Changing and making that dramatic of a change dramatically impacts the rest of the line routing, as well. You can't just take it apart and say let me take this parcel and move it 2,000 feet in this direction, because that impacts -- you've ultimately got to get from point A to point B and there can't be a disconnect anywhere in there. They have to be connected.

Q So when you did your report in February 2013--

A Yes.

Q --you basically laid this out and go these are the alternates we're looking at, correct?

A Yes, sir.

Q So I want to know what you did when you looked at it and according to match the routes on PMPA 1, 2 or the exhibit 14 and if you look at exhibit 44, which is in evidence, it appears that you're going through woods for most of the way. Is that correct or not correct?

A Most of the way right there.

Q Okay. So you can't tell me whether B1 or B2 or B3 is 10 percent worse than this middle route through the Oiens or 20 percent worse or 50 percent worse, is that right?

A I can tell you it's more expensive.

Q But you don't have any analysis of the factors in-writing?

A No, sir.

MR. BANNISTER: Judge, that's been asked and answer ad nauseam.

MR. POPE: It has.

THE COURT: And overruled.

Q All right. Going now to the A1, A2, A3 because it affects the Oiens property. Did you do any, other than what you've just told us, have you done any work on A1 or A2?

A Can you show me which is A1 and A1, there are three.

Q I believe, it's the top line. That one right there. And then A2 is the one below it, and A3 hugs the property line.

A Okay.

Q All right. So I'm asking you now about A1 and A2?

A Other than issues from at that point tapping the line.

Q Sir?

A Other than issues ultimately tapping, from a standpoint of tapping the line, making the tap, having a place to connect to.

Q But you never talked to anybody at Duke about getting a tap?

A Ultimately, we did.

Q When I deposed you, you said you had never talked to anybody at Duke?

A Because they'd rendered, they've given us their decision since that time, sir.
Q All right.
A And they concurred with my original judgment.
Q Sir?
A They concurred with my original thoughts.
Q But you said you had never talked to Duke from 2013, 2014 or even as of the time of your deposition in December of 2015, correct?
A No, I didn't say that.
Q In your deposition, I'm going to pull your deposition.
A Okay.
MR. POPE: May I open it up?
THE COURT: And let me open it up and make it a court exhibit, please, and that'll be Court exhibit 3 or is that 2. So this will be a court exhibit, the next in line.
MR. POPE: Okay. Thank you.
(Whereupon, Court's exhibit No. 2 marked for identification.)
A Okay.
Q I said 74. All right. It's at the very bottom of 74. There's a question, and I'm going to read it.
Question, Duke had never told you they would not give you a tap there, correct? What was your answer at the top

of 75?
A Okay. So you're saying--
Q I'm reading my question.
MR. BANNISTER: Judge, I'm going to object. He said, the question was you told me you'd never talked to Duke. He said that's not true, and now he's impeaching him with something totally different.
MR. POPE: No.
MR. BANNISTER: Did Duke tell him something specifically.
MR. POPE: This is cross.
MR. BANNISTER: I think he should at least ask a question before--
THE COURT: Well, I agree with that, but where are the questions concerning whether or not he'd had conversations with Duke.
MR. POPE: Well, I want it to be clear that when he was doing route studies, he never talked to Duke. That's what he says here.
THE COURT: Ask him a question.
Q Duke has never told you they would not give you a tap here, correct? What is your answer?
A Right there. It's, that's Correct.
Q Now, did you say, I'm looking at that other exhibit that's up there with you, exhibit 14, page P12 which has

the alternate routes on it. Now, you've said that you didn't do any written alternate route studies, so I'm going to ask you about your verbal route studies. Did you do more or less route study on B1, B2 or B3 versus A1, A2 and A3?

A First off, I don't have exhibit 14.

Q Sorry. It's the one under the deposition on your, if you'll close that. This one right there. It's that one.

A That says 12.

Q This is page 12, PMPA-12.

A Oh, okay.

Q Of exhibit 14. I'm just saying did you do any more or less verbal route study of A1, A2, A3 versus B1, B2, B3?

A Did I do any more or less?

Q Yeah, you just said, and did you do this same so-called route study on B1, B2, B3 that you say you did on A1, A2, A3?

A Yes.

Q What was that?

A Again, first point of emphasis is a tap point, period. A tap point; you have to find a place that we fill like Duke will allow us to tap the line. Then, we have to look at relative costs based on construction and we have to look at right-of-way from a terrain, wetlands

import--
Q All right. Do you remember getting--
A --as it impacts construction.
Q How did A1 and A2 and A3 compare aesthetically with B1, B2 and B3?
A Aesthetically, I would say--
Q Well, how did you consider it then? Not say now. How do you remember it when you were supposed to be doing this study?
A Say that again, please.
Q How do you remember it? What took place back in the day, back in 2013 or '14 regarding your route study of A1, A2, A3 compared to B1, B2, B3? Aesthetically, how did they compare?
A They compare from a standpoint of aesthetics. I'd say most of the property going across through that area would essentially be a non-issue, because it's through the woods. There's nothing else there.
Q So B1, B2, B3 is just woods?
A Mostly, all of them, until you get to that residential area over there.
Q So B1, B2, B3 don't involve a high-end residential retreat type of place?
A I don't know that.
MR. POPE: Could we take just like a five-minute

break, Your Honor?

THE COURT: Yes, that'll be fine. You can step down. Just don't talk to anybody about your testimony.

(Whereupon, a short break was taken.)

THE COURT: All right, Mr. Pope.

CONTINUE CROSS-EXAMINATION

By Mr. Pope:

Q Now, Mr. Cobb, we were talking about A1, A2, A3 and the routes B1, B2 and B3--

A Yes, sir.

Q --when we took a break. Can you tell us what the cost to acquire each of those lines would have been?

A Cost to acquire, you're talking right-of-way?

Q The cost of the property to go A1, A2, A3 or B1, B2, B3?

A At that point in time, I would have had my original estimate of $5,000.00 an acre.

Q So what about B1, B2, B3 where you're going through this timbered property?

A It could be more or less, but at that point, we're looking at average property value.

Q All right. But you have no notes about any such analysis about cost to acquire any of those routes, is that right?

A Other than what was in my report, sir.

Q And your report doesn't say anything about these routes. It just lists, shows a map with no narrative, correct?
A Correct.
Q And you can't recall anything specific you said when the Oiens called a meeting in November 2013, is that right, about route selection?
A I cannot.
Q And is it fair to say that you don't recall them bringing it up or not bringing it up, route selection being their choice for the southern route, do you?
A I do not.
Q But you don't deny they bought it up, you just don't know?
A I just don't know.
Q Now, would it be fair to say that you really did not do any kind of in-depth analysis of any of those routes that we just talked about, those six routes?
A I did enough to know from an engineering standpoint that they would not be one of the preferred.
Q Well, look at page 51 of your deposition. On page 50, I was asking you about those same routes, A1, A2, A3, B1, B2, B3 and I asked you what they meant, and you said they represent initial possible alternate routes, correct?
A Where are we at now?

Q That's on page 50.
A 50, oh, okay.
Q Is that correct, though?
A What, what did, where are we?
Q Well, I was on line 14, my question and your answer was, correct me if I'm wrong, they represent initial possible alternate routes prior to an in-depth investigation on the ground. Is that right?
A That's true.
Q All right. And then I asked you if you'll look at page 51, did you do a route study in all six of these routes and I said, you said, all but six. I said, no, on all six of these routes. Line 5, what was your answer?
A Line 5? Not in-depth.
Q So you didn't do any in-depth analysis of cost of construction, cost to acquire the land, the aesthetics, the environmental, any of those issues, is that right?
A If you're talking about how they compared in detail, in detail with some of the other routes, no. I compared them to another depth to know that they weren't worth considering--
Q Well, which of those six routes was the worst route?
A Probably, the very bottom.
Q B3?
A I would say.

Q All right. But what's that based on?
A Well, that's based on the fact that assuming tap costs are equal, they all three, ultimately, end up at their western and the same point in space.
Q All right.
A So now we're looking at cost to construct primarily and B3 has more angles. It's got two more angles in it.
Q Sir?
A It has two more angles in it, so that means more cost to construct it.
Q Well, what about environmental?
A We have not gotten to that point yet.
Q The point is you don't have any analysis of all those factors for any of these routes, do you?
A Not written.
Q Well, I understand that. I'm trying to understand since you're relying on some verbal or thought process. Now, the decision on route analysis falls with PMPA, eventually, right?
A Based on my recommendations.
Q All right. But you didn't have any analysis verbally that I understand, now, and you're here to explain your verbal analysis--
A Okay.
Q --and all these factors are listed in southern route.

You didn't do that. And I'm not talking about today's analysis. I'm talking about the analysis you applied in 2013.

A Mike Frazier and I discussed these.

Q Sir?

A Mike Frazier and I discussed these with my client.

Q Well, tell us about what you discussed about environmental on each of those six routes?

A I can't remember, sir.

Q All right. Tell us what you discussed about cost to acquire land on each of those routes?

A We probably did not.

Q You didn't?

A I would say not, because I would say today looking back since I obviously can't remember, but I would say there is no significant cost difference in the land on either of them.

Q Right, but you didn't do a cost to acquire each of those routes. They're different lengths and they go through different parts, but you didn't do any analysis to distinguish the values, is that right?

A The minor length doesn't make an overall--

Q Sir?

A That minor length difference does not make an overall difference in the project.

Q Can you tell us the dollars or the cost to acquire any of those A1 through B3 routes?
A Not a dollar amount.
Q What about the aesthetics of A1, A2, A3, B1 through B3, what about those? Which one's best? Which one's worst? What'd you analyze, anything?
A They were, I would say they're all equal until you get to their western end and they become all the same, because they'll each have almost the same impact on the residential area.
Q Did you ever later go and walk B1 and B2 and B3 to ascertain those?
A I looked at a lot of these areas from the street, from the road, but it didn't necessitate the complete walk of every route.
Q All right. Can you remember any route you did walk of those six routes?
A Probably, I can't.
Q I want you to just say from your memory. Don't guess if you, just tell us.
A I'm not guessing. No, I'm not guessing. I'm trying to figure out which one. It would be the third one from the bottom.
Q Is that B1?
A I can't read that, sir.

Q Well, let me look.
A This one across here.
Q All right. That is B1. You agree that that's B1?
A Yeah.
Q Is my copy easier for you?
A Not really.
Q Can't see that?
A I can see the B.
Q All right. You can see B1. Okay.
A I was concerned about water again, and there are ponds there.
Q But you don't do the costs dealing with the pond?
A No, sir.
Q Now, these ponds, and crossing a pond is not unusual for a transmission line?
A Absolutely not.
Q Can you tell us what the anticipated use of the properties in B1, B2 and B3 are?
A B1 is--
Q B1, B2, B3. You did line numbers?
A We never progressed to that point with those options.
Q All right. Well, studying these alternates, B1 through B3, you didn't talk to a landowner and you don't know what the anticipated uses of those properties were, is that right?

A We did not.
Q So you don't know that?
A I know we, what is your question, do I know that?
Q The question is do you know the anticipated use of those properties, A1, I mean, B1 through B3?
A No, sir.
Q Do you know anything about the safety issue related to B1, B2 and B3? Did you analyze that?
A I analyzed that in the final route design.
Q B1 and B2 and B3?
A Safety is not an issue. Safety is purely by code.
Q Purely what?
A By code and regulations; engineering details.
Q And B1, B2 and B3 did those not, neither of those routes, none of those three options go through property owners or house, that situation, is that right?
A Not that I can tell from these drawings.
Q That appears to be correct what I said?
A That appears to be correct.
Q They were dismissed based on cost, is that what you're saying?
A No, sir.
Q What were they dismissed, for what reason?
A They were dismissed of because of, again, we have to get from point A to point B and we've got to connect the

dots in the middle so when, if you break this thing up, essentially, like an east side, middle and west side that's how it played itself out. The west side has, had issues we had to work around. The east side of it should had issues we had worked around. The middle of the property or the line was fairly straight-forward.

Q When you say the middle of the B1, B2, B3 property?

A I'm talking about if you take, if you take this line, this two-mile line--

Q Two-mile line. Okay.

A And split east, middle, west, and then start looking at these options, well, then you carry that through to how does that impact the middle section, and then how does that impact the west section and we've got to ultimately end up with a balance--

Q All right.

A --that works in all three of those cases.

Q And you have to analyze those options with regard to that balance, don't you?

A Yes, sir.

Q All right. Well, let's look at B1, B2, B3. All start at the Duke transmission line.

A That's a given.

Q So we're okay there?

A We're good there.

Q All right. And then we go across and we end up on page PMPA-12 hitting at a right-angle, the same line that goes through the Oien property, correct?
A After going by and through residential property.
Q Well, identify residential property on here for me?
A Here, here.
Q All right. You're pointing to houses, through their property but they go near it, is that what you mean?
A Goes near it, yes.
Q All right. Did you do an analysis of what the cost was going to be had you used that route, the cost to acquire?
A Which route?
Q The B route, any of the B routes?
A Never got to that point.
Q Well, in fact, B3 would be far below those properties, wouldn't it?
A They all end up at the same point. They all end up at the same point on the west end. As it passed the properties; yes, it would be a bit further way.
Q All right. So the problem you're addresses would be the other houses, but B3 doesn't go through.
A It's the more expensive option at that point, though.
Q But you don't have an analysis that shows us that, is that right?

A I can't show you, no.
Q Now, after this initial report you made at PMPA based on GIS and Google Earth of 2013, you never went back to PMPA, is that right? You never made another report?
A I didn't make a written report to PMPA, no.
Q So the decision that Mr. Frazier said was his, is that right, on the route?
A Ultimately, I would say so. I couldn't tell you if he had to consult with anyone inside his firm, but he was my contact.

MR. POPE: Thank you, Mr. Cobb.

THE COURT: Redirect?

MR. BANNISTER: Just briefly, Your Honor.

REDIRECT EXAMINATION

By Mr. Bannister:

Q All of the B routes that y'all were referring to, B1, B2 or B3, all come together in the B route that crosses 121 and, ultimately, intersects at the line, is that right?
A That's correct.
Q And where they come together, they cross fairly close to an existing residence, don't they?

MR. POPE: He's leading the witness. I object.

THE COURT: Overruled.

A I think it did. The problem is I need larger maps.

I'm used to dealing with more details, but I think it did.
Q And that line goes through, what is all those little blue squares? I can't tell.
A That's residential property that I understood at the time from talking with the guys at the City that had been subdivided but hadn't been developed yet.
Q A subdivision?
A Yes, sir.
Q So from the time B1, B2 and B3 intersect crosses, and just tell me if I'm wrong, very close to a house, and then intersects through a subdivision?
A I believe that to be correct, yes.
Q Is that why you ruled out B1, B2 and B3 was because they all cross--
MR. POPE: He is leading.
Q --a subdivision that--
THE COURT: Just one second. What was your objection?
MR. POPE: Leading. Leading.
THE COURT: Overruled. Go ahead.
Q Is that why you ruled out all the B tracts, because you'd have to, basically, condemn somebody's residence, and then cut all that subdivision down the middle?
A I mean, yes, yes.
Q So did you have to do, do you believe to properly

determine the feasibly of B3, that you need to do an environmental study of B3 once you ruled out where B3 is going to connect to 3?
A No.
Q Would that be a waste of time?
A And money.
Q And money. So you ultimately, come to A, right?
A Yes.
Q All right. You've heard the testimony about the aesthetics of the power line as it interferes, according to Mr. Oien, on his 115 acres?
A Yes, sir.
Q Did you hear that testimony?
A I did.
Q All right. For the purposes of this question, I want you to assume that any transmission line that's within 600 feet, how far is the homesite to the transmission line?
A I cannot recall. I can't remember. It seemed like it was, you talked about the proposed or the existing?
Q Where it's going to go, the middle route.
A I think it was 3-400 feet, but I can't.
Q All right. Let's say it's 300.
A Yeah.
Q For purposes of this hypothetical. If the transmission line is aesthetically unpleasing at 300 feet,

had you chosen line A that runs behind all those little houses, you see it?
A Yes, sir.
Q How many people, how many existing houses where people live and parked their cars and raise their family, how many of those people would be within the 300 feet that Mr. Oien says is objectionable; can you count them?
A Maybe a half a dozen. I can't--
Q Six?
A Is that close? One, two, maybe even more. It's these up--
Q Count. Count them.
A Well, I'm assuming. I can't, if there are houses here, you know, and I expect there are. Maybe a dozen, maybe.
Q So 12 existing residences would be affected by the A line if a transmission line is objectionable to have in your back yard at 300 feet?
A That, I would have to agree with that.
Q Is potentially that--
A A did nothing to mitigate the issues with the ponds and the wetlands.
Q And it had a issue with the pond?
A Yes.
Q So you affect all of those neighbors and you got to

cross a pond?
A Correct.
Q So when you're doing this analysis in aesthetics, right, and what it's going to look like, do you consider only the people who have high net worth retirement homesites or do you consider everybody who's going to be able to see the line?
A When I'm laying out a line initially, I prefer not to even know who owns the property. It's purely objective from an engineering standpoint.
Q So you would just treat everybody the same?
A Oh, I wouldn't know how to do any different at that point.
Q All right. The last question. We've talked a lot about the Southern Development factors. Did you consider those when determining the final location of the transmission line as it crosses the Oiens property?
A Yes.
MR. BANNISTER: No other questions, Your Honor.
THE COURT: All right. You may step down. Do you have any questions?
MR. POPE: A couple of follow-ups.

RECROSS-EXAMINATION

By Mr. Pope:
Q Mr. Cobb, you drew the alternates, B1, B2 and B3?

A That's correct.
Q And the alternate route B routes go under south of those poles, correct?
A Say, say that again?
Q It's shown on the map. In other words, right, B3 ought to go south of those houses on that road, correct?
A Yes, sir.
Q All right. And all the houses are close on the north end, so they would be over 300 feet?
A From this drawing, I can't tell.
Q And you drew it. You were expected, I take it, when you drew it to do a workup or a route study on each of those routes?
A I was working off a bigger drawing than this, sir.
Q I mean, you drew it. You intended to work it up.
A To scale.
Q And there's no document--
A I wasn't, I had no intention to work up completely every one of those routes. No, I never had that intention.
Q And you say you had to cross a pond, the pond shown--
A Well, but it's still water.
Q It's not an obstacle.
A If I'm there, it's easy to look at.
Q Sir?

A If I'm there, it's easy to take a look at. It's a physical, if I'm there, it's easy to look at. It's a physical feature.
Q All right.
MR. POPE: May I have your indulgence a second.
THE COURT: Sure.
A That's 14.
Q Exhibit 31, have you ever shared that, with the Oiens, they implied that they wanted some special treatment. You said, The Oiens want to settle. Money isn't an issue. The line needs to go to the south side. Mr. Frazier identified that yesterday. He wrote his boss.
A Just give me a minute, if you would, to read this, please.
MR. BANNISTER: Which one is that?
MR. POPE: 31.
MR. BANNISTER: 31.
A I don't recall seeing that at all.
Q Okay.
MR. POPE: No further questions.
THE COURT: May this witness be excused?
MR. BANNISTER: Yes, Your Honor.
THE COURT: All right. Thank you, sir.
MR. COBB: Thank you.
THE COURT: All right. Let's take a break till

quarter of 2:00 if that will be sufficient?

MR. BANNISTER: I would request you give us till 2:00.

THE COURT: Sure. I'll be glad to.

(Whereupon, a break was taken.)

THE COURT: You ready with your next witness?

MR. BANNISTER: I am, Your Honor. I'd also move, well, I think we've got an agreement on most of the Defendant's exhibits that aren't already in evidence except for exhibit 21 which I think is in the unredacted form. So I would move at this time that, by agreement, all of those would be entered as evidence.

COURT REPORTER: That would be 1 through 28.

THE COURT: One through?

COURT REPORTER: 28, except for 21.

THE COURT: Is that correct?

MR. POPE: Yes, except for 21.

THE COURT: Okay. One through, except for 21. Okay. 1 through 28 except for 21 will be admitted by stipulation.

(Whereupon, Defendant's exhibits 1 thru 20 were admitted into evidence.)

(Whereupon, Defendant's exhibits 22 thru 28 were admitted into evidence.)

(Whereupon, Defendant's Exhibit 21 was marked for identification only.)

MR. BANNISTER: Thank you, Your Honor. Call Todd Guy.

TODD GUY, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bannister:

Q Mr. Guy, who do you work for?

A The City of Newberry.

Q And what do you do?

A I'm an electric foreman.

Q And have you grown up in Newberry?

A Yes, sir.

Q You lived here all your life?

A Most of my life.

Q All right. How long have you worked for the City of Newberry?

A I've been back with the City now going on 16 years.

Q And how old are you?

A How old?

Q Yes, sir.

A I'm 49.

Q Where did you work prior to working for the City of Newberry?

A I worked, I was self-employed for a couple of years. The first time I left here, I left, I worked here five years before. I left here for about two and a half years. Before that, I worked at Shakespeare in Newberry.
Q As part of your job at Newberry in January/February of 2013, did you get an assignment related to a transmission line?
A Yes, sir.
Q What was that assignment?
A Well, I kind of took it on myself to make a courtesy call to most of the landowners to let them know what was kind of going on.
Q And that, was that related to the location of a transmission line?
A Yes, sir.
Q And you knew who those landowners were?
A I had to talk to people, the GIS tax maps, that kind of thing.
Q All right. So I'm going to look into so that I understand. As it relates to the Oiens property, the first time you would have been responsible for contacting anybody relating to transmission line, including the Oiens, was in February of 2013?
A Somewhere around that point.
Q And then what was the last time you had contact with

the Oiens about the transmission line?
A There was a call made from me to Mr. Major about who gave me permission to be on their property and all that. That was somewhere around June.
Q So in June when Mr. Major called, was that, were you taken off that assignment as it related to the Oiens?
A Yes, sir.
Q Okay. So that's your involvement in 2013, February until June?
A Yes, sir.
Q Okay. The first time you met with the Oiens, where were you?
A Well, it first come up, I was talking to Mr. West and got the information of who the people were and he--
Q Mr. West is the neighbor?
A Yes, sir. And he gave me the name of the man that was overseeing the property, which was a Mills.
Q Did you get a name?
A Yes, sir.
Q What was his name?
A Mills.
Q Mills?
A Yes, sir.
Q All right. So did you contact Mills?
A Yes, sir. I went out and talked to Mr. Mills one day

and we called Mr. Oien from his carport that afternoon.
Q From Mills' house?
A House phone.
Q Is that his last name, Mills?
A Yes, sir.
Q Mill or Mills?
A Mills.
Q Mills. All right. And you talked to Mr. Oien then?
A On the phone.
Q On the phone?
A Yes, sir.
Q And did y'all discuss that there was a transmission line?
A I kind of described on what was going on, kind of what was happening was a transmission line coming through. We had to do a tap with Duke. Let them know that, you know, we needed to get together anytime we could to discuss what was going on.
Q And did he make arrangements to meet you at his property?
A Exactly, I don't know sure when and all that, but we met eventually on his property.
Q So he did, and was he there by himself or was his wife there?
A As I recall, I think his wife was with him.

Q All right. And did you bring maps or pictures?
A Well, I kind of started off at first, you know, we was doing a transmission line and we was discussing the center property in between the two properties, and he said he didn't like that idea. That let's proceed with the bottom side of the property, stay on the property line.
Q So Mr. Oien--
A Yes, sir.
Q --said I don't like the center route, I want to look at the southern?
A Yes, sir.
THE COURT: Hang on. I'm confused. I thought this was Mills, but this is Mr. Oien and his wife, is that correct?
MR. BANNISTER: I'm sorry.
Q So after you left Mr. Mills' house having talked with the Oiens, you met the Oiens at the property?
A Yes, sir. Later on. That was maybe a week later or so, and I don't know exactly the time frame.
Q All right. And so you met Mr. and Ms. Oiens on their property and discussed the center route transmission line?
A Yes, sir.
Q All right. And what did they say?
A Let's go with the southern route. Let's look at it. If we can do something different. I was there, just like

I said, as a courtesy call trying to help see what people wanted and what they didn't want.

Q Is that what you were doing with all the property owners?

A Yes, sir.

Q Okay. And so you reported back to PMPA, the City of Newberry?

A Yes, sir.

Q And Mr. Cobb and they wanted the southern route?

A Yes, sir.

Q And did a route on the southern side of their property get drawn?

A Yes, sir.

Q Did you meet with them again?

A Yes, sir.

Q Did you show them the drawings of the southern route?

A Yes, sir.

Q All right. And what did they say?

A They didn't really like the southern route, because it would be taking away the buffer of the neighbors right at the bottom of the property line.

Q All right. And this, would it be this buffer between the lake and these home sites?

A Yes, sir.

Q Okay. And when you were talking to the Oiens, did

y'all discuss that that transmission line would be very close to those peoples houses?
A No, sir.
Q No. The Oiens are not concerned about their neighbors?
A They just didn't want the buffer gone.
Q They wanted the buffer.
A Was the main reason why they didn't want it.
Q Did they say something about security?
A Just didn't want to see the buffer, the property owners next-door.
Q Got you. They didn't want to, what now?
A See the property owners next-door.
Q They don't want to see their, all right. Did they tell you at that time that they had planned a homesite up on the northern place and that's where they were going to build their $600,000.00 home?
A I don't know exactly when the home property came involved, but after that, I said and, you know, we can look at a different route. And that's when we moved it to the northern route and I know the home property came involved at that time.
Q Okay. So they said no on the southern route and let's explore a northern route?
A Yes, sir.

Q And I haven't been out there. Just to be clear, if you are standing on the proposed homesite--
A Yes, sir.
Q --could you see these houses if you cleared those trees out?
A I don't think so.
Q Okay. Just making sure.
A Yes, sir.
Q All right. So you went to explore the northern route. Now, what did you have done as related to the northern route?
A Well, we made one map of, you know, hooking it around the property land there and it wasn't quite far enough, so we had to hook it out a little further to get it further away from the proposed site of the house.
Q All right. So walk me through this, because I want to make sure I understand what's happening. You drew a northern path?
A Yes, sir.
Q Or somebody did, right?
A Yes, sir.
Q You didn't draw it?
A No, sir. I didn't draw it.
Q You don't work, do your, do that?
A No, sir.

Q You just reported we needed a northern route and somebody at the City of Newberry or PMPA engineer drew your route and you took it back to the others?
A Yes, sir.
Q And were you on the property when you met with them?
A I think so.
Q Okay. And you showed them the northern route?
A Yes, sir.
Q And what did they say, did they love it?
A Well, and we had to tweak it a little bit more to get it further away from the proposed site.
Q All right. When you say we had to tweak it, you mean Oiens wanted you to tweak it--
A Yes, sir.
Q --to get further away from the proposed homesite?
A Yes, sir.
Q Is that right?
A Yes, sir.
Q All right. And so you went back to the City, PMPA, the engineers and said give us another option, they want it further up?
A Yes, sir.
Q All right. And then did you take that new northern route back to the others?
A Yes, sir.

Q What'd they say?
A Well, they denied it, because it being wrapped around the property homestead area or the proposed building site and said let's move it back to the center.
Q So the Oiens rejected the northern route and you said denied, but they didn't want, they didn't want it?
A They didn't want it.
Q Did you agree with them that's kind of a weird place to put it if they're going to build a house up there?
A Well, it wasn't really my position to say that but no, I didn't agree with it but, you know, I was doing what they wanted to do.
Q All right. And so you went back to explore the center route?
A Yes, sir.
Q All right. And did you come back to the center and meet with the Oiens again to talk about the center route?
A Yeah. That's when we kind of got involved on some oak trees and some very tall oaks that was involved.
Q Was there a question by the Oiens about where precisely the line would be in the center? They wanted to know where it was going to go and what oak trees they were going to have to cut down?
A Yes. Yes, sir.
Q Okay. And could you show them exactly when you were

in your meeting with them out there that day?
A No, sir. I couldn't tell them exactly where the property, the two properties were different in the center line.
Q Because it just goes through some woods, right?
A Yes, sir.
Q Okay. So what did you propose?
A I proposed I'd have to get our surveyors in to, you know, kind of stake it and see where the center line was.
Q And did the Oiens give you permission to have the surveyors come out and stake the center line?
A Yes, sir.
Q And did that happen?
A As far as I know; yes, sir. That's kind of, in that area is kind of when June came in and I kind of fell out of it.
Q All right. And then in June, there was a phone call from Mr. Major?
A Yes, sir.
Q And do you know the nature of that phone call; who did he call?
A He called me.
Q He called you?
A Yes, sir.
Q And what did he say to you?

A He was wanting to know who give me permission to be on the property? If I had a document, easement document saying that I could be on the property and I told him the only time I ever been on the property is with Mr. Oiens and then, or Mr. Mills.

Q And did you report that conversation to the folks at the City of Newberry?

A Yes, sir; I did.

Q And did they tell, and what did they tell you to do after that conversation with Mr. Major where he challenged your right to be on the property?

A My boss, Marc Regier, said it's getting kind of technical; it's time for me to just step out.

Q Okay. And was that the last meeting you had with the Oiens, and then the last conversation you had with Mr. Major about the route?

A Yes, sir.

Q And all of that happened between February when you started the work on the transmission line and the phone call from Mr. Major to you accusing you of trespassing?

A Yes, sir.

Q Okay.

MR. BANNISTER: No other questions, Your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

By Mr. Pope:
Q Mr. Guy, you, of course, have never been, this is the land acquisition project you'd ever worked on?
A Yes, sir; that's correct.
Q And you had never been involved in a condemnation before?
A No, sir.
Q And you had never worked on a transmission line project?
A No, sir.
Q And you don't know anything about any of the requirements for land acquisition?
A No, sir.
Q And did you know that, do you know Misty West?
A Yes, sir.
Q She's the vice president of West Electric?
A Yes, sir.
Q All right. Did you know that on, in exhibit 7 here, Plaintiff's exhibit 7, she had alerted Mr. Oien by email that there was a line that might be coming through their property and that she had told them there was no way you willingly give them an easement to cut your property in half?
A I didn't know about the email, but I did, that's who I contacted. I was there with Mr. West when he gave me

the contact name and number of Mr. Mills.
Q Okay. And do you understand that just from this one project that landowners like to look at options?
A Yes, sir.
Q And that's reasonable, isn't it?
A Yes, sir. And I think we gave them plenty of options.
Q So throughout your experience, there were three options?
A Yes, sir.
Q And that no final decision had been made about any of those options when you stopped in June of 2013?
A No, sir.
Q Is that right?
A Yes, sir.
Q And you didn't construe the situation when you left working on this project to be any final objection by the Oiens of the southern route, did you?
A No, sir.
Q And, of course, that was almost three years ago?
A Yes, sir.
Q All right. Now, I think you understand from your experience with this property that people do not like lines going through the middle of their property?
A Most people.

Q You would agree with that?
A Yes, sir.
Q And you've never seen any comparison in-writing, which I call a route analysis or something like that, that PMPA did to show the advantages or disadvantages of the north, the south and the middle route?
A We looked at plenty of other various routes. The main way to go with it is the least amount of property owners and the shortest amount of distance.
Q A straight line?
A It was about as straight as you could get it.
Q But what I meant was you weren't party to any discussions that would talk about land acquisition costs and aesthetics and environmental concerns and something like that?
A No, sir.
Q And do you understand from your project that once people, and some landowners don't want the line anywhere, of course, on their property, correct?
A Sir? Say it again.
Q And some landowners when you would confront them on this project didn't want a line anywhere, of course, right?
A Yes, sir.
Q But if they have to have it, most of them want it to

run along the edge of their property, doesn't it?
A Yes, sir.
MR. POPE: Nothing further.
THE COURT: Redirect?
MR. BANNISTER: None, Your Honor.
THE COURT: Thank you, sir. You may step down.
MR. GUY: Thank you.
MR. BANNISTER: We'd ask that he be excused.
THE COURT: There's any objection to him being excused?
MR. POPE: No, sir. That's fine.
THE COURT: All right. Thank you, sir. You may leave.
MR. GUY: Thank you.
THE COURT: The next witness, please, sir.
MR. BANNISTER: Marc Regier.

MARC REGIER, being first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Bannister:
Q Mr. Regier, who do you work for?
A The City of Newberry.
Q And how long have you been with the City of Newberry?
A About seven and a half years.
Q Were you here with the City of, well, what's your

title with the City of Newberry?
A Utilities Director.
Q Utilities Director; is that what you've done since you've been with the City?
A No, I started off in Information Services. Then, I went into Utilities as the Assistant Utility Director, and then I took over as Interim in February. Sorry.
Q Move just a little closer to that mic.
A Sorry. Can you hear me?
Q Yes. All right. Did you take part in the location that we've been talking?
A I did.
Q You were with the City when that was going on?
A Correct.
Q All right. And then were you with the City when the transmission line was being planned?
A Correct.
Q Did you participate in the planning meetings about the line with PMPA and the engineers?
A I did.
Q Can you give the Court, briefly, but I know it'll take a little bit, briefly sort of a outline of the meetings and conversations that you had either with the Oiens or about the Oiens and the location of the line on their property?

A All right. So you don't want me to start prior to that with the substation? You want me to start in--
Q Well, start in February 2013 about how the process started with the acquisition of the line.
A Well, we, after we had met quite a few times and had looked at, you know, various--
Q Actually, you know, go back. In the planning stage where the line was going to be, did you participate with PMPA and the engineers?
A I did.
Q All right. So what, describe for the Court what that looked like?
A So as other folks have said, we tried to site a substation near where our load center is and we tried to find something that would be able to get, you know, situated in a place where it wouldn't affect a lot of homeowners and it wouldn't be aesthetically, you know, unpleasing to folks. After siting the substation, we began to have conversations with PMPA and Mike about how to get to the station.
Q And when you say Mike, you mean Mike Frazier?
A Mike Frazier, yeah. At that point, we began to look around as been said earlier, the west and the east side. I remember at one point we looked at a route through the west side that was, you know, 50-60 properties. We went

through a kind of lengthy back and forth and phone conversations about the various possibilities. We looked at trying to go down the commercial, through the commercial district. We tried to look going through the residential districts, and then ultimately landed on the possibility that ran us kind of through the woods and didn't impact as many owners, property owners. So at that point, we began the process of kind of looking at various, you know, mutations of the line, of kind of that specific line and looked at, you know, how can we get out of this station, how can we try to, of those property owners is there a way we can impact even less than that. And then, you know, we kind of set some of the kind of boundaries we wanted to kind of stay with and without, you know, running into homes and things like that. So at that point, we created a list of potential property owners that were there that would be, you know, potentially impacted by it and with that list, we sat down and went through GIS. And then Todd knew some of the people just from growing up around here and I asked Todd at that point, would you go out and, you know, you know a lot of these people, you grew up with some of these kids and, you know, things like that, some of them are people you went to school with and just kind of let them know that hey, this is going on and we are, you know, potentially looking in your vicinity as

a potential route. As he stated, he did that and interacted with some folks. Now, moving into the Oiens, I know that he had asked Billy West. He reported back to me that day that Billy actually knew the owner and had some, Billy somewhat take some claim for helping bring them to town and was real excited about them being in town. And, you know, I said well do you have a way to contact them and he said well, they're going to reach out to them, but we're going to, there's a property manager or somebody who's got a key that we can hopefully talk with. After that, we went through and, you know, he continued to talk with other property owners. He drove down to people's houses in Chapin to meet with them and, you know, kind of explain what was going on and tried to make it as, you know, as personal as something like this can be. It's not something anybody wants but, you know, it's a fact of life. It's got to, you know, there is, we have an obligation to serve people and that's what we've got to do. So at that point, you know, we had some mutations. The southern line came up like he said. We had Alan and those look at, you know, drawings for it and possibilities for it. Then, I actually had a conversation with Mr. Oien and he told me that he would prefer the northern route and we, again, spent some time--

Q And this is Mr. Oien?

A Mr. Oien, yeah.
Q Okay.
A And we spent some time and Alan made some drawings. Mike and I talked about, you know, various possibilities and in that process, as Todd said, we had, we'd learned that there's a homesite going to be in the clearing and we were asked, as he said, we were asked to kind of move the line kind of away from the homesite. And I remember at one point thinking hey, let's go ahead and pay, we the City of Newberry, pay for the difference. If this is the way they want to do it, we'll pay for the angle poles, because Mike was concerned that there were costs that we were kind of mounting. But from my standpoint and from Todd's standpoint, you know, our goal was can we, you know, is there anything that we can do? Is there anything that we as the City can help facilitate to get people as okay with it as possible. And I remember having a conversation where I said, well, and I think Mike and I talked and he said something like, well, it's going to cost another, you know, $80 or a $120,000.00 for these other angles that you're putting in now. And I, you know, I remember saying well we, you know, maybe there's something we can do to help, you know, facilitate that to keep everybody, I mean, you know--
Q We being the City of Newberry?

A We being the City of Newberry. Yeah. Sorry.
Q So PMPA was, bears the cost of the line? You as the City of Newberry are trying to get the landowners and make sure they're completely satisfied from the City's perspective to do that?
A Correct. So the way that the agreement works with PMPA is that they will pay for 110 percent of the appraised value. Anything above and beyond that is the responsibility of the member city. So for us, anything above that was, you know, going to come on our, and then you know, so we kind of drew those up. We had conversations and then Todd went out and met with the Oiens. I don't remember if it was Mr. or Ms. and both.
Q All right. So you're, where were you?
A We were looking at the northern routes. Then, Todd met with the Oiens and the conversation of the middle route came up, and we began to start looking at some, you know, mutations at the middle of the property. At that point, Todd and I had a meeting with Mr. Oien and we showed him some maps in early June about kind of going through the middle of the property. And I remember frantically printing off a picture of five or six different types of transmission poles, so I could kind of show, hey, this is kind of what it looks like, what we expect that it would look like. And we met with them and

as most interactions were with him early on, it was pleasant. I mean, I felt like we were making some headway. We bounced around a little bit and we'd spent some money and, you know, I felt like we were doing the neighborly thing to try to make it work out. And after the kind of middle line, you know, we had a conversation about it and he wanted to kind of see where it was. We sent the surveyor out there to look at it and kind of spot the line for him, the middle of the property and the like and I believe at one point, he was out there on a tractor of his own kind of clearing some to try to figure out where the route was.

Q So wait a minute. Wait a minute. He was on a tractor, bush-hogging the route where he thought the right-of-way would go?

A I don't know. I'm not, I'm a city person. I don't know what a tractor or a backhoe or some sort of machine.

Q Some kind of machine?

A Some sort of machine or anything.

Q In the woods? How do you know that's what he was doing?

A I mean, he said that's what he was doing.

Q Okay. So he was, he told you he was on his equipment--

A Well, he was looking for the center of his property.

He was looking for the irons that were in the ground.
Q Okay.
A So after that, you know, he realized where the line was going to be and there have other folks have said, there was some conversation about the specific trees and the need to try to miss those. And we then paid for the surveyor to go back out there and try to get the angles of, that we would need for the trees to make sure that we didn't clip the tops of those trees. Around that point, Mr. Oien went out of the country and my next conversation was after Todd got the phone call from Mr. Major kind of really changed the tone of the whole conversation. It became very adversarial. It was not, it just was not the same type of interaction that Todd or I had had with them.
Q That was in June?
A In June, yeah.
Q From 2013, February to June, that's what you've been talking about this far?
A Yes.
Q All the middle route, southern route, the northern route, the second northern route and back to the middle route, the bush-hogging of the center route, the talk about the oak trees, all that was prior to Mr. Major getting involved?
A Correct.

Q Okay.
A He got involved. Todd told me about it. I said look, just leave it alone right now. Let's keep looking at the rest of the property, because what was happening every time we would change the line, it was causing changes on, you know, the other end of the properties. So again, in order to try to, as Mike Frazier and Alan Cobb had said, you know, from our standpoint, if we could keep it as straight as possible, it keeps costs down and things like that. So as we're doing these mutations, you know, northern side, southern side, middle, it's moving things on the opposite end of the line. So we kind of worked on that for a little bit and, you know, tried to see, okay, can we go here. I remember quite a few different mutations along the two Kibler properties, you know, is there a way we can just stay on one and not have to involve the other or, you know, are we going to end up clipping both of them. And, you know, again, with the goal being to minimize the number of folks that are impacted by it. I then received a call from Mr. Major in July, I believe, maybe latter July saying hey, I haven't heard back from Todd, but my client, Mr. Oien, wants an update on the transmission line. We at that point shortly thereafter went out and met with Duke about the possibility of tapping the line. There was no real

additional information at that point other than we were trying to figure out a way can we get around these trees, tap the line and do all that type of stuff. We then had the first conversation at the City with the Oiens, and they expressed some concern about kind of the positioning of the line along the property line, as it relates to the property line and asked if we put the, could put the bend in there to try to get, I believe actually it was Ms. Oien that kind of wanted, when she was driving in, didn't want to see some poles and things like that and, you know, could we bend it around this way. So I went back to Mike and Alan and said hey, you guys, you know, is there something we can do here? Again, if it's something that is above and beyond what you guys think, you know, is feasible, you know, we'll try to see what we can do to facilitate it. So we went through that process and kind of added that little dogleg into the initial or jag, whatever you call it, in the initial start off and after that, we had some kind of conversations with Mr. Major about he started kind of asking for, you know, he wanted the right-of-way agreement. He wanted me to give him a cost of the timber. He wanted me to give him a cost of the land. He wanted to give, you know, give this full report and I told him, well, we're, I don't know that we're a hundred percent where this line is just yet,

because it's moved a couple of times over the last eight, nine months. So we went back and again, tried to kind of solidify what we had and figure out is there a way, you know, is there anything better that we can do, is there anything that, you know, can we kind of finalize this and say hey, if we can work with this, then we're good to go.

Q All right. Well, let me ask you a question to make sure I understand. Mr. Major was representing to you that he was acting on behalf of the Oiens?

A Absolutely.

Q And are you, did you have any personal interaction with the Oiens after Mr. Major got involved where they acknowledge that Mr. Major was acting on their behalf?

A Yeah. We had some meetings at City Hall where it was specified that he was going to be out of the country or do something and that I needed to relay any information to Paul Major. So I began to funnel everything through him so that he was involved. I didn't know what arrangement they had, but that's what he asked me to do, so that's what I did.

Q And that's what Oiens and Major did and you just complied with those requests?

A Correct.

Q By including Major in all these decisions?

A Correct.

Q Okay. All right. Keep going. So Major wants timber values, right-of-way details, and he wants you to start talking money?

A Right. And the first, I asked Mike to send me a copy of the standard kind of PMPA right-of-way agreement and he sent it to me, and I passed that along to Mr. Major who, I believe, he said he had talked with the Oiens and that his clients were unhappy with some of the verbiage in there and they were not willing to, you know, or unhappy with certain aspects of it relating to the antennas and the antenna provision and the easement and things like that, the perpetual easement. But again, he said, you know, I want to, I need you to come up with an offer; I want you to come up with a timber value, and I want you to come up with, you know, a total compensation package, I believe he called it. And again, the interactions with the Oiens were pretty pleasant. The interactions with Mr. Major were pretty adversarial. I mean, he told me on just about every occasion that I met with him that the Oiens, that his clients would gladly welcome condemnation and they would find that 12 of their peers would side with them over the power company, which is exactly what Todd and I were trying to avoid from the get-go. You know, I'm not adding doglegs. I'm not moving the line around to condemn it. Obviously, we're trying to keep everybody, again, as

happy as possible so.
Q All right. Let me interrupt you for one second and show you what's been marked as Plaintiff's 12 and ask you if that's an email where you were responding to some of the questions that you just outlined.
A Yeah, this is a email that Mike Frazier and the folks at PMPA worked, some responses to specific questions that Mr. Major had.
Q Mr. Major had on behalf of the Oiens related to the right-of-way agreement and the offer of a pole count and that sort of thing?
A Correct.
Q Okay. I show you what's been marked as Plaintiff's exhibit 11. Is that an email where you're communicating with Paul?
A Yes.
Q What are you asking for permission to do there?
A At that point, we were trying to get back out, because he was pretty adamant about trying to get, he wanted to know exactly, we had kind of, he had backed off a little bit of some of the right-of-way stuff, but he wanted to know the value of the timber and wanted to know the value of the land. And I said before we can get there, we've got to have an official survey done. We had, you know, we sent somebody out to mark a center line and,

you know, we had pegged some points along the lake, but we hadn't done a true survey other than, you know, hey this is the approximate square footage and this is the cost per acre. So at that point, we were asking for access to the property so that we could send the surveyors back out there.

Q And what was the date of that?

A November 4th.

Q All right. Let me show you what's been marked as Defendant's 12. Do you recognize that email?

A Yes.

Q Is that an email you got from Paul?

A It is.

Q And the last paragraph of his email, what does he make clear?

A Well, two things and, you know, first he's asking get the survey done and Mr. Oiens allowed us to get on the property. Get the survey done. Get me the offer of pole count location and what have you. But then at the end of it, again, it's this kind of almost passive-aggressive. It's hey, we're working together but, oh by the way, we're never going to sign your right-of-way agreement. And then, you know, again, we're in November, so it's eight months since we started and the tone is we're not going to sign it. You know, he's telling me hey.

Q And that was after you had answered the questions about the terms and y'all had talked about the right-of-way agreement. The Oiens agent, Mr. Major, was telling you we're never going to sign a right-of-way agreement.

MR. POPE: A leading question, Your Honor. I object.

THE COURT: Say that again.

MR. POPE: Leading.

THE COURT: Rephrase your question.

Q And tell me where in the timeline this was as it relates to the route that you're discussing, that you've had surveyed, that they've asked for a timber count, where are we in the process.

A Well, we didn't talk about any of the routes after June through, you know, November. We were on the middle route and we were talking at that point about right-of-way language and value. And again, you know, it's I'm not going to sign the right-of-way agreement and my clients would rather you just come and condemn us, because you're the big, bad power company, and I think he actually called us that at one point.

Q Okay. The discussions with PMPA, the City of Newberry, the engineers, the Oiens and Mr. Major about changing the route, were you trying to negotiate in good-faith a route that was acceptable to everybody?

A Yeah. I think that was the, that was the goal and Todd and mine from the get-go. I mean, again, and this is not something that I wanted to necessarily do, but the City has needed a substation for 20 years.
Q And the culmination of those negotiations would be deciding of a right-of-way, would they not?
A Correct.
Q In other words, you weren't negotiating for fun? There was both the City, PMPA needed a resolution to where to put the transmission line?
A Correct.
Q Okay. At some, at the point you got an email from Mr. Major that said my clients will never reach an agreement with you, did you then believe that continuing to negotiate about potential alternate routes would not lead to the ultimate goal which was deciding the right-of-way?
MR. POPE: And that's a leading question.
THE COURT: Overruled. Continue.
A Could you ask me the question again?
Q No, probably not. I can try. In November when you got the email from Mr. Major referencing the Oiens refusal to ever sign a right-of-way, did you believe that that portion of the right-of-way acquisition where you negotiated the landowner for the signing of a right-of-way

had ended?
A No, and I, I guess, I fault myself for some of that being somewhat optimistic that we could work through because, again, my interactions with the Oiens themselves were good. This guy's gotten kind of in the middle of it and he's, you know, I think a little bit more agitated than everybody else was and I thought hey, you know, I think we can still work through this. We've figured out that we can bend this and do this and work it out for them but, you know, I'm kind of getting this push back from him. And, again, the interactions that I had with the Oiens up until that point was pretty good. You know, I felt like we were working together to come to a solution and but, you know, I think at that point we still, we went through, had the survey done and we brought the appraiser, met with Mr. Major. They walked around. We got the report back from that and Mike gave me the full report which I sent on to Mr. Major. And, you know, he came back and said that the value was too low and, again, you know, we went through the whole threat of condemnation and that type of thing.
Q So hold on. So Mr. Major said he didn't like the appraisal. Did he give you his appraisal?
A No, he didn't. He told me at that point that his client rejected the offer. That, you know, he thought it

was not fair and I still had not given him a value of the timber. He kept coming back to that.

Q And when did the Oiens make you a counter offer or Mr. Major, the Oiens through Mr. Major? Did they ever say we'll take X?

A No. We never got a, I mean, again, at that point it was, you know, we gave the appraisal and I kind of thought, as with some of the other property owners, say, well, you know, I think it's worth this and whatever and I didn't get that back. What I got back is this is not just. We need more information on the timber and stuff like that. And then shortly thereafter, you know, they said that they wanted to change the line to the southern route and, at that point, I guess I kind of, the wind got out of my sail at that point. You know, it's now a year going on. I got a substation that's completed.

Q So when did they come back to you? If you remember, when was the time frame when they came back and said we changed our mine, we want to go to southern route?

A It was after the appraisal was completed on the center line. So it would have been March 14, I think.

Q So all the emails from Mr. Major up till that point wanted an appraisal for the center route?

A Correct.

Q The timber values for the center route?

A Correct.
Q The survey of the center route. And when you made them that offer, which you made an offer of the appraisal, I suppose?
A Yeah. I sent him the entire, I actually sent him the entire packet, 80 pages or whatever it was.
Q And they said we want to do the southern route?
A He got back and said my clients want to do the southern route, and then we had subsequent meetings at the City where they were, you know, they told us that they wanted the southern route.
Q Okay. Let me show you what's been marked as Plaintiff's exhibit 10.
A You want those back?
Q Yeah, I'll take that back. Let me see if that's, is that Defendant's 10. Sorry, that may be the wrong one. Disregard that. I can't hardly read sometimes. Do you recognize that email?
A I do.
MR. POPE: What exhibit?
MR. BANNISTER: 10. It's Plaintiff's 10, not Defendant's 10.
MR. POPE: Okay, sir.
Q Do you recognize that email?
A I do.

Q I believe, explain that email? Who's it from? Who's it to?
A This is from Alan Cobb and, again, we're working through and talking about the possibility of different routes, you know, based on changes that we are doing on the Oien property. And he asked the question of when do you think we will hear from the owners on the west side of 121, if we cross more toward the middle of their property, to which I responded, he was pretty adamant that he wanted the line at the southernmost property. And if you continue on in the email. He comes back and says, what are you referencing, and I send back the tax map number of the Wilson west tract.
Q Which one is that on here?
A Well, you want me to get up?
Q Yeah, if you don't mind.
A (Witness complies.)
Q This tract on the opposite of 121?
A Yeah. 337-2-11.
Q So what, what you're referring to is not in April of 2013 that the Oien were adamant about the southern route, but somebody completely different on the other side of 121 is adamant about the southern route?
A Yeah. The only question in the email was answered and that was, what do you think we will hear from the

owners on the west side of 121.
Q Which is--
A Which is 337-2-11.
Q Okay. Did you reach some time frame or at this point a year into the project, a year into the project where you needed to move forward with the case?
A Yeah. By March, we had already taken delivery of the transformers and the substation and we were wiring everything up. We had already done a secondary back feed around to kind of stabilize loads. We were running into a situation where we were overloaded in certain areas. We were going to have to tie some stations together. So we went through that process and took delivery of our large power transformers and around that time in March, we were at the point where we were ready to energize the substation. So we had, the City had spent 3.6 million dollars at that point.
Q On the substation?
A On the substation.
Q And you were ready for the line to get turned on?
A Still waiting.
Q And you heard from the Oiens that they now wanted to change routes?
A I heard from Paul Major that they wanted--
Q Paul Major?

A Correct.
Q That the Oiens wanted to change routes?
A Correct.
Q Did you have any other meetings after that with the Oiens?
A I did. And I don't recall exactly the time frame, but we had another meeting. And then I believe in the fall or late summer, early fall, the condemnation papers went out at that point, and Mr. Pope per the Oiens request contacted the City Manager and asked if we could come and meet with them at his office to discuss the possibility of going down the southern route.
Q And did you meet with them?
A We did.
Q And did you decide to change the route or stay with the center route?
A No, and at that point, I mean, and I--
Q Had you at that point started acquiring other right-of-ways down the line?
A We were, we were, at that point, virtually done with the other right-of-way acquisition. But yeah. Again, you know, and got a lot of wind out of the sail and after a year of trying to make something work and, actually, you know, putting our own kind of rate payers out and saying hey, you know, we can try to work something out here

that's going to work for everybody. And then kind of being slapped back and saying no, we're going to, you know, we're going to try again and we're not going to agree with this and not going to agree to that. And, you know, and at that point when the condemnation papers, I mean, I got to move. I mean, I can't, I'm trying hard to, you know, be as understanding and conscientious of kind of the hey, you treat people the way you want to be treated and, you know, but I got a job to do and I got 5,000 customers I have to answer to and I've got rate payer dollars sitting there. And I just, you know, I can't stand by anymore and wait for, you know, hey, let's do another mutation. Let's try to engineer something else. Let's try to do something else. Let's see if we can still come to an agreement on the right-of-way papers. I mean, we're talking about a line, but we still hadn't ever solved the issue of the antennas or the, I mean, we talked about it, but there was never hey, this is okay or that's okay. It wasn't until recently that I heard that, you know, we could sign a right-of-way agreement.

Q In other words, the Oiens never agreed to the terms of the right-of-way that you would ultimately need signed regardless of where it was?

A Correct.

Q And the place that you thought it was that they were

asking you for making a demand of PMPA, the City of Newberry for money for just compensation and saying you were undervalued. They abandoned that route and went to a new route?

A Yeah, I think, I don't know if they did it or it was relayed to me through Mr. Major.

Q All right. But somebody on their side ultimately says, okay, whatever you thought, we're going to do something different. So at some point when you filed the condemnation, you've abandoned trying to work out an agreement with the landowner, and so now you were condemning the property? Just to make sure I got it right. You're still going to negotiate and try to work it out but changing the line at this point is passed?

A But still, we leave a dogleg in it, because that's kind of what, when the interactions that I had with the Majors' were kind of one on one, that's where we had kind of agreed on the line going.

Q All right. You didn't go back on your commitment to put the angle in the line from the tap point so that you hug the property line down the middle, did you?

A No. That's what I was saying. I mean, still in the condemnation, the line has that in it, because that's, at the time, that's what they wanted to have and what I was trying to facilitate.

Q I guess, they've alleged that, you know, y'all were bullies and arrogant and didn't know how they'd been able to discuss the line, but the line you ultimately condemned is more expensive and is adjusted per their request?
A That's correct.
Q Did anything stop you from just getting rid of that accommodation to the Oiens and running it straight?
A That's kind of what we had agreed on and that's kind of the way I wanted to leave it.
Q So you didn't go back on your agreement that you'd adjust it, you just condemned what you believed to be the best of three bad turns?
A Correct.
Q All right. So going through the route selection process, were you part of the route selection meetings that went on?
A We went through quite a few kind of mutations and conversations whether it was over the phone or at City Hall.
Q All right. So let's go through from the point that you got to, okay. That's, let me show you what's marked Plaintiff's exhibit 14. There was a good bit of discussion with Mr. Cobb about the alternative routes that are shown there in red. Let me ask you first about the B routes. There's three iterations that all meet at the B,

the red B, and then go when they intersect the 90 degree angle with the line. You see that?

A Yes.

Q Were you in meetings when that route was rejected?

A Yeah. I think I had a lot to do with the rejection of that route.

Q All right. And tell me how the discussion went related to that route?

A The goal is to minimize the number of property owners that are impacted and with any of the B properties, I'm getting way to close to homes. I mean, at the end of the day, I got to cross through. I got to tear up a bunch of properties and some of them on the back side of this B line, I remember going out and looking at them and there wouldn't be any property left. I mean, that the parcel that's there would be gone, so I'd be taking up entire parcels as I kind of traversed through the land there.

Q Was there at least one house that would have to be condemned?

A Yeah, there was a business that would have to be condemned as well. In the B drawing, it runs right over the top of a business.

Q And how many lots would the subdivision lose if you drew it on the B line?

A There are at least two of the parcels in that

subdivision that would be gone once you add the right-of-way in, but there is others that would be impacted pretty significant. I mean, those aren't huge parcels. So if you take 75 feet from the back side of them, there's not much left there, especially when you get into those more narrow ones around the end there.

Q So and the meeting discussing the construction of the subdivision and the condemnation of the business and the house, was that sufficient to warrant, is that basically what caused y'all to not choose B?

A Again, from my standpoint, my goals were to try to minimize the number of properties that were affected. There are, you know, more properties affected just in this portion of the line than there were through the other proposed route.

Q And you are sort of the City of Newberry's representative in the discussions about route selection?

A I'm the one that's going to deal with people complaining here in town.

Q And so when the court in Southern Development says intended use of property, discussions with landowners, and Mr. Rogers said that's an important part of the route acquisition analysis, B, from your standpoint was not acceptable?

A Absolutely not.

Q Was there any point then in going and asking the landowners that would be affected by B3, B2 or B1 what they intended to use their land for?
A Not in my mind.
Q Why not?
A Because again, I'm going to double the number of properties that I'm going to impact.
Q Because ultimately you're going to get to the where it becomes just the B line and that portion is unacceptable?
A That portion is unacceptable. Yeah. I mean, you're tearing right through the middle of a subdivision, potential subdivision.
Q Okay. Now, let me ask you about some of the properties that might be affected on A1, A2 and A3. Did you look at that choice of lot?
A We did, yeah.
Q Were you in the meeting with PMPA, the engineer, Todd Guy and who else was there?
A As Alan stated earlier, we had a few meetings where we sat down in the conference room and ate lunch and talked about and I had my computer and he had his out, and we were looking at different tracts and parcels and ways that we could try to snake this thing through and impact it.

Q Did y'all have a big screen T.V. in there?
A We did.
Q You hooked your computers up to it?
A We had them both, yeah.
Q So y'all could all look at the same drawing?
A We were.
Q In hi-def?
A As hi-def as it can be.
Q So look at A1. And you heard the engineer talking about going back, wetlands and the pond and that will be a challenge from an environmental and engineering standpoint. You heard him talk about the cost of the additional angle poles.
A Yes.
Q As a representative of the City of Newberry, did you consider anything for the option of A1, is that A1? I'm sorry, A3.
A Well, any of the A routes--
Q A3, the bottom one.
A Okay. Well, any of the A routes just would, because of the proximity to the homes.
Q Proximity to the homesite of Mr. Oiens?
A No. A1 is, you know, I don't have a scale here, but it's awfully close to the, I guess, what we're referring to as the cottage now, but was the home on the property.

And A3, you know, potentially is going to impact all of those property owners in that subdivision south of the Oiens property.

Q How many people live in it? How many home sites would be basically have their back yard be power line, right?

A I'd say at least 10 or 11.

Q So do you know if people live out there?

A They do.

Q Are there actual houses?

A There are.

Q Is that why you rejected the A option?

A That's why I was pretty adamant that we not, you know, again, my goal was to minimize the number of properties that we were affecting.

Q All right. So in the hypothetical that Mr. Oien's is correct and Mr. Major is correct. If location of a, pole transmission line within 600 feet of a home reduces its value by 10 to 20 percent, how many of those houses are within 300 or 400 feet to those transmission lines if they were constructed on the A route or the B route?

A I'd say there are about 16 to 20 that would be damaged.

Q Do you need an appraisal to tell you that it would be more expensive to pay 16 people who own homes 20 percent

of their home price than it would be to pay one landowner who doesn't have a house on this property for the damage the transmission line would cause? Do you need an appraiser to come in and appraise all those houses to tell you that?

A No, not at all. And the problem there is that, I mean, some of those houses are 250 feet from the property line. I mean if 600 feet is too close, 250 is too close.

Q Well, once you looked at that and knew there were houses there, did you believe that route was rejected and, therefore, the appraisals would not be necessary? Is that how the meeting went?

A We as the City, I was not going to say hey, I want y'all to look at this line and do a bunch of appraisals and surveys for something that I would have a difficult time, you know, standing up and explaining to people why I'm doing that instead of going through the woods.

Q And that's what the route that was ultimately selected goes through the woods, doesn't it?

A Correct.

Q Did you have an opportunity to talk to Ms. Oien's?

A I did.

Q And did she tell you anything about her personal feelings about where the line should go?

A Early on, she had some concerns about the garden at

the homesite and wanting to, you know, ask questions about what it would look like and what kind of trees. I remember having a meeting with the city manager where we went through some conversation about trees and things like that in the right-of-way and kind of what could be grown around it, and then we also had the conversation about the kind of the dogleg in the line. But I remember a conversation at the very end, kind of in this process, where she made it pretty clear she just didn't want the line on her property.

Q She made it clear she didn't want it on her property at all?

A Correct.

Q Did she ask you to move it to somebody else's property?

A She indicated that she, couldn't you guys put this line on somebody else's property?

Q Did you believe from your conversation with her that she felt entitled for you to do that?

A I mean, I think it was a, you know, kind of go and do that. But again, at that point, I kind of felt like it was a moot point. You know, we had already gone through various mutations of the line.

Q Do you believe this lawsuit is just following through with Ms. Oien's desire to have the line moved somewhere

else and an attempt to stop the City of Newberry and PMPA from putting a transmission line--

MR. POPE: Objection.

THE COURT: Sustained.

MR. POPE: Object. He can't--

MR. BANNISTER: Okay.

THE COURT: I already sustained it. Cross-examination.

MR. POPE: Thank you.

CROSS-EXAMINATION

By Mr. Pope:

Q Mr. Regier, you have been with the City about four years?

A Seven.

Q Seven. Excuse me. You started as the IT director?

A Correct.

Q And you have never been involved in a transmission line acquisition before, is that right?

A Correct.

Q And I take it you had no training with regard to procedure for land acquisitions, is that right?

A I had no, I have no formal training for land acquisitions.

Q That's all right.

A Can you hear me?

Q You're a little bit too close.
A Better?
Q Yeah.
A I have no formal training for land acquisitions, but I would say that I'm well-versed in customer service.
Q All right. And you've never been involved in any route selection for a transmission line or ever, is that right?
A I was, as we talked about in the deposition, I was involved in--
Q -- transmission.
A --not transmission, distribution.
Q And have you ever heard of the Southern Development case before this case?
A I have not.
Q Now, you understand that options are frequently looked at with regard to individual property owners through a transmission line?
A Sure.
Q And it's perfectly reasonable for landowners to look at those options and consider all of them, and then make a decision?
A I think we looked at a lot of them.
Q Huh?
A Yes, and I think we looked at a lot of them.

Q And you as the City representative, you were a liaison, really, for it, correct, in this process?
A Yeah. To a degree, yeah. I mean, I would say I was--
Q Well, didn't you say that in your deposition you were a liaison?
A Yeah, I mean, to a degree I am.
Q And you would agree that communications with homeowners are imperative, good communications?
A That's what we tried to do, yeah.
Q And so now we've got routes that are being looked at and you as the City rep, your company, PMPA has perhaps deadlines, correct, or proposed deadlines for a route, for a project?
A Well, I think we were the one implementing the deadlines.
Q Well, you have a deadline?
A Right.
Q All right. But the point is, there's been no testimony that you never told the Oiens, now you got to make a decision on these three routes. We got 30 days or 20 days or 40 days?
A It's a difficult decision.
Q I'm sorry?
A It's a difficult decision having a line, again, as we

talked about in my deposition.
Q Yeah. They're not aware of your deadlines, correct?
A No. I think we told that we had, I mean as we have discussed, we talked about the deadline. You know, I think Mr. Oien even referenced us needing to flip the switch at a certain time.
Q I know. What about a deadline to establish a route, so to speak. You never told him of a date--
MR. BANNISTER: Now, he just answered that question. He said that he didn't.
THE COURT: Well, repeat your answer and repeat your question and he can answer it.
Q You never told the Oiens that you had a certain date by which you had to know which route they wanted?
A No. I believe we did and Mr. Oien referenced it.
Q What date was it?
THE COURT: Well, let him finish. Let him finish. Go ahead.
A Mr. Oien referenced it. I believe the date was April of the following year we had to have the loading change.
Q You needed a decision by April of 2014?
A No, I needed to have the substation energized, if possible, by that point.
Q Well, that was two years ago?
A Correct.

Q All right. But you don't begrudge landowners from looking at various options?
A No, and that's why I, as the City, was willing to explore all options and try to work with them.
Q In Defendant's exhibit 11, give me those back.
A Okay. Thank you.
Q Defendant's exhibit 11, that's my copy, and so I'm trying to read it.
A Okay.
Q All right. You wrote Mr. Major and said you wanted to know if PMPA could send out their survey to provide the information the Oiens requested, right?
A Correct.
Q Okay. So it's obvious that at that date which was November 4, 2013, they were looking to get that information so they could make some determination of which route?
A Correct. But I don't think there was a determined--
Q And they, did they come to City Hall in March of 2014 after that survey and tell you that they could not live with the middle route or the south?
A They come back in March and told me that they could not accept the terms of the right-of-way agreement, accept the compensation and that they wanted the southern, and wanted us to look at the southern route.

Q That was March of 2014?
A It was about that time, yeah.
Q After they got the results of the survey from November, and do you remember having the survey done?
A After we got access to the property--
Q The survey, excuse me. Sorry.
A Go ahead.
Q You did, the survey was done like February of 2014, wasn't it?
A I don't remember when the survey was done.
Q A couple of months after November?
A Well, I think we got the word back in the middle of November and we began the process of, you know, getting the surveyor to go out there and we got them out there, and then I think the appraisal was done shortly thereafter. We put their appraisal ahead of everybody else's to try to get it back to them.
Q And when they got the results of the survey when they came to your office with Mr. Major and said we can't accept the middle route, please do the south, the southern route, correct?
A I don't remember them asking for the southern route.
Q Didn't you just say that they rejected the middle route?
A I believe they rejected the terms of the right-of-way

agreement and it's still at that point in March Mr. Major was asking about compensation for the middle route. So then at the very end of the meeting, we had the conversation where they said hey, can you look at the southern route and at that point, you know, we're, I'm a year in and I started a year ago on the southern route.

Q But you had never told them that it was going to be too late for them to request the southern route by March of 2014?

A They were aware of the timeline that we had.

Q How do you know, you never wrote them? Did you write them a letter?

A Did I write them a letter?

Q Did you write and say please tell me by this date or it's going to be too late?

A No, we met face to face.

Q And in March, she told you she didn't want the middle route?

A Correct.

Q Did you ever write them and say, well, you got 30 more days to accept it or tell us what you want to do?

A No. Mr. Major made it clear that he wanted us to condemn the property if we wanted to go the middle route.

Q Now, you referred, did you, your email referred to Mr. Billy West as the king?

A That's correct.
Q Why is that?
A As I said in my deposition when I worked at the college, he was involved in every committee and we just referenced him as the king, because everything seemed to always have to go through him. So I, when I moved over to the City I--
Q So you had to talk to him rather than directly to the Oiens?
A No, I didn't talk to him directly about the Oien tract. Todd Guy talked with him and got Misty to reach out to them and reach out to Mr. Mills.
Q And you had some meetings on the site, is that right?
A I did.
THE COURT: Did you say the media?
A Meetings.
Q Meetings.
THE COURT: Meetings. Meetings. Thank you.
Q And you had three meetings on the site March the 13th, 2013, is that correct?
A That sounds about right.
Q Mr. Frazier, Cobb, and yourself and Todd Guy?
A Sounds about right.
Q And the Oiens weren't--
A And Mr. Mills.

Q --present?
A No, Mr. Mills was there.
Q And you had a meeting of August 8th, 2013 on-site with yourself, Mr. Frazier, Cobb, and Duke Power, is that right?
A That sounds about right.
Q And you didn't invite the Oiens to that either, correct; you didn't see them that day?
A I didn't see them that day. No, the last interaction I had with the Oiens on their property was in June.
Q I'm sorry?
A The last conversation I had with the Oiens was on their property, on their property was in June. That was the last on their property.
Q And you understood, you had, when the Oiens would ask you questions when you would call them or see them, you would have to defer to PMPA to get answers, correct?
A Not always, no. I mean, we, again, there's some stuff that I could answer and there's other things, you know, hey, what's this pole going to look like? How many poles are there, things like that. Then there was other stuff about, you know, when Major got involved where he was asking about cost of timber and, you know, I'd give that to an expert.
Q I understand that. But I'm just saying if they had

technical questions, you had to go to PMPA--
A I went to the engineer.
Q I'm sorry?
A I went to the engineer.
Q Mr. Frazier?
A Mr. Cobb or Mr. Frazier.
Q Oh, Mr. Cobb?
A Yeah.
Q But you understand that the Oiens were a little frustrated because of the condemnation and sort of being open or active and the process, the project had been active until November.
A Like other property owners have never met with PMPA. We facilitated and tried to facilitate the right-of-way agreement signing during those eight months or so.
Q Well, you understand that they were frustrated, whether it was valid or not, and they were frustrated they wanted to see the horse's mouth--
MR. BANNISTER: Judge, I'm going to object to the question about whether or not he knows if somebody's frustrated.
THE COURT: Just lay your foundation.
MR. POPE: All right.
Q Did Mr. and Ms. Oien express frustration that they had not heard from PMPA directly, and they wanted to speak

to the horse's mouth?
A Mr. Major did.
Q All right. And based on the request of the Oiens, you had your first and only meeting with PMPA, they did, November 26, 2013?
A That's the only meeting that I know they were in with PMPA.
Q Then, you had a survey done after that to answer some questions they had, and then they came to your office in March and said we can't do the middle route, it has to be the south, correct?
A They came back and said they were not going to agree to the middle route.
Q But you learned at some point around that time that they wanted the southern route?
A They asked if we could put the line on the southern route, in and out there, yes.
Q I'm sorry?
A Yes, they asked us if we could put the line on the southern side of the property--
Q Okay.
A --around that time frame.
Q And the southern route it had already been drawn by, it's Plaintiff's exhibit 12, and it was drawn by Mr. Cobb at some point prior to that, and this drawing exhibit 12

is a engineer's drawing?
A Correct.
Q Okay. Because that's what they were referring to when they said southern route, correct?
A I don't know. We never got to a drawing and say hey, sketch this. That was the original southern route that we talked about that they had some concerns about the buffer.
Q But this is the only southern route that had been drawn at that point, exhibit 12?
A Right. That's the southern route that we used the year prior.
Q And you'd never worked with PMPA before on a project like this, is that right?
A Not on a transmission line.

MR. POPE: Judge, could we take about a five-minute break.

THE COURT: Sure. Take a five-minute break. You can't speak to anybody during the break about your testimony.

MR. REGIER: Okay.

(Whereupon, a short break was taken.)

CONTINUE CROSS-EXAMINATION

By Mr. Pope:
Q Mr. Regier, so for the last two years it's been clear to you that the Oiens have adamantly requested the

southern route since March of 2014?
A That's my understanding.
Q All right. Now, we talked about the time frame from the condemnation. Now, let's take, for instance, the average person's knowledge of condemnation is pretty low, correct?
A Yeah.
Q All right. We got a bridge down here on Collins Street that's now closed for rebuilding.
A Correct.
Q It's a condemnation project, right?
A I don't believe it is.
Q Well, it's right by your office. They're condemning some land around the bridge for that project?
A No condemnation. I don't believe there's any condemnation in that project.
Q Well, the church. You ever heard of Bethlehem Baptist Church?
A Yeah.
Q Well, they have their property being--
A I don't know.
Q Well, anyway the point is everybody--
A That's DOT's.
THE COURT: Hang on. Let him finish. Go ahead.
A It's a DOT project.

didn't remember any, is that right?
A At the time, I didn't remember any.
Q This was October 7, 2015. What was wrong with your memory then?
A What was wrong with my memory is that--
MR. BANNISTER: Judge, he said I didn't remember anything. Mr. Pope interrupted him and asked him what's wrong with his memory. He's entitled to finish his answer.
THE COURT: I agree.
MR. POPE: Okay.
THE COURT: Let him finish.
A So I'd said I didn't believe so. I didn't spend time going through 580 whatever pages of all my emails after I sent them to you. I then prior to the trial went back through all of my notes and, you know, I directly recall having these conversations.
Q You produced 486 pages or PMPA did about this entire case, correct?
A I believe it's somewhere around there.
Q All right. There's no word in any of those records that references any discussions you had about those routes, nothing. Can you direct me to one?
A No, but going through and replaying the entire thing and starting at the beginning looking through all the

emails, it began to kind of agitate my memory and get me remembering all of the very, I mean, the three years of conversation that I've had on this project.

Q Yes, sir. And you said when I asked you in this deposition that you had met two hours with your lawyer before the deposition, is that right?

A And we were there for two hours.

Q No, not at the deposition. I asked you at the deposition how long did you meet to prepare for the deposition with your lawyer and you said two hours.

A Correct. And then you asked me what I looked at and I said nothing and you said what did we talk about. And I said we talked about the procedures of a deposition, but I mean two hours to look through 400 pages, I can't read that fast.

Q What would you, could you have possibly have looked because it hadn't been produced? What could you have looked at that would have refreshed your memory about a discussion, a mouth to ear discussion?

A Going back through the process. Looking back through all the emails, rereading them and remembering the conversations. You know, and again, after three years of this, I still today find myself going hey, I remember this conversation what was with this person. You know, it's not that my memory is terrible, but it, it's three years

A I'm sorry. One more time.
Q Page 64, line 2, are you aware of any problems with the routing on exhibit 2 to the Frazier deposition which is the southern route. And your answer was, as you stated before, I'm not an engineer, but I don't know. We kind of abandoned that after they told us they didn't want to go that way.
A Right.
Q And you weren't aware at that time of any problems with the southern route, correct?
A No, I didn't have a problem with the northern route. They dictated they didn't want the southern route. They didn't want the northern route. They didn't want the middle route. They wanted the southern route again. I mean, at no point did I tell them you can't do that there. I tried to facilitate it every single time.
Q And in your experience with this one transmission line prior to, you agree that landowners you encountered would not generally want a transmission line through the middle of their property?
A Sure.
Q Okay. And since the Oiens were frustrated by not talking with PMPA, we'd identified that you had had three meetings on-site with PMPA and Duke and yourself with the City, that they weren't included. I'm not saying they had

to be included, but wouldn't it have been helpful for them to get answers if you had told them you were going to meet and invite them to join you?

A If I recall correctly, most of the time, they would let us know that they were in town, I mean the day they were here or the day before they were coming to town. And there were a couple of times when Mr. Major was involved that he knew Mr. Oiens schedule and he said he'll be here this Friday, can we sit down and talk.

Q Now, you told us this morning, contrary to your deposition, not this morning but this afternoon, contrary to your deposition, that you remembered discussions about A1, A2, A3 and the B routes as well, that you had your computer out, but you have no notes that you have printed from that computer about any route analysis or any factors considered, correct?

A No, we were just looking at it on the screen through the GIS.

Q Now, you're not qualified and you don't hold yourself qualified to do a route analysis, right?

A I think a route analysis, as we've talked about ad nauseam over the last two days is done by a conglomeration of experts. And I think you've had those experts in with some personal attention and you come up with, you know, analysis that hopefully fits the engineering, the land,

the right-of-way, and the most importantly, the property owner.

Q But that's an uninformed opinion, is it not? It's a lay opinion?

A A lay opinion? I mean I could--

Q You're not qualified to access construction costs are you?

MR. BANNISTER: Judge, if he ask him and he answers, he can't impeach him.

THE COURT: Sustain the question. You ask the question. Go ahead.

A Could you repeat the question?

Q You have no qualifications to do construction costs analysis, right?

A No, I rely on engineers to do construction costs.

Q And you have no qualifications about aesthetics as it affects land value, correct?

A I don't have any formal qualification.

Q And you don't have any qualifications about the cost to acquire property?

A No, I would use an appraiser.

Q Okay. And, in fact, your degree is not engineering, it's in education?

A Correct.

Q And you graduated from Newberry College in 2009?

A Technically, in '11.
Q '11? Okay. Now, you told us earlier today, contrary to what you said in your deposition, that you had looked at these routes A1, A2, A3 and they were all too close to adjacent homeowners and, you know, Mr. Cobb didn't analyze that. Mr. Frazier didn't analyze that. How are you able, what expertise did you have to analyze that?
A It doesn't take a rocket scientist or an engineer, no offense to those guys, to figure out that one parcel versus 15 parcels is going to be a better path.
Q In fact, you've never seen a route selection study or review or audit until you saw Mr. Rogers in this case, is that right?
A I have never seen the way the Southern Company does route analysis; that's correct.
Q I'm sorry?
A I've never seen the way that Southern does a routing analysis.
Q You've never seen that routing analysis?
A I've never seen the way that they do it; that's correct.
Q All right. And they haven't produced one for this case?
A Who?
Q Southern, your--

A Central or whatever you call it. Now, what do they call it, Central Electric?
Q I'm talking about and your expert didn't produce a route analysis, right?
THE COURT: We are well aware we don't have a route analysis in this case.
MR. POPE: Okay.
Q Now, since this was your first project, did you ever relay back to PMPA that they ought to be coming down and talking to the landowners and explaining the details of the project to the Oiens?
A I don't know that I specifically asked them, because, again, I felt like we--
Q I'm sorry?
A I said I don't know that I specifically asked them. I felt that we, Todd and I, were making good headway with Mr. Oien in coming to a solution that was going to work for them and for us. I didn't see a need to bring somebody from out of town to come down and interface with them if we were able to handle it like we did with the other property owners.
Q But PMPA was the condemning authority?
A Correct.
Q And they thought that, wanted to be talking to them to find out some technical aspects of the condemnation?

A At no point did we mention, the only time the word condemnation came up was when Mr. Major brought it up. I never told the Oiens that I wanted to condemn their property. I never told them that I was even thinking of condemning the property or was even going to aid in the process of doing that. My goal is just simply to meet with them and try to find something that would work for everyone.

Q And you never told PMPA that they ought to be coming down and talking to them about it, because you said it was never your intent to condemn it, is that right?

A I don't know that I never said hey, PMPA, you need to come down here or not come down here, but I know that we were trying to solve it, at least initially, at a local level. I think when Mr. Major came back and started asking all of the details, I said, Mike, you guys are going to have to come down here and answer these questions, much like you did in that document that I just had. You're going to have to come down. They want to know specifics about what antenna is going to be there and this, that and the other, and I wasn't qualified as I said to answer those questions.

Q All right. Page 46 of your deposition. At the top of that page, line 1. I asked you, since this was your first transmission line project, did you not think or did

you ever tell PMPA they ought to be coming and talking and explaining the details of the condemnation. And your answer was what?

A No, because it was never our intent to condemn the property. And I still today believe that at no point was it the City of Newberry's intent to condemn the Oien property.

Q Well, they told you in March 2014 after the surveyor had done and answered their questions, that they had seen it, they had reviewed the options, and they wanted not the middle route, they wanted the southern route. Did you ever tell them well, you got 30 days you're going to have to decide something right now or we're going to condemn it in 30 days?

A No, because in the same conversation at the same meeting, we were still talking about, I think, the term that Mr. Major used was just compensation. So, I mean, we're still talking about the middle but kind of, it was the same, the initial comments about the southern route were much like the initial comments about we don't want it on our property. I mean, it's, you know, we explored the southern route literally a year prior to that.

Q And many landowners initially say they don't want it on their property, that's just a common--

MR. BANNISTER: Judge, I'm going to object and hear

me out. The issue for Your Honor to decide is whether or not the proper procedures were followed in route selection prior to the condemnation being filed where PMPA condemns the center route. Whether or not PMPA or somebody assigned by PMPA or the City of Newberry negotiated with the landowners doesn't matter, because there's nothing in the statutes that require the City of Newberry and PMPA to negotiate with the landowners about where they want to condemn the line. That is purely in the discretion of the condemning authority prior that they go through the steps and none of those steps require ongoing negotiation or notice to the landowner they're going to condemn or anything else. They just have to, when they're selecting the route which is what we're here about, they have to consider the factors related to the route they select.

THE COURT: So in a nutshell you're saying this is not relevant?

MR. BANNISTER: Yes, sir. And that's going to probably apply to a host of, I mean, I didn't raise that issue, but we're kind of going over the same ground.

THE COURT: Well, how is this line of questioning decide--

MR. POPE: I'm getting close to it.

THE COURT: Hang on. Hang on. Besides replowing over ground, how is this relevant to the analysis as to

whether or not you did meet the factors of Southern Development?

MR. POPE: It's probably collateral--

THE COURT: I sustain the objection.

MR. POPE: All right. So from, now, this question and I know you are going to object again, probably. But they have accused the Oiens, having keep changing their minds and our review is there wasn't a changing of minds as much as wanting to see all the information on the available routes. So I would like to pursue a couple of questions.

THE COURT: Ask the question, and then we'll hear as to whether or not it's being objected to.

MR. POPE: All right.

Q So from March 2014 for the next two years, the Oiens have maintained their wish to have the southern route as being the best route consistent with what their expert also has said, correct?

MR. BANNISTER: Your Honor, I'm going to object to the question. There's one issue before the Court and that's whether or not--

THE COURT: Let me say this. I note your objection. I can ferry it out. I also understand, got relative issues with bad-faith, fraudulent-type activity, estoppel issues that was pled, the different factors set forth in

the Southern Development case and whether or not there has been unreasonable peripheral damage to the Plaintiffs property by the location of the line. That is in my mind what I look at, okay?

MR. BANNISTER: Okay.

THE COURT: Now, I hear you and you may disagree, but that's what I'm pulling out of the case, okay. I'm going to give a little leeway. This is nonjury and y'all can correct me if I make an--

MR. BANNISTER: Can I make one comment, and then I'll--

MR. POPE: Your Honor, I don't think--

THE COURT: Hang on. Hang on. I can run the court.

MR. BANNISTER: You said you're going to consider bad-faith?

THE COURT: If it's an issue that's been raised in the case.

MR. BANNISTER: There were four factors that they raised and when you started this case you said one of the issues and they said public use and the failure to allow the Southern Development as related to the way they've selected the route, the route-selection criteria. There are other grounds for objecting to a condemnation, bad-faith, fraud, public use, lack of necessity. And they've abandoned those and they've, and at the start of,

and in his case--

THE COURT: Well, I'm saying to you if those are appropriate, those are factors in these type of cases to consider. And if they haven't alleged them, they're not an issue. If they've abandoned them, there's not an issue. We'll clarify that. I'm going to give him a little leeway with his questions so we can move on.

MR. BANNISTER: Thank you, Your Honor.

THE COURT: Thank you.

A You were asking about March of 2014 and what happens.

Q Yeah. There was no change of opinion expressed by the Oiens from March of 2014 following that they wanted the southern route, right?

A They have, in the interactions that I've had with them, they've made it clear from that point on that they would prefer that we look at the southern route.

Q Thank you.

THE COURT: Redirect.

MR. BANNISTER: Briefly.

REDIRECT EXAMINATION

By Mr. Bannister:

Q And the Oiens have never agreed to a southern route right-of-way, have they?

MR. POPE: Your Honor, I object. He's leading his own witness.

THE COURT: Please rephrase.

Q Is there a southern route survey that's been presented to you by anyone that shows exactly where that would be?

A No.

Q Has there been an appraisal of by the Oiens or anyone of the southern route?

A No.

Q Have they agreed to the terms of the right-of-way that they objected to previously for the southern route?

A I've not seen anything.

Q Were you present for Mr. Oien's deposition?

A I was.

Q Do you recall him testifying in that that he was told that the switch had to come on in April?

A I recall hearing that.

Q And that you had to have the line acquired by then?

A I remember that.

Q I said April of 2014, right? That was the deadline, April of 2014?

A April of '14, yeah.

Q And there was a title problem, just for the Court's--

A Correct.

Q And the title problem had to be cleared which PMPA did that.

A Correct.
Q On the Oiens property?
A It took a while to get, before we could get the appraisal done, it took a while because of the sister still having ownership in the property or something like that.
Q And so now that the condemnation started a good bit later than had been anticipated--
A -- much later than I wanted it to, and I'm already behind.

MR. BANNISTER: Judge, no other questions.

THE COURT: All right. Any recross?

RECROSS-EXAMINATION

By Mr. Pope:

Q One thing. The only southern route that had been drawn is the one that Mr. Cobb drew, correct?
A That's the only one I know of.

MR. POPE: That's all.

THE COURT: Can this witness be excused?

MR. POPE: Yes, sir.

MR. BANNISTER: I think he's going to stay.

THE COURT: Oh, is he? All right. You're excused if you want to be.

MR. BANNISTER: Thank you, Judge.

THE COURT: Any other witnesses?

MR. BANNISTER: Can you give me two minutes?

THE COURT: Yes, sir.

(Whereupon, a short break was taken.)

MR. BANNISTER: Judge, no other.

THE COURT: No other witnesses?

MR. BANNISTER: No other witnesses. That's the Defense's case.

THE COURT: Okay. Mr. Pope, is the Plaintiff going to call any witnesses in reply?

MR. POPE: No, Your Honor.

THE COURT: All right. Good. The evidence is in. Renew your motions, please?

MR. BANNISTER: You want me to go all the way back through it or not?

THE COURT: Just renew it for the record.

MR. BANNISTER: I'll renew my motion for directed verdict.

THE COURT: There you go. Let me tell you to the extent. Well, look, here's what I was referring to earlier as to what the standard is out of Southern Development. This is a court of equity, a court of equity, exercise the condemnation power to list the condemning authority as acting in bad-faith, fraudulently or with clear abuse of discretion. And Southern Development defines said abuse of discretion as failure to

consider the factors they outline. Does anybody disagree with that proposition?

MR. BANNISTER: No, Your Honor.

THE COURT: Do you?

MR. POPE: No, sir.

THE COURT: And the standard the Plaintiffs have to meet also is that they have to--

MR. POPE: Can I get closer, Judge? I'm sorry.

THE COURT: Yes, but the standard has to show that it's unreasonably hurtful to their particular property. Do you agree with that?

MR. POPE: Unreasonably hurtful?

THE COURT: Unreasonably hurtful and that is the--

MR. POPE: I'm not sure I agree.

THE COURT: Okay. Those are the standards I'm looking at and if somebody wants to correct me, please do. Send it to me in an email. I don't want an email battle. But I have several questions I want to ask. Number one, Mr. Bannister, you made a statement at the beginning of the case is that once the condemning authority determines it's route, then they don't have to further go through the factors specifically in Southern Development.

MR. BANNISTER: Once, once, can I answer you?

THE COURT: Let me ask my question--

MR. BANNISTER: Yes, sir.

THE COURT: And then you explain it. We have testimony that West proposed or considered corridors. They can do that. It goes east and you have particular corridors, and then they select a particular route and it was going to follow up the middle. Once that's done as opposed to the other particular corridors, is it your contention that no further analysis has to be done. Factors under Southern Development, if they did those factors in determining those routes.

MR. BANNISTER: Judge, it's our condition, it's our contention that they, the final route that's selected, they have to consider all the factors outlined in Southern Development.

THE COURT: Okay.

MR. BANNISTER: The failure to consider all of those factors in the route that they select would be the abuse of discretion.

THE COURT: Is there a timing requirement at all as to when those factors are considered?

MR. BANNISTER: I believe it's, the way I read it is when they condemn, they are declaring this is the route--

THE COURT: Okay. Do you disagree with that?

MR. POPE: I disagree that they have to consider alternate routes, as well as the final route.

THE COURT: Sir?

MR. POPE: They have to compare the chosen route, the one that they say is final with the alternate route.

THE COURT: Okay. Go ahead. I stopped you from answering. I'm going to give you an opportunity. Go ahead.

MR. BANNISTER: I believe what it says is they have to consider all the factors of the route that they've chose and they have to consider alternate routes. There's nothing in Southern Development that says they have to do a full-blown review of every alternate route that is available anywhere, between two equally appropriate routes, they just get to pick one. That's the responsibility the condemning authority has between accepting routes, they have to pick one. And the Court is not supposed to go behind the condemning authority and make a better selection. As long as the condemning authority considered all the factors set forth in Southern Development on the route that they selected. So it would be a clear abuse of discretion if they didn't consider any other route. And it would be a clear abuse of discretion if they didn't consider all the factors in the route that they chose. But it doesn't say that every route that they choose, they don't choose, they have to consider all the factors on all the routes that they decide not to use.

THE COURT: And you disagree with that?

MR. POPE: I don't.

THE COURT: You don't.

MR. POPE: I don't.

THE COURT: You just say that other routes that are not chosen, they have to compare to the route that is chosen?

MR. POPE: That's right.

THE COURT: Where does it say that?

MR. POPE: They have to look at all the alternates to see which is the best and if they got a chosen route, they still have to compare apples and apples.

THE COURT: Well, okay. Let me look at exhibit 14, Plaintiff's exhibit 14. Clearly, on routes B, routes A, you have proximity issues with existing developmental developments. So once you see that, what's the benefit of going through, let me ask you a more factual-based question about your clients positions.

MR. POPE: I think that the routes that should have been thoroughly analyzed are the ones that Mr. Rogers did which is on the Oien property, A, B, Nettles, north and south and they really eliminated the north, because neither party really wanted it. So we really focused on the south and the middle.

THE COURT: So, I guess, the question I was trying to inartfully ask the question earlier. According to your

position, a condemning authority has to make a per parcel or per owner factual analysis under the Southern Development case as opposed to that analysis, as to these proposed routes. In other words, we looked at the entire route and the factors of the Southern Development case are met as opposed to as it applies to these particular plans.

MR. POPE: I'm not sure I understood, but I approach it--

THE COURT: Well, okay.

MR. POPE: We only look at the Oien property.

THE COURT: Hang on. Hang on. I'm the condemning authority, and I've got ten tracts. I mean, obviously, I think everybody can agree to limit the number of tracts you go through. But assuming, do I have to go through an individualized analysis under Southern for the passage as it pertains to this particular tract as compared to the route as a whole or can I just make it based on the route as a whole where it may not necessarily meet the factors on this particular area, but along the entire length of it, therefore, we will pick this route.

MR. POPE: Well, we don't quarrel with the route--

THE COURT: You're not answering my question.

MR. POPE: I'm not sure I understood it.

THE COURT: Well, okay. I mean, do you have to make an individualized analysis per parcel?

MR. POPE: Yes, sir. Per tract; yes, sir.

THE COURT: All right. What's your position?

MR. BANNISTER: We do not.

THE COURT: In other words, you're saying you make it as to the entire route, because one piece of, one tract may not necessarily fit, but the entire lot has to be considered would.

MR. BANNISTER: Yes.

THE COURT: And I'm sorry I'm being obtuse about the way I'm asking the question.

MR. POPE: Well, I think that the Southern Development case talked about one tract, and but they also talked about alternate routes off of that tract. Our case is stronger and we're not saying put it on somebody else.

THE COURT: Well, the Southern case, let me, let me ask you this. How do your clients explain exhibit No. 44, 43?

MR. POPE: 43?

THE COURT: Yeah. And that is you been taking the position since March of 2014, your clients were absolutely clear that they wanted to have this Southern route be followed?

MR. POPE: Yes, sir.

THE COURT: However, as of August 21st, 2014, they said we don't agree to any of them. How do they explain

that?

MR. POPE: Well, they say they didn't agree at that meeting.

THE COURT: I'm reading it. I read exactly what it said.

MR. POPE: There are other documents in the record that say they're adamant about the southern route, about the southern route.

THE COURT: I understand that. But they're saying, because, quite frankly, first and foremost, we don't want this on our property and I quite understand that. I wouldn't want it on my property. Then, okay, let's not do the southern route, let's show up north. No, we don't want to go up north. Let's go back to the middle. Then, you know, we really don't want this on our property at all and we can't agree to anything on our property. And that's the way it seems like to me, so they're bouncing around and understandably, because you don't want this on that beautiful piece of property going through it. I mean, I quite understand it. But to take the position that they have said, you know, we've wanted this southern route since March 2014 I think belies the evidence I can't put my hands around. So tell me where I'm wrong.

MR. POPE: Well, Mr. Regier admitted it.

THE COURT: Sir?

MR. POPE: Mr. Regier said he thought that was what their position was. So he understood it that way.

THE COURT: Sir?

MR. POPE: He understood it that way.

THE COURT: All right. Well, okay. I'm not going to rule today, but I'm going to tell you my preliminary thoughts on the case. I don't want a war of emails, but I, if y'all want to respond. But my thoughts are, quite frankly, I think you raised appropriate factors. I think that the pleadings can't be read, at least under the rules of criminal justice to include bad-faith. Fraud, I don't think you even pled that. But I don't believe that there is an obligation for condemning authority to meet the gold standard that's established by Mr. Rogers. Clearly, he's got the Rolls Royce of the standards of evaluation of alternate routes and created it. But just because the condemning authority end did not make this in-writing does not mean that this, this is the best practices does not mean they didn't consider the factors. And I think you are going to be, there's no really way they could have done that based on the number of properties, based on the number of different factors. I think they could have done this, inadequately considered it or they did it at all. I think you're, which I hear what you are saying. But, you know, I don't think they're required to have it

in-writing, although, quite frankly, I'd probably understand it, but since this is their first time, it could have been done on a much more professional basis. I mean, since they're new at it. Mr. Rogers admitted, and I seem to be picking on you, Mr. Rogers, the cross-examination if, in fact, the condemning authority had considered these factors, regardless of whether or not it's in-writing, exercise his judgment; i.e., use of discretion and location of the line. So the question is did they not, all the evidence that you have heard in this case, I don't think you met that burden and statutorily, frankly. There's no way to put this in bad-faith in this case. In fact, quite frankly, the evidence states that the condemning authority tried to meet with representatives or with the Plaintiffs themselves to locate where the easement was going and to appease their concerns. I think that from all I can tell that the Plaintiffs were a lot more congenial to deal with than this other gentleman was. But, be that as it may, and, quite frankly, were less than, as far as professionalism in this case. It doesn't amount to anything that people are not being professional, somebody using a little bit, being a little bit more lax in their indications than they should have. Again, no evidence as far as their conduct. And there is no evidence at all based on other cases,

there's any estoppel issue. You didn't raise estoppel.

MR. POPE: We didn't raise estoppel.

THE COURT: So I'm not considering it. And, therefore, my thoughts are in this case and that the Defendants did, in fact, use their discretion in determining where this easement was going to go, therefore, they did not abuse their discretion in the Southern case and the facts of Southern. And we went over those factors in the beginning of the case. But I have written those factors down, availability of alternate routes and costs, cost of building, cost to acquire, environmental factors, public authorities, state considerations, liability and aesthetics. And that has to be both standard for obtaining the line in the first place. You know, with that being said, this is kind of a personal aside, because I'm sure your clients know better than me, but as you go forward, if I do and I am inclined to decline your petition in equity to enjoin construction of this line. My ruling will be of the damages. Contrary to the authority's expert, who I thought was very credible that there was no damage to remainder, I thought that was almost beyond believability in the sense you can build a high-rise transmission line through the middle of somebody's property, especially as pristine this property is and there not be any damages. In my, when you do a

jury trial could very easily find up to the value to correct or install the southern route that you were proposing. So at the end of the day that those, while you're correct in, being the end result, you may end up cutting off your nose to spite your face. I think the evidence showed that the B routes and the A routes are so obviously problematic that they didn't need any further analysis under the Southern case and those are my general thoughts about what I'm going to do on this case. Now, again, gentlemen, if you want to correct me, I don't care about any particular format. Just send it to me and say, look, this is where you're wrong. This is where your analysis is wrong and this is what the facts dictate that you consider something else. Send it to me by email. What kind of time frame do you need, how much time do you think you need?

MR. POPE: I'd probably need what about till next to a week or is that too long? A week from Wednesday?

THE COURT: Yes, sir. That'd be good. I'll tell you what, give yourself a week. If you need additional time, you can have it.

MR. POPE: I just got a couple of things coming up that I'm going to have to deal with this week.

THE COURT: Right. And if you want to respond to him, just try to do it as quickly as possible within 48

hours, if possible. If not, let me know.

MR. BANNISTER: I will respond within 48 hours and I'd ask you not to let it go too long.

THE COURT: Yeah. Well, I'm not, because you're right. That's a good point, it needs to be, this thing needs to be resolved so they can get started.

MR. BANNISTER: Yes, sir.

THE COURT: Okay. All right. Gentlemen, I was looking forward to watching both of you because you're both very prepared and professional. I want to thank you for that and having the case prepared. Thank you very much.

MR. BANNISTER: Thank you, Your Honor.

THE COURT: This case is adjourned.

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

STATE OF SOUTH CAROLINA — IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY — C.A. NO.: 2015-CP-36-00120

OIEN FAMILY INVESTMENTS, LLC,

Plaintiff,

VS

PIEDMONT MUNICIPAL POWER AGENCY,

Defendant.

DEPOSITION OF: COLEMAN SMOAK

DATE: September 8, 2015

TIME: 12:48 p.m.

LOCATION: Bannister Wyatt & Stalvey, LLC
401 Pettigru Street
Greenville, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: MICHELE E. BECKER,
Registered Merit Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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COLEMAN SMOAK

being first duly sworn, testified as follows:

EXAMINATION

BY MR. POPE:

Q. State your full name and address.

A. Coleman Frampton Smoak, Jr. I live at 200 Barksdale Circle in Laurens.

Q. Oh, you live in Laurens. Your office is in Greer, right?

A. Yes, sir.

Q. Your position is executive director of PMPA?

A. No, sir.

Q. President?

A. No, sir.

Q. CEO?

A. No, sir.

Q. I give up, what is it?

A. General manager.

Q. All right. How long have you been general manager of PMPA?

A. On a full-time basis since late June of 2006. I was interim general manager from December of '05 until that time.

Q. And when did you start with PMPA?
A. In any capacity?
Q. Uh-huh.
A. I was an alternate member of the board of directors back in the early 1980s, a member of the board beginning in July of 1985, and I was on the board.
Q. From the town of Laurens, the City of Laurens?
A. Yes, sir. And I was on the board until I resigned to perform the interim general manager duties in December of 2005.
Q. All right. So the only employment role you've ever had was general manager then?
A. Yes, sir.
Q. So what do you see as your role, your job description, so to speak?
A. Well, under extremely limited supervision I'm to carry out all the policies that are set by the board of directors of PMPA.
Q. What is your role in engineering functions or for instance the land acquisition projects?
A. I have a general knowledge of the projects that we're doing. Obviously I depend on my

engineering department to handle the engineering part because I'm not an engineer and they keep me briefed on the major parts of any project that we've got going.

Q. What role, if any, do you play in route selection for transmission lines that PMPA builds?

A. I look over the routes that have been suggested by my engineers but, I mean, I don't actually go out on the ground and choose routes.

Q. Okay. So you're not aware -- what are the factors of route selection --

A. Well, with any line --

Q. -- criteria?

A. -- any utility line you're looking to affect as few property owners as you can. And while at the same time trying to keep the problems that the property owners may have to a minimum. I mean, for instance, you don't want to try to go right through somebody's home, those kinds of things.

Q. Right. And what other factors are there?

A. Other than just making sure it's engineeringly feasible and trying to hold down costs, that's about it.

Q. You would agree that aesthetics has a role to play?
A. Yes, sir.
Q. Desires of the landowner should be considered; do you agree with that?
A. Yes, sir.
Q. You never visited the Oiens' property, correct?
A. No, sir.
Q. Do you know they have approximately 115 acres?
A. I'll take your word for it.
Q. And that they have a home site, and I'll show you the home. The previous exhibit from the other deposition somewhere. Exhibit 13. You weren't here, but when Mr. Frazier was here earlier for his deposition, this is a GIS aerial photo of the property. And there's a circle with an X at the place where there's a homesite that the Oiens have selected. And they have built -- dug a well right beside it. And they have electric power of the Newberry Electric underground to that home site from where the line is shown on Exhibit 13.
A. Okay.
Q. So you weren't aware of that until

just then?

A. I have probably seen an aerial photograph of their property. But, no, sir, I'm not very familiar with -- I haven't been, actually been on it.

Q. Well, would you agree that that property has a great aesthetic appeal? Have you seen any photographs of it, of the ground level photographs?

A. The only photograph I've seen would be the aerial.

Q. Okay.

A. So I can't attest as to the aesthetics of the property.

Q. So you haven't heard from either the City of Newberry or your staff that it's a very lovely residential piece of property?

A. No, sir.

Q. Okay. Would that be a factor or not in route selection if it were?

A. As I stated previously, it would be a concern that I was getting too close to a home or trying to go right through a house, yes, sir.

Q. Is there any written policy or guideline or memo from PMPA about route selection or

the factors to be considered?

A. Other than the transmission policy as far as just stating that the board will approve the routes, that the member that it affects would work closely to PMPA employees to locate the line? No, sir. Other than that, no, sir.

Q. I don't think there was any reference to route selection in that; is that correct? Is that the document there, Exhibit 15? Is that the document?

A. I've never seen this document till you just handed it to me.

Q. Okay. Well, that's the PMPA document we talked about.

A. Great.

Q. But do you -- let's see, the title of it is: Piedmont Municipal Power Agency Electric Transmission Rights-of-Way Guidelines Restrictions.

A. Yes, sir.

Q. You've never seen that?

A. No.

Q. I won't ask you about it if you haven't. So you don't know of any other document that has anything to do with --

A. No, sir.

Q. -- route selection, factors to be considered or criteria?

A. No, sir.

Q. Now, would you agree or disagree that your outside engineer, Mr. Allen Cobb, does not make decisions about line selection -- I mean, route selection?

A. He has input into the route selection, yes, sir.

Q. Well, you ask him questions, right?

A. Yes.

Q. Or your people would ask him questions?

A. Yes.

Q. Would you ask him questions directly yourself?

A. I don't know that I've ever asked him anything about a transmission line.

Q. Okay.

A. No, sir.

Q. All I was -- I wasn't implying that he didn't have any input into route selection. I was asking if he had any decisionmaking authority over route selection?

A. No, sir. The route selection would be

PMPA's.

Q. And correct me if I'm wrong, that would be your decision and/or Mr. Frazier's decision?

A. Yes.

Q. Together?

A. Yes.

Q. Is there anybody else that would have been consulted?

A. We would have -- we would have talked with our board members from Newberry.

Q. But there's no protocol for doing that. There's no requirement in writing as to how that should happen or when it should happen or what criteria would be considered?

A. No, sir.

Q. Do you know what just compensation or what price had been paid to the other landowners on this Kraft Foods transmission line in Newberry?

A. Well, first thing, sir, we're not building a transmission line for Kraft Foods. But, no, sir, I do not know how much has been paid to other people.

Q. You haven't seen any background -- any dollar information?

PLAINTIFF'S EXHIBIT 1



2008 Purchase & Sale Agreement

Lindal CEDAR HOMES

This Purchase and Sale Agreement is entered into between:

Client:	Lynn and June Olen		
Address:	1216 SE Colony Way		
City:	Jupiter	State/Province:	Florida
Country:	USA	Zip/Postal Code:	33478
Phone #1:	561-622-4527 Home	Email #1:	leo@deltatsystems.com
Phone #2:		Email #2:	
Cell:	561-891-0831	Fax:	
Notes:			

Warranty Number

If applicable, indicate below the previous "Design order number" or previous "Production order number" assigned by the factory.

Previous Number

40835

Dealer's Order Number

and:

Dealer:	Comstock Agency LLC		
Address:	141 N. Mitchell Way		
City:	Havelock	State/Province:	North Carolina
Country:	USA	Zip/Postal Code:	28532
Phone #1:	888-946-9414	Email #1:	jcoms63154@aol.com
Phone #2:		Email #2:	
Cell:	252-241-5529	Fax:	
Notes:			

Order Acceptance Information
(Do not use this space)

Dep:

U.S. Dollars

S/R:

D#:

CR/AM:

RP/PC:

This is a binding agreement covering the purchase and sale of home materials to a Client by an independent dealer of Lindal Cedar Homes Inc. and/or Lindal Cedar Homes Ltd. (Lindal). The only responsibilities of Lindal are: (a) to manufacture and ship the materials and building plans, (b) to honor its warranties (paragraph 3), and (c) to mediate and arbitrate disputes with the Client and/or the Dealer (paragraph 17). Lindal will accept this agreement when the President/CEO of Lindal sends to Client a written confirmation and warranty number. The Terms and Conditions below and on the following pages are a part of this agreement. Dealer agrees to sell to the Client the materials listed below at the prices listed below. The prices are fixed for 60 days. Possible price increases after 60 days are discussed in paragraph 11 of the Terms and Conditions.

TERMS AND CONDITIONS

1. Binding Contract. The Purchase and Sale Agreement and these Terms and Conditions are a binding legal contract.

2. Responsibilities of the Parties. All of the responsibilities of Lindal are contained in this agreement. Dealer is independent and is not an agent of Lindal. Neither Client nor Dealer may add to or change Lindal's responsibilities.

3. Warranties.

A. Lifetime Structural Warranty. In addition to this Materials Warranty, Client will receive Lindal's Exclusive Lifetime Limited Structural Warranty for as long as the Client owns the home per attached certificate. In order to qualify for this structural warranty, Client within one year of delivery of the materials, must show proof of final building inspection or occupancy permit.

(Further Terms and Conditions are Contained on Pages Two through Four of this Agreement

This document is only valid if executed on or prior to December 31, 2008

Client Initial LEO / JO Date 9 / 28 / 2008 Dealer Initial JC Date 9 / 23 / 2008

PLAINTIFF'S EXHIBIT 2

2008 Purchase & Sale Agreement

Lindal Cedar Homes

Description of Materials /Pricing

Model & Series: Custom Lakeshore Lodge | Specification: Select Post & Beam

☑ Addendum Attached, Titled:

Special Requirements? – If so, attach a sketch and design specifications and itemize below ☑ Sketch Attached ☑ Specifications Attached

	All Prices in U.S. Dollars Unit Price
	$563,589.00
Priced per plans dated 5/1/08 Outside engineering fee if required would be added to price plus any additional materials required.	
Cash Discount of $40,000 per addendum	-40,000.00

PRICES ARE FIXED FOR 60 DAYS — SEE PARAGRAPH 11.

WE AGREE TO RESOLVE ALL DISPUTES THROUGH MEDIATION AND ARBITRATION. SEE PARAGRAPH 17.

CARRIER INSURANCE	SHIP VIA	FREIGHT	UNIT
◉ Yes Initial	○ Water	◉ Prepaid	◉ Prepaid
○ No ____	○ Truck	○ Collect	○ C. O. D.
	◉ Piggyback	○ N/A	

Building Site:
City: Newberry | County: Newberry | State/Province: South Carolina | Country:

Routing and/or Delivery Address (give exact instructions) ☐ Map Attached?

Routing will be sent before shipment

PAID 9/12/08 by check

Home Materials Price:	$523,589.00
Sales Tax:	36,651.00
Other Tax:	
Sub Total:	$560,240.00
Carrier Insurance:	0.00
Freight:	40,152.00
Gross Total:	$600,392.00
Initial Payment of 15%:	78,538.35
Cash Balance of:	$521,853.65

PAYABLE AS FOLLOWS:

Wire transfer 1 week before shipment date

Notes:

This document is only valid if executed on or prior to December 31, 2008

Client: Lynn and June Olen | Dealer: Comstock Agency LLC

Client Initial LEO / JO Date 9 / 28 / 2008 | Dealer Initial JC Date 9 / 23 / 2008

(TERMS AND CONDITIONS – Continued)

B. One-Year Limited Material Warranty. Lindal warrants that the materials shipped by Lindal will be of sufficient quality and quantity as specified in this contract and will be free of defects. This material warranty expires one year after the delivery of the materials and all warranty claims must be brought within that one year period. This material warranty is subject to the additional conditions set forth below.

C. Exclusions to Warranties. The material and structural warranties do not cover defects to materials caused by (1) site conditions; (2) failure of any materials or designs not supplied by Lindal; (3) changes, deviations or substitutions from the design and materials provided by Lindal (even if authorized or undertaken by Dealer) unless they were pre-approved by Lindal in writing; and (4) improper handling or storage of Lindal-provided materials. Client is not obligated to accept construction services provided by Dealer or listed on any builder referral list provided by Dealer or Lindal. The choice of construction services is entirely up to the Client. Neither Lindal nor the Dealer is responsible or liable for the performance or financial responsibility of the contractor. Under no circumstances shall Lindal or the Dealer be liable for any construction defects. Lindal provides an essentially complete home materials package which allows Lindal to offer the warranties herein. Except for the deletion and/or substitution of a minor amount of alternative materials which has the prior written approval of Lindal, any deletion or substitution of materials will void Lindal's warranties and Client and Dealer agree to waive their rights under Lindal's warranties.

D. Extent of Warranty. Lindal's obligation under this warranty is limited to repairing and replacing the defective materials at no charge to Client. Instead of repairing or replacing materials, Lindal may choose to refund the purchase price of those materials, less depreciation, or to reimburse Client for the reasonable cost of repair and replacement. In the case of a refund, Client will return the materials to Dealer. Dealer and Lindal will not in any case have any responsibility or liability for consequential or incidental damages.

E. THE STRUCTURAL WARRANTY AND THE MATERIALS WARRANTY SET FORTH ABOVE ARE GIVEN IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES OF FITNESS, MERCHANTABILITY OR HABITABILITY PROVIDED UNDER THE LAW.

4. How to Make a Warranty Claim. Client should submit all material warranty claims in writing to Lindal Cedar Homes, Customer Warranty Service Department, P.O. Box 24426, Seattle, WA 98124, USA. If warranty service is unsatisfactory, Client may contact the Supervisor of Customer Warranty Service at the above address.

5. Building Codes and Regulations. Client is responsible for complying with all laws, regulations, construction permits and licenses. Client must notify Dealer of any laws, regulations, construction permits or licenses that require modification of the plans or specifications no later than twenty days before shipment of the materials. If that requires a change in specifications, prices or shipment date, a written amendment will be signed by all parties. The Client agrees to pay for the cost of any outside design or engineering work needed for the design of the home, plus 15% to review and incorporate into the overall design plus the value of any extra Lindal materials specified. These costs will be added to the purchase price of the home but shall not be treated as a general price increase and shall not be subject to the termination provisions of paragraph 11.

6. Financing and Construction. Client is responsible for obtaining financing and a contractor for construction. This contract is binding even if Client cannot arrange for financing or construction.

7. Shipping Date. Client approves the final plans and asks Dealer for shipment by signing and submitting the Lindal "Authorization to Ship" (ATS) form. Lindal will assign a scheduled shipping date for the home materials and will notify Client and Dealer of the shipping date. If the home materials are not shipped, through fault of Lindal, within 30 days of the scheduled shipping date, Client may terminate this agreement. If Client terminates this agreement for this reason, the Client will be refunded the initial payment on the home materials, less Dealer's and Lindal's costs for any design work or other work performed. This right to terminate expires when Lindal has loaded or is ready to load the home materials. If Client delays the shipment or payment, additional fees and costs may be applied. Client recognizes that Dealer and Lindal will generate significant expenses in the preparation of the home for shipment and if there is a delay in a scheduled shipping date caused by the Client, either by Client's delay in payment or otherwise, additional costs and fees may be applied that are not subject to paragraph 11 and may be in addition to the initial payment on the home materials. If Client fails to authorize Lindal to ship the home materials within three (3) years from the date of this agreement, this agreement shall automatically terminate, without notice, unless otherwise agreed in writing, and no part of the initial payment on the home materials will be refunded.

8. Damage While Being Shipped. Client is responsible for any loss or damage to the materials after Lindal has delivered the materials to the carrier or shipping company. Client should arrange for insurance or seek the assistance of Dealer in arranging for carrier insurance.

9. Inspection Upon Receipt. Client and Dealer must inspect the materials when they are received. Client must notify Dealer and Lindal of any shortages or damages within ten days. If Client does not notify Dealer and Lindal of any shortage or damages to the material listed on the inventory within ten days it will mean the Client and Dealer have accepted the materials. Dealer or Lindal will supply any shortage and any excess materials are the property of the Dealer and may be picked up at any time.

10. Place of Shipment. The materials will be delivered to Client's location if that location is accessible for safe and normal delivery. If not, the materials will be delivered to a nearby location, and Client will be responsible for moving the materials to Client's location. The Client or Client's builder is responsible for unloading the home materials from the truck or carrier.

11. Price and Payment. Full payment in cash, certified check or wire transfer is due before the materials are shipped. The price stated in this contract is good for 60 days. If the scheduled shipment is after 60 days, Lindal may announce a general price increase and if Dealer notifies Client in writing that the general price increase applies to Client's order, Client has ten days to accept the new price or terminate this agreement. If Client terminates this agreement for this reason, the Client will be refunded the initial payment on the home materials, less the costs incurred by Dealer and Lindal for any design work or other services. If Client does not terminate the agreement by written notice to Dealer and Lindal within ten days of notification of a general price increase then Client accepts the new price.

(Further Terms and Conditions are Contained on the next page)

This document is only valid if executed on or prior to December 31, 2008

Client: **Lynn and June Olen** Dealer: **Comstock Agency LLC**

Client Initial LOO / JO Date 9 / 28 / 2008 Dealer Initial JC Date 9 / 23 / 2008

(TERMS AND CONDITIONS – Continued)

12. Home Materials Specifications. The home materials shall meet the appropriate grading rules of the American Lumber Standard Committee. Lindal or Dealer may substitute minor amounts of other materials in place of Lindal materials only if the substitute materials are an equal or better grade. Lindal's warranties do not cover Dealer substituted materials without prior approval in writing from Lindal.

13. Complete Agreement. This Purchase and Sale Agreement is the final agreement among Client, Dealer and Lindal. Any other agreement not contained in this contract is invalid and not binding unless in writing and signed by all parties. Client has not changed or modified any language in this form Purchase and Sale Agreement. Any changes to this agreement must be contained in an attached addendum signed by the parties. If there is an addendum, then the box on page 2 of this agreement must be checked and addendum title filled in. This agreement can be changed in the future only in writing signed by all parties. If there is a credit from a past order for design services or materials it must be noted on the face of this agreement and such credit will be deducted when final payment is due.

14. Notices. All documents and notices under this agreement must be in writing and will be considered delivered only when they are received.

15. Plans & Drawings. Lindal will provide necessary plans and drawings. Lindal shall be the sole owner of the copyright in all plans and drawings provided by Lindal or Dealer to Client. Such plans and drawings may include concepts or changes requested by Client and/or Dealer; however Lindal shall be the sole owner of the copyright in the drawings and plans for Client's Lindal home package. Client agrees not to infringe upon Lindal's copyrights and shall not use Lindal's plans and drawings for any purpose other than to construct a home using Lindal materials. No one may copy or use, directly or indirectly, Lindal's plans and drawings without Lindal's prior written consent.

16. Delays. Dealer and Lindal are not responsible for any delays (including shipping delays) or for any damages suffered by Client because of delays if the delays are caused by fire, flood, accident, riot, act of God, war, government interference or embargo, strikes, labor disputes, transportation delays, shortage of fuel, power, materials or supplies or any other cause beyond the control of Dealer and Lindal.

17. Resolution of Disputes.

A. Negotiation & Mediation. Client, Dealer and Lindal agree to negotiate any disputes. If negotiation doesn't work, they agree to non-binding mediation before the American Arbitration Association (in Canada, the appropriate Provincial arbitration act).

B. Arbitration. If the dispute hasn't been settled by negotiation or mediation, then Client, Dealer or Lindal agree to binding arbitration administered by the American Arbitration Association ("AAA") (in Canada, the appropriate Provincial arbitration act). The parties agree to use the AAA Rules for the Resolution of Consumer Related Disputes that apply to all disputes involving claims up to Ten Thousand Dollars ($10,000). For all other disputes the AAA Commercial Arbitration Rules will apply. For disputes involving claims over Ten Thousand Dollars ($10,000), (1) all mediation and arbitration fees will be paid half by Client and half by Dealer and /or Lindal, (2) if the dispute involves Lindal, mediation and arbitration will take place in King County, Washington, and the laws of the state of Washington will apply, and (3) the arbitrator cannot award punitive or exemplary damages, unless specifically authorized by statute.

18. Termination. Within three (3) days after Client signs this agreement, Client may terminate this agreement for any reason by giving Dealer and Lindal written notice. If Client terminates this agreement within three (3) days, then Client will be refunded the full initial payment on the home materials. Thereafter, if Client terminates this agreement, Client acknowledges that the Dealer and Lindal will have incurred substantial costs, all of which are very difficult to calculate and estimate. Client therefore agrees to pay the following termination fees as liquidated damages. If the Client terminates this agreement before the Client's authorization to proceed to final permit plans, the termination fee shall be seven and one half percent (7 ½%) of the Home Materials Price, and the balance of the initial payment on the home materials will be refunded to the Client. Thereafter, no part of the initial payment on the home materials will be refunded. These termination fees do not apply to a termination pursuant to paragraph 7 (late shipping), or paragraph 11 (general price increase), paragraph 15 (Plans and Drawings) and paragraph 17 (Resolution of Disputes) shall survive the termination of this agreement for any reason. Also, no part of a payment, if any, under a previous agreement will be refunded. Any termination fees may be credited, in full or in part at Dealer's option, toward the final payment on a future Lindal home purchase by Client from Dealer.

(End of Terms and Conditions)

I have read and understand this contract and the Terms and Conditions as printed on all four pages of this agreement.

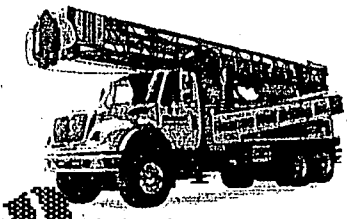
Client:	**Lynn and June Olen**	Dealer:	**Comstock Agency LLC**
Print Name:	LYNN E. OLEN	Print Name:	JOHN COMSTOCK
Signed:		Signed:	
Print Name:	June Olen	Dated at	Haverlock, NC
Signed:	June Olen	this	23 day of Sept., 2008

This document is only valid if executed on or prior to December 31, 2008

Note: You will be asked to sign 3 copies of this document. All copies must be identical and have original signatures and initials.

104 Heanue's Hollow
Prosperity, SC 29127

Heanue
Well Drilling, Inc.



Commercial-Residential-Irrigation
Pump Sales & Service

Office: 803-405-1290
Fax: 803-405-9627

FILED
10/03/2008

Invoice

BILL TO
Lynn & June Oien 1216 S.E. Colony Way Jupiter, FL 33478

DATE	INVOICE #
10/1/2008	6288

PLAINTIFF'S EXHIBIT 3

DESCRIPTION	AMOUNT
RE: WELL DRILLING SERVICES	
SC DHEC Permit Fee: WELL #1 - SCW36100588	70.00
Well Drilling: 365' @ $9.00:	3,285.00
6 1/4" PVC Well Casing: 20' @ $4.00:	80.00
Grout:	150.00
SC DHEC Cert. Well Cap:	25.00
SC DHEC Permit Fee: WELL #2 - SCW36100589	70.00
Well Drilling: 185' @ $9.00:	1,665.00
6 1/4" PVC Well Casing: 20' @ $4.00:	80.00
Grout:	150.00
SC DHEC Cert. Well Cap:	25.00
THANK YOU FOR YOUR BUSINESS!	

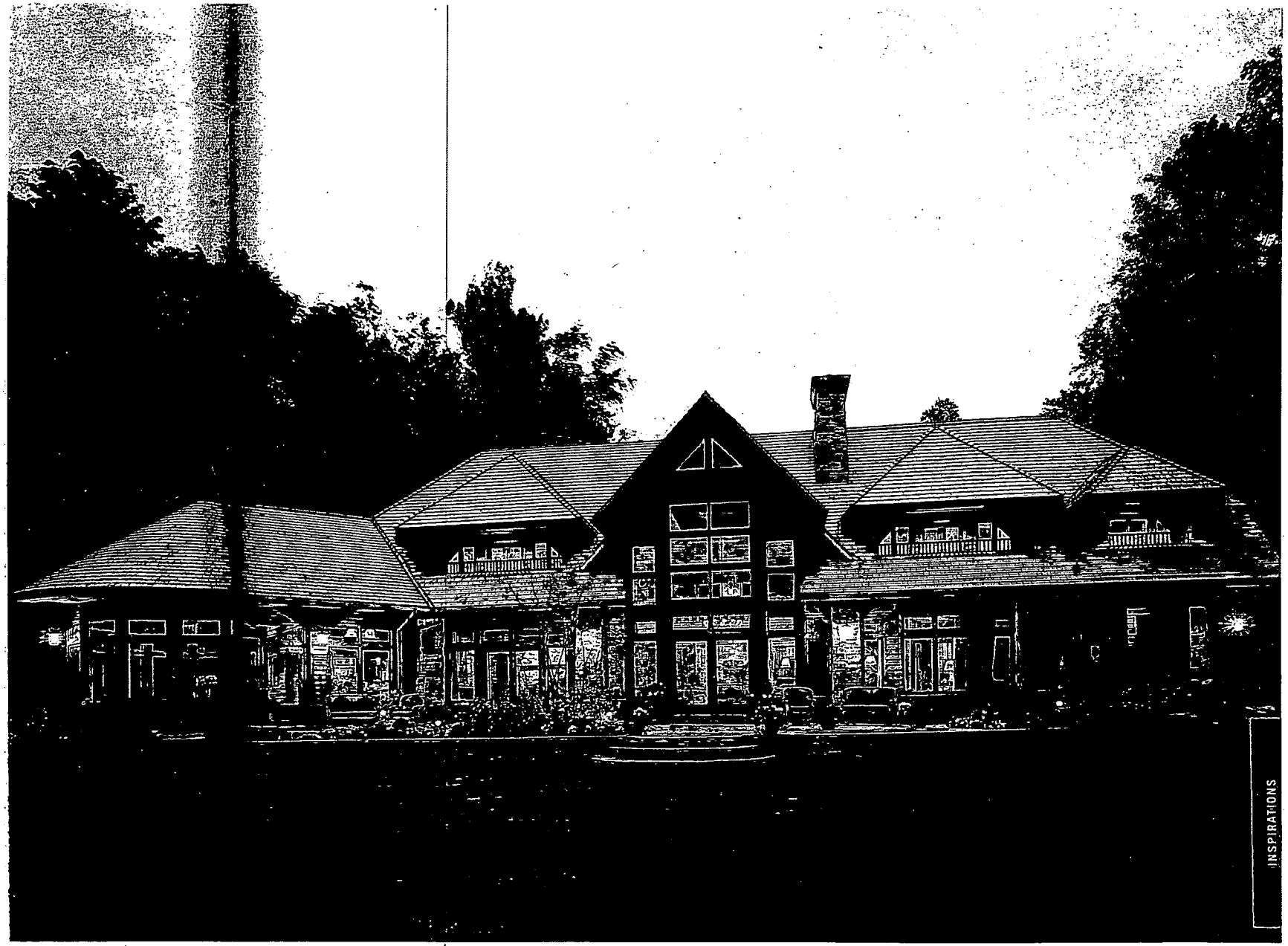
TERMS:DUE UPON RECEIPT. A Service Charge of 1.5% will be added on all Balances over 30 days.

Total $5,600.00

Lodge

for this lakefront
property has been in
hey were ready to
l's Muskoka plan as a
lal dealer, they
views of the lake and
same time. Some of
wo-story wall of
ch just off the
n fireplace, built with
ie on the property.

PLAINTIFF'S EXHIBIT 4
tabbies



Deep-roofed gables flank a dramatic two-story wall of windows and give this large home a sense of intimacy and charm.

ENTRANCE DRIVE
PLAINTIFF'S
EXHIBIT
5 Evo
tabbies

POSSIBLE DUKE LOCATION

SOUTHERN ROUTE

ENTRANCE DRIVE
LOOKING UP RW TO
SELECTED
ROUTE TAP POINT

SOUTHERN ROUTE TAKE OFF

FROM TAP

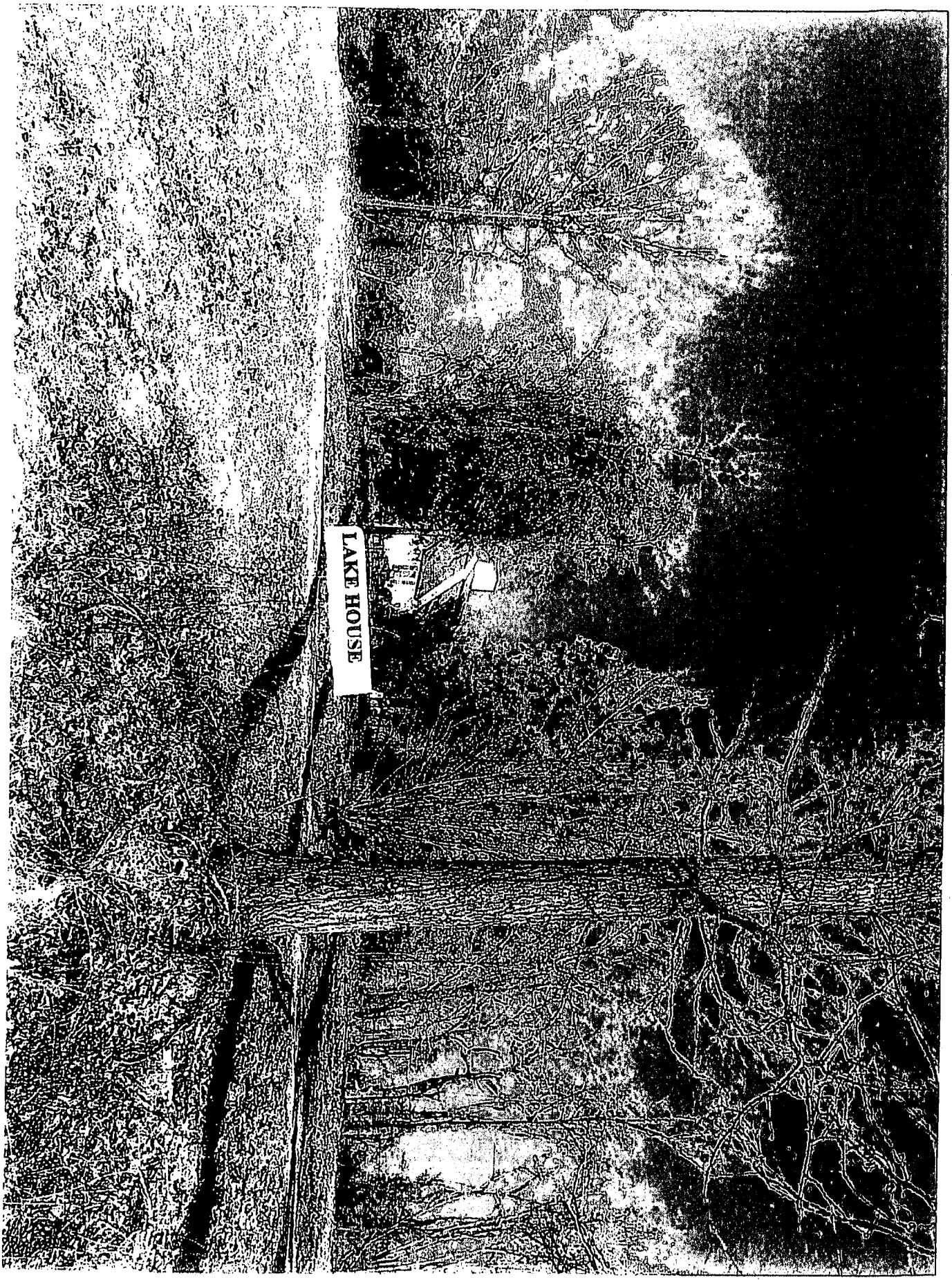
ACCESS DRIVE

ACCESS DRIVE

ARNING
UNDERGROUND ELECTRI

ACCESS TO LAKE HOUSE

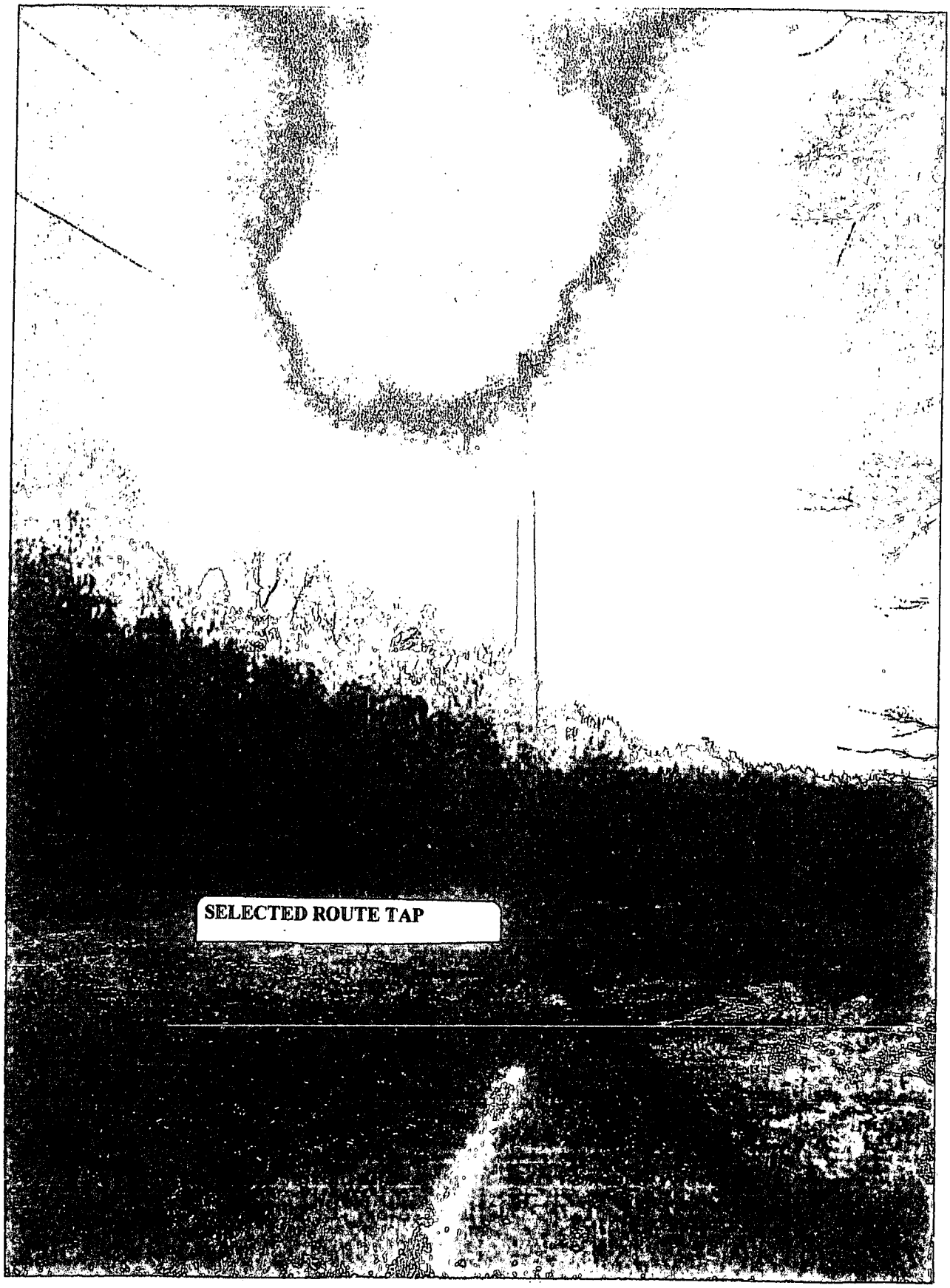
ENTRANCE WAY
LAKE HOUSE


LAKE HOUSE


LAKE HOUSE

LAKE HOUSE

POND VIEW -LAKE HOUSE


SELECTED ROUTE TAP

LOOKING BACK TO ACCESS ROAD FROM SELECTED TAP

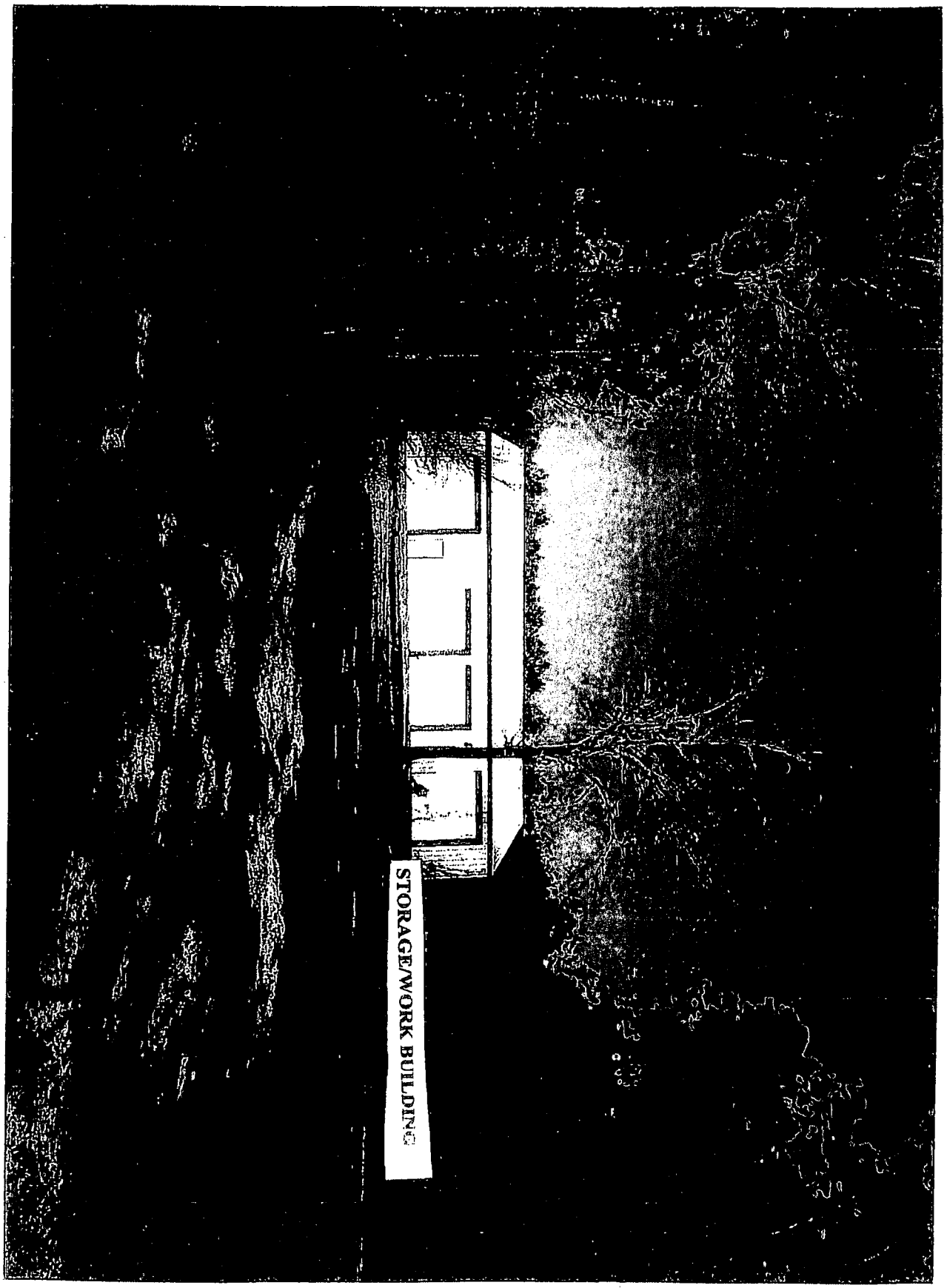
SELECTED ROUTE

SELECTED ROUTE

UNDERGROUND ELECTRIC
TO HOUSE SITE

HOUSE SITE

HOUSE SITE


STORAGE/WORK BUILDING

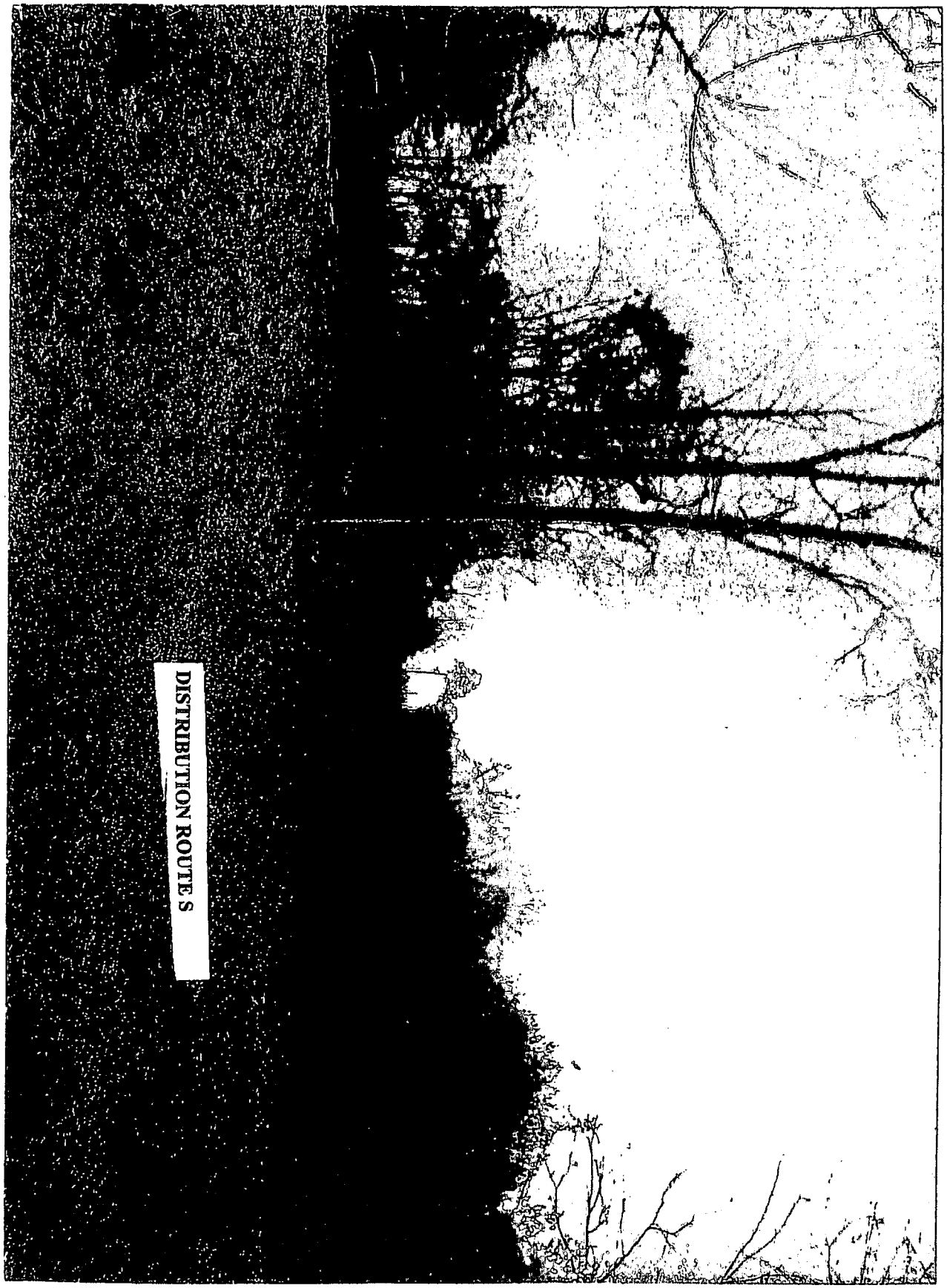
EXISTING DISTRIBUTION

EXISTING DISTRIBUTION

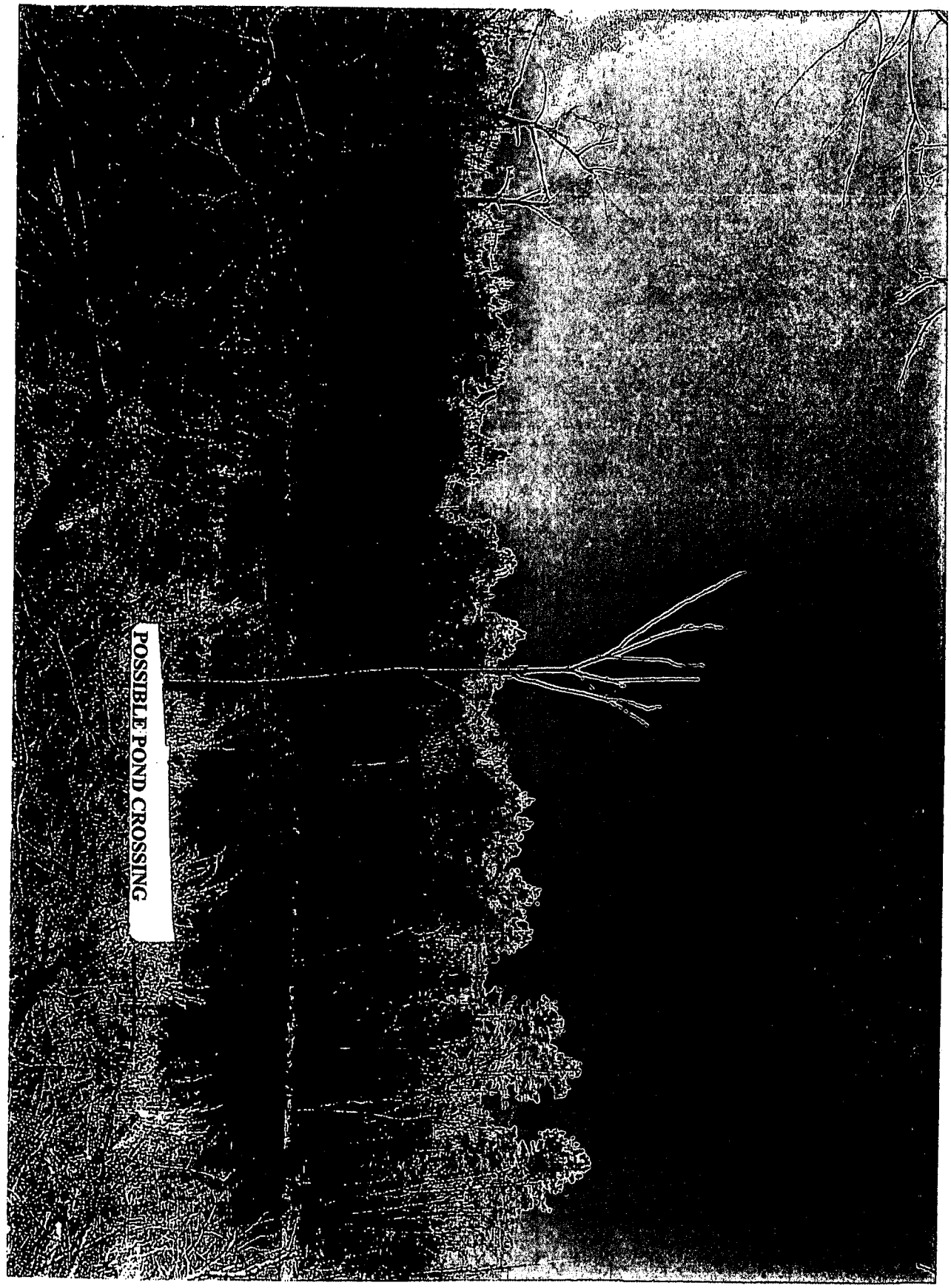
EXISTING DISTRIBUTION

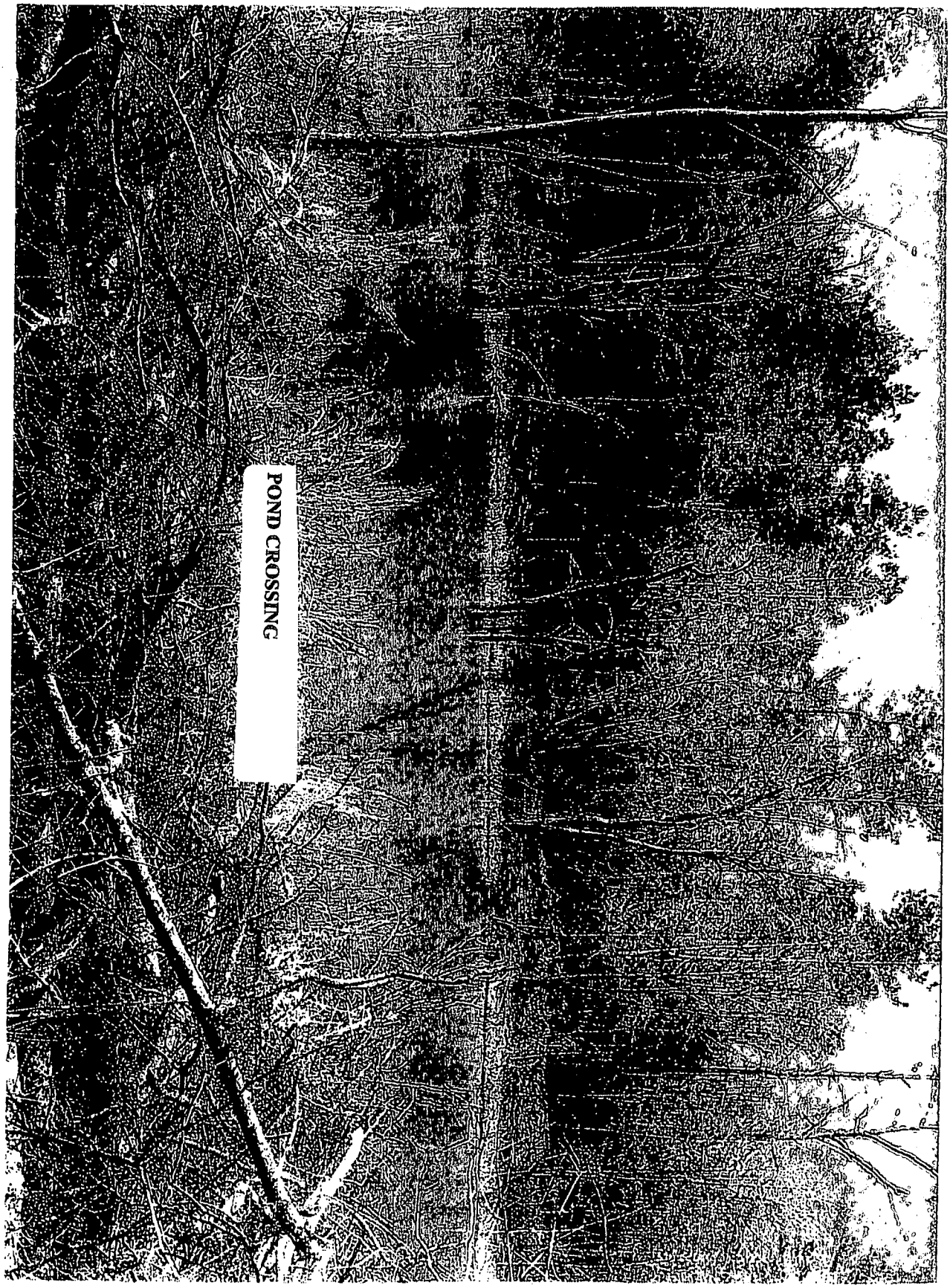
DISTRIBUTION TO ROUTE S

DISTRIBUTION TO ROUTE S

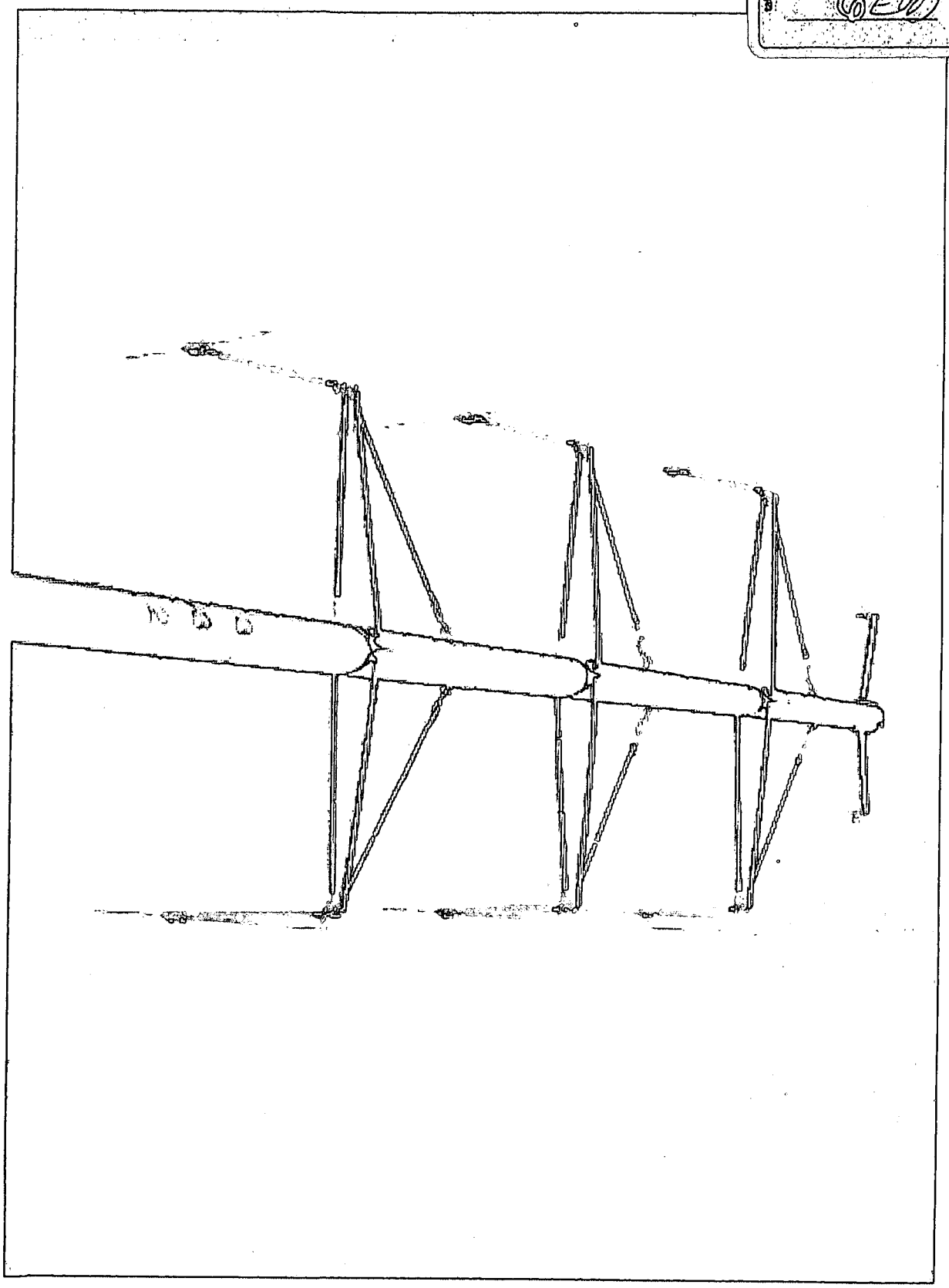

DISTRIBUTION ROUTE S

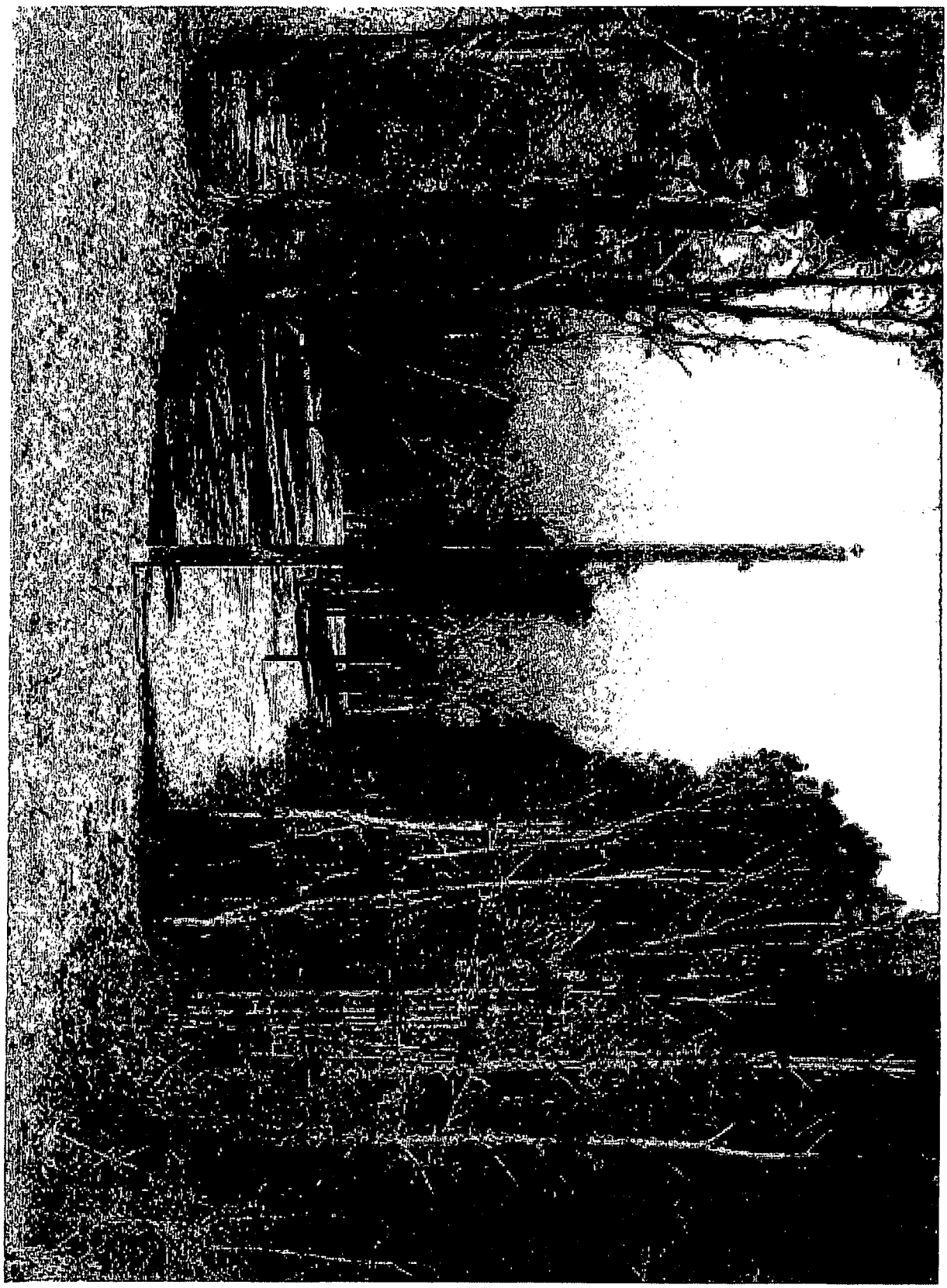
NEW RW FOR DISTRIBUTION
PATH TO POND / S ROUTE


POSSIBLE POND CROSSING

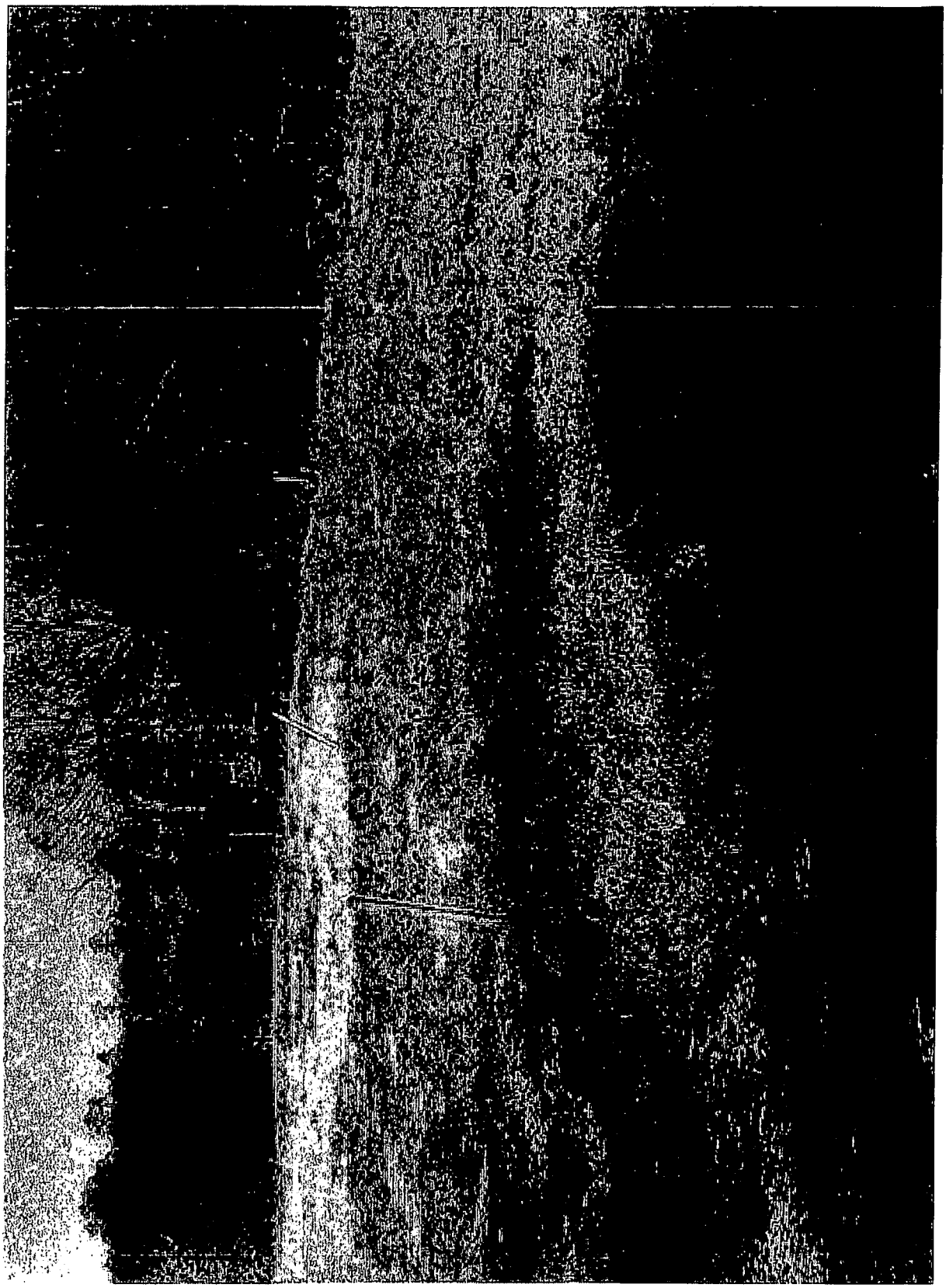

POND CROSSING

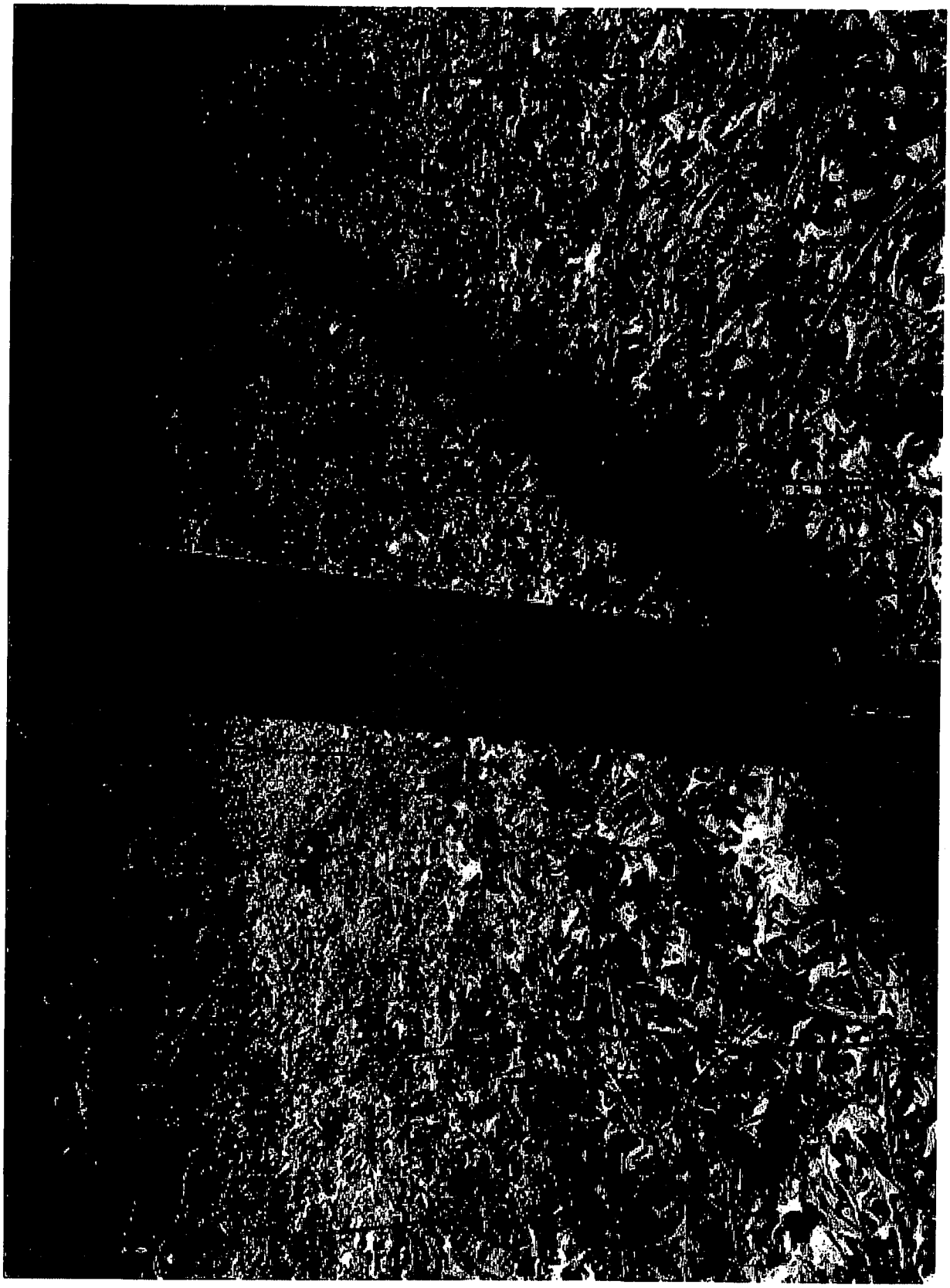
PLAINTIFF'S EXHIBIT
6E10

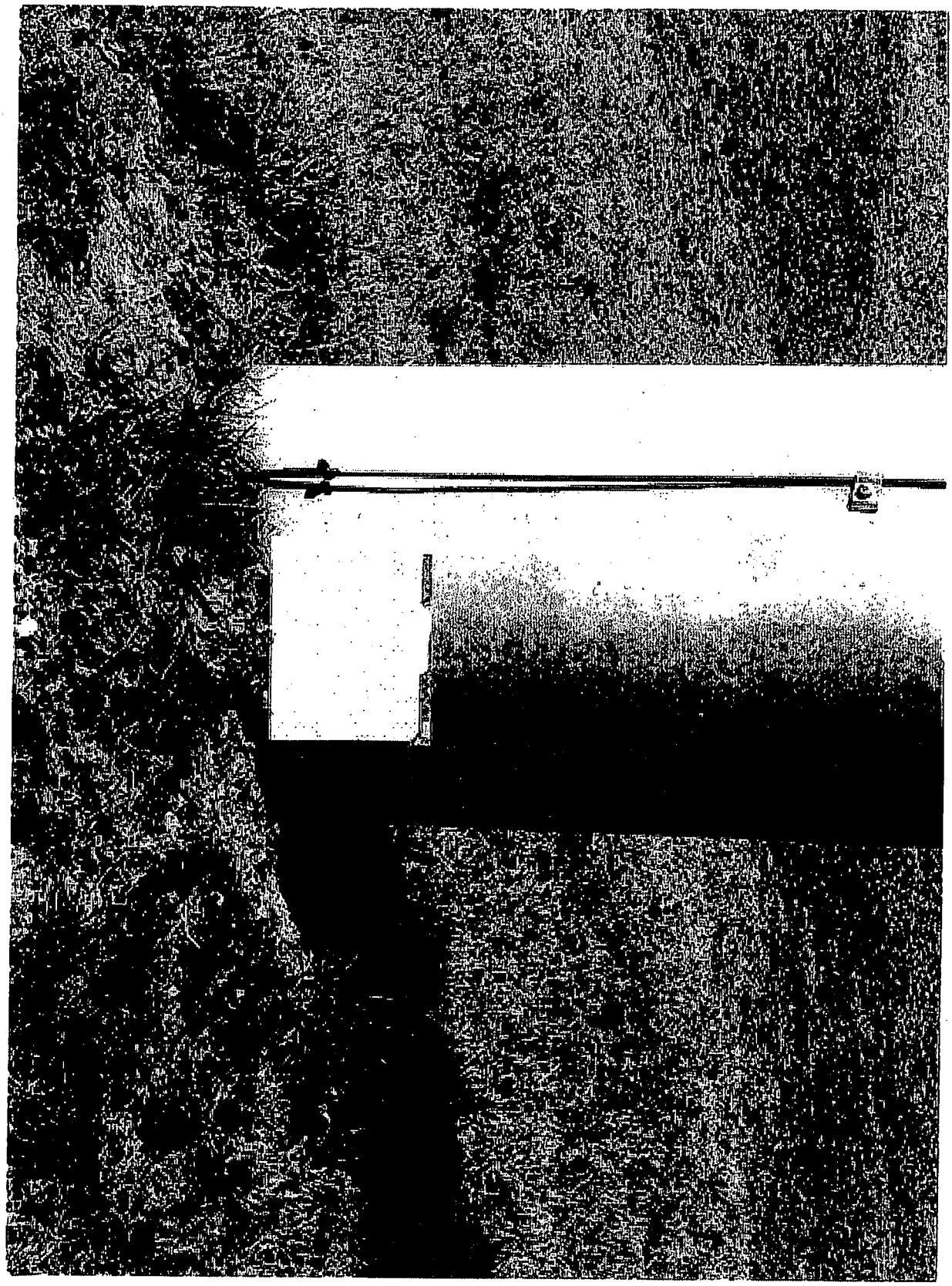


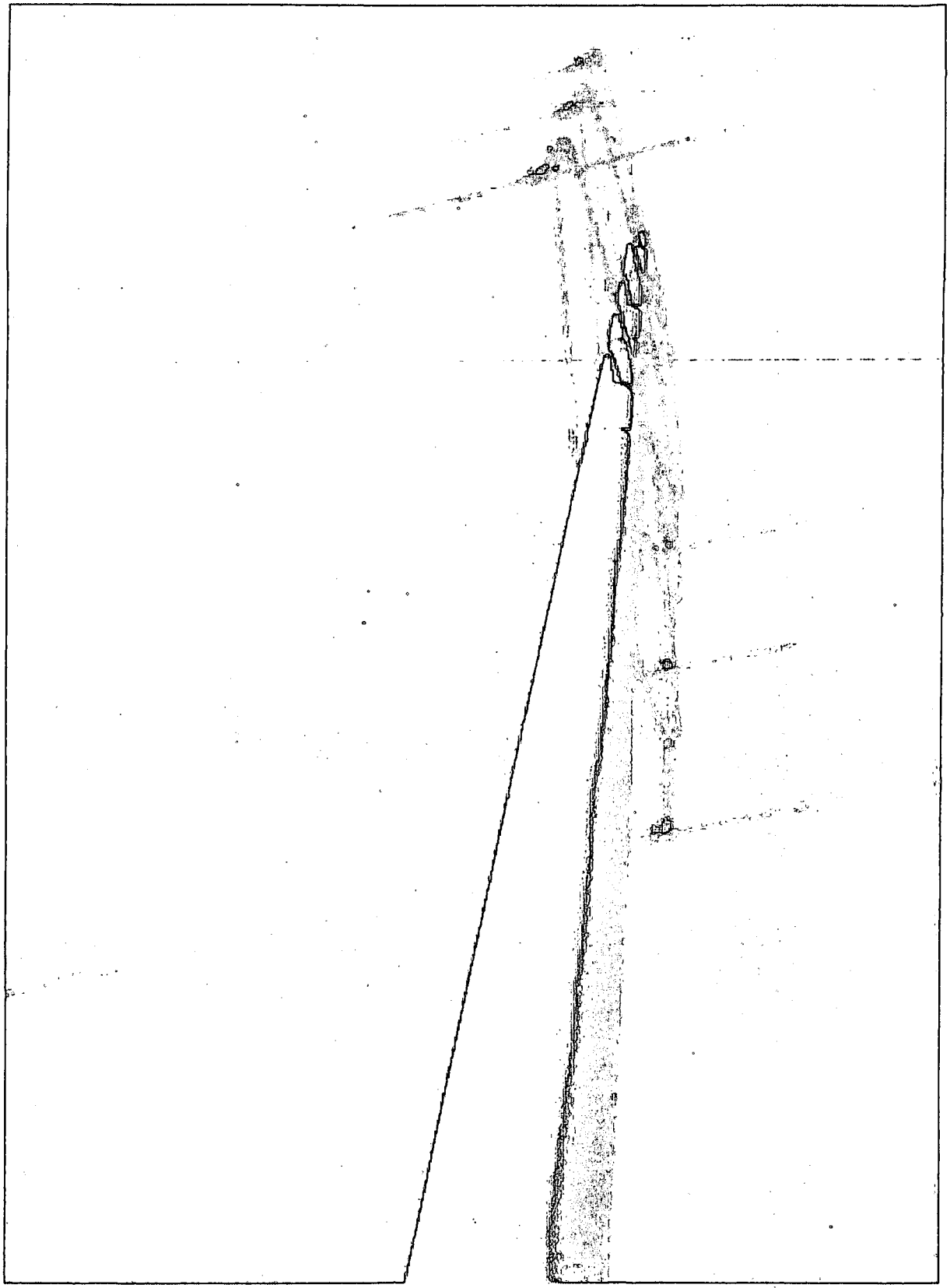


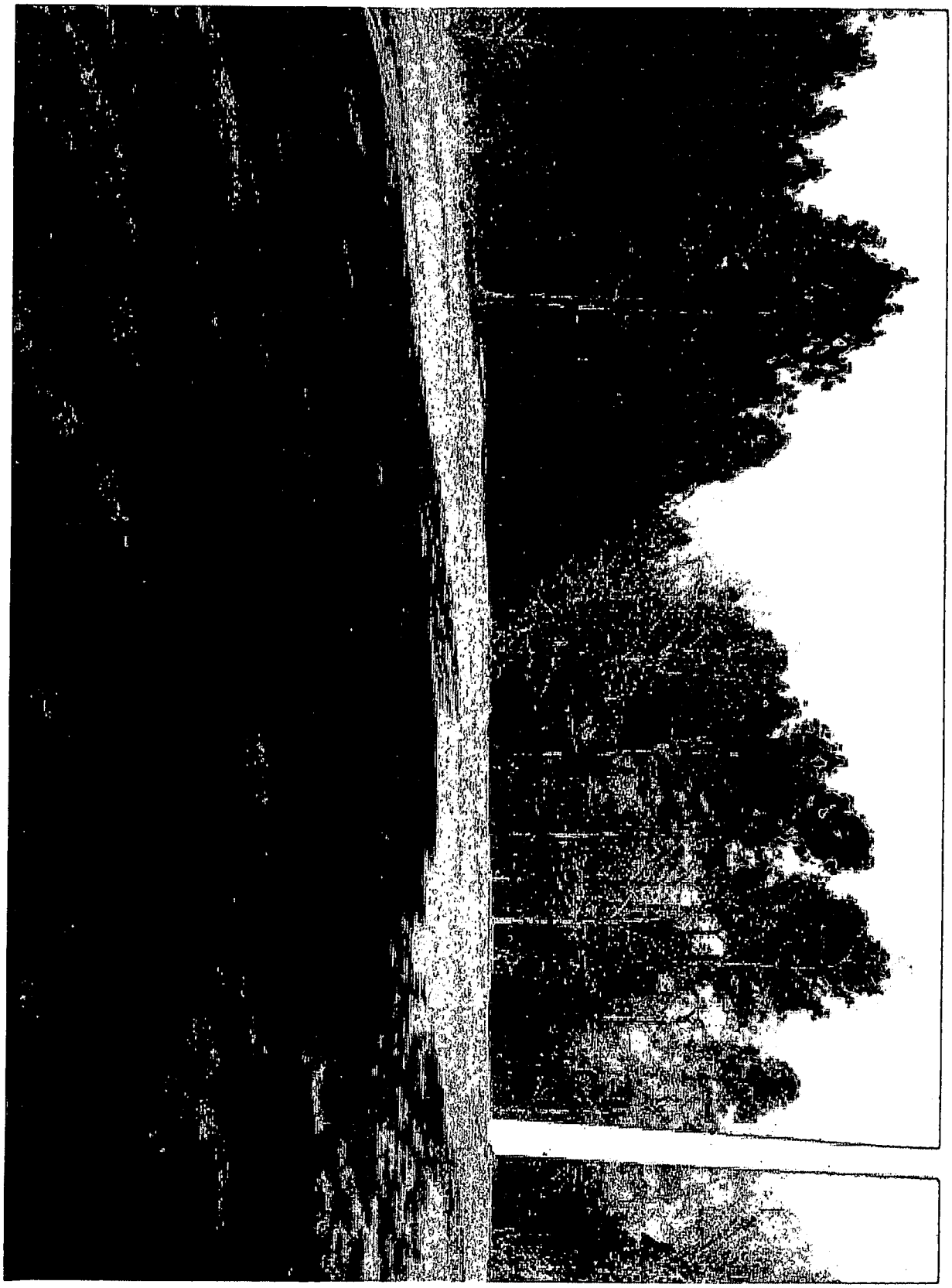
NG
ND
ITY
INC.

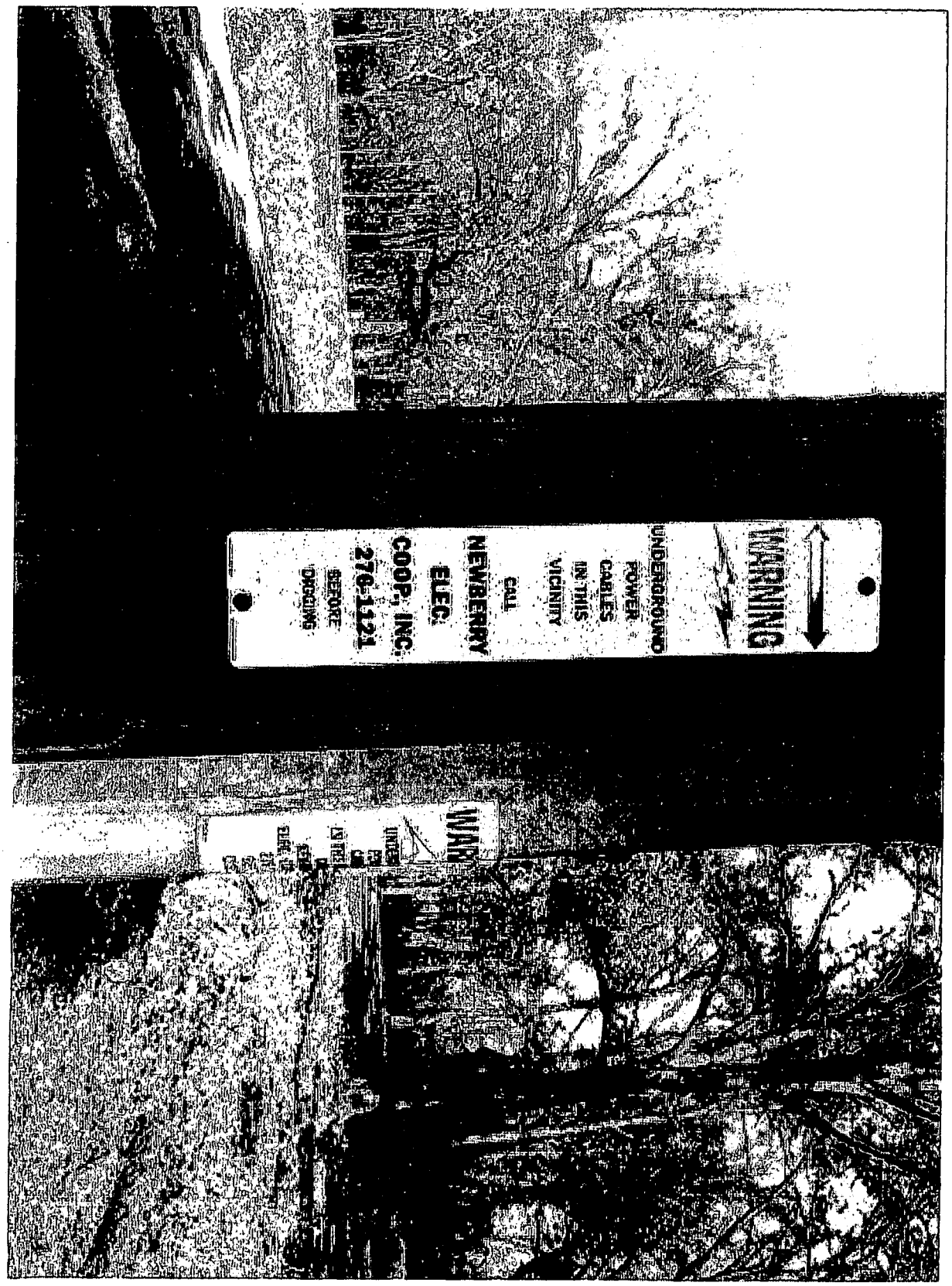











WARNING
UNDERGROUND
POWER
CABLES
IN THIS
VICINITY
CALL
NEWBERRY
ELEC.
COOP., INC.
276-1121
BEFORE
DIGGING



incorporated by reference herein and all information and attachments shall constitute confidential and proprietary information under the terms thereof. The recipient is not authorized to reproduce the e-mail and attachments without the written authorization of sender. Any unauthorized review, use, disclosure, copying or distribution is strictly prohibited. If you are not the intended recipient, or if you are the intended recipient but disagree with any of the foregoing, do not open the attachments, please contact the sender by reply e-mail and destroy all copies of the original message and its attachments.

Begin forwarded message:

From: "Misty West" <mwest@westelectrical.com>
Subject: FW: Message from "RNP0026732B00BA"
Date: February 25, 2013 at 4:56:04 PM EST
To: "'Lynn Oien'" <leo@deltatsystems.com>

Lynn-
I hope this finds you doing well. Dad and I met with the City of Newberry today. They are working on plans for a new 100 KW transmission line from
the service line near your house to the Kraft plant. As planned it crosses out tract on SC 121 (about midway in the new line) and I noted it crossed your tract (start of new line).
I attached a copy of the GIS map the City provided to me. In my discussion
with them I told them there was no way you would willingly give them an easement that cut your property in half - note the "hash dot hash" line. That would run across your garden area, near the new house site.
I suggested if they have to do this, they relocate the proposed line to your southern property line - see the "dotted" line. That would take it across the wet area at the head of the pond.
I wanted to give you a heads up because they will be contacting you.

Please feel free to call me any time if you have questions or want to discuss this.

Have a great day -
Misty

-----Original Message-----
From: Misty West [mailto:mwest@westelectrical.com]
Sent: Monday, February 25, 2013 16:43

To: Misty West
Subject: Message from "RNP0026732B00BA"

This E-mail was sent from "RNP0026732B00BA" (C9145).

Scan Date: 02.25.2013 16:42:48 (-0500)

This email has been scanned by the Symantec Email Security.cloud service.
For more information please visit http://www.symanteccloud.com

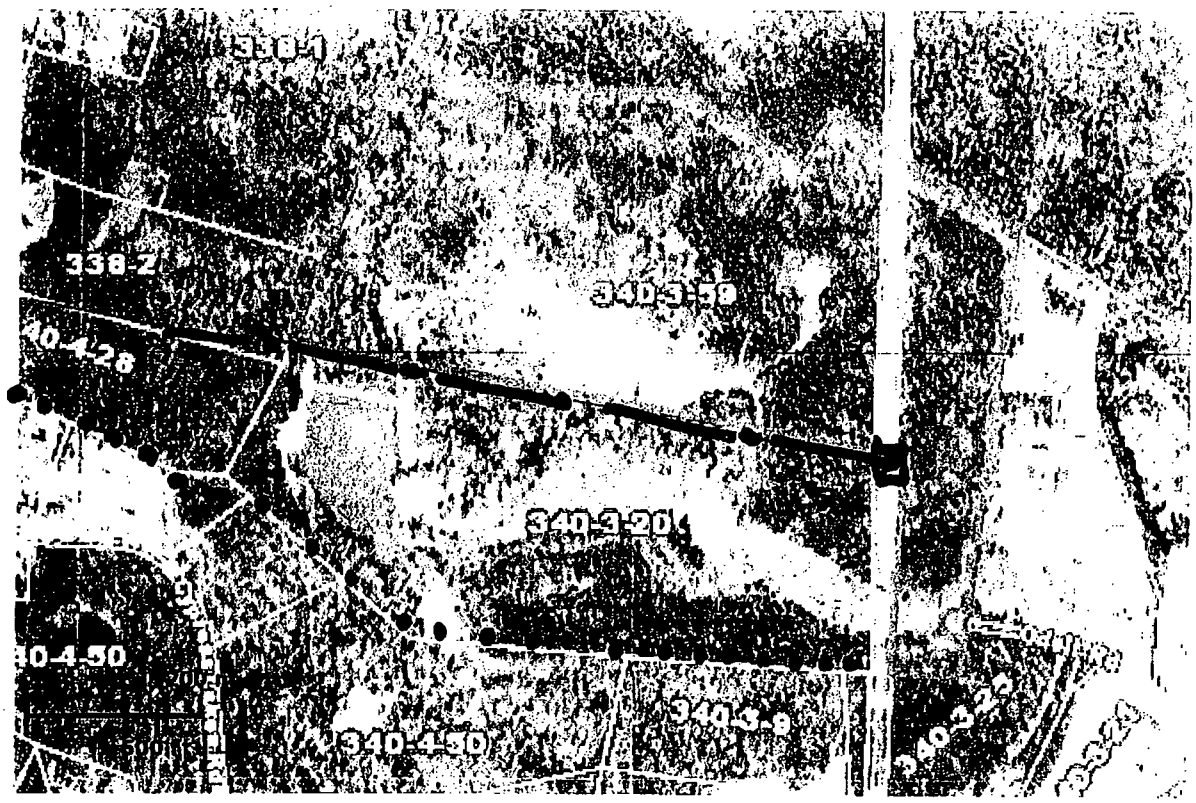
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Newberry County GIS

Parcel #340-3-59

OWNER
OIEN FAMILY INVESTMENTS LLC
1216 SE COLONY WAY
JUPITER, FL 33478

THIS MAP IS PREPARED FOR THE INVENTORY OF REAL PROPERTY FOUND WITHIN THIS JURISDICTION, AND IS COMPILED FROM RECORDED DEEDS, PLATS, AND OTHER PUBLIC RECORDS AND DATA. USERS OF THIS MAP ARE HEREBY NOTIFIED THAT THE AFORMENTIONED PUBLIC PRIMARY INFORMATION SOURCES SHOULD BE CONSULTED FOR VERIFICATION OF THE INFORMATION CONTAINED ON THIS MAP. THE COUNTY AND MAPPING COMPANY ASSUME NO RESPONSIBILITY FOR THE INFORMATION CONTAINED ON THIS MAP.



LEGAL
Grantors Name: OIEN LYNN AND JUNE,
Sale Price: $10.00
Sale Date: 02/14/2012
Deed Book: 1607
Deed Page: 173
Plat Book: C136
Plat Page: 9

PROPERTY INFO
Parcel ID: 340-3-59
Card Number: 1
Location: OFF ODELL RD
Land Use Code: 4AGV: Qualified Agricultural Vacant
Acres/Lots: 66.27

225 odell Rd
Plat Spriders

PMPA

Piedmont Municipal Power Agency

121 Village Drive
Greer, SC 29651
www.pmpa.com

(864) 877-9632
(864) 879-2122 fax
(877) 236-3547 toll free

August 14, 2014



Lynn Oien
June Oien
1216 SE Colony Way
Jupiter, FL 33478

RE: Right of Way Agreements with Piedmont Municipal Power Agency

Dear Mr. and Mrs. Oien:

PMPA has been proceeding with the transmission line route that was agreed to by both of you at the meeting we had at the City of Newberry City Hall on March 14, 2014. Attached to this letter are three copies of three right of way agreements, the appraisal covering the area PMPA wishes to have as right of way on your property, a restrictions/guidelines document on what typical things the right of way can and can't be used for since this property still belongs to you, and a blank W-9 IRS form. One agreement covers the bulk of the route, the second covers a small amount on the southern property, and the third is the area that PMPA will transfer to Duke Energy so they may build their connection point (a pole with or without a GOAB (gang-operated air-break) switch on it). All three agreements have exhibits attached showing the location of the right of way.

The right of way ("ROW") allows PMPA to construct and maintain the transmission line. Any trees on the ROW will need to be cleared and any that may fall on the line will also be topped. Loss of any trees has been taken into consideration in the appraisal. You are welcome to remove the trees yourself or hire someone to do this prior to PMPA's contractor doing the clearing.

For allowing PMPA the ROW across your property, PMPA is going to compensate you for the ROW area based on the appraised value of your property. In order to begin this process and get you your check, please date the agreement and you both need to execute these documents (all nine) in front of a notary and two non-related witnesses (the notary can be a witness). If you come in to the City of Newberry City Hall, the city can provide a notary and witnesses. Come to the utility office and ask for Marc Regier for assistance. If you execute the documents on your own, please return these documents to me in the enclosed envelope. Please keep one set of agreements for your records. I will reimburse you the postage paid for returning them.

The enclosed W-9 form needs to be filled out and signed for tax purposes. The W-9 form should be completed in the name of Oien Family Investments, LLC. Please include the completed W-9 form with the agreements you return.

PMPA

Piedmont Municipal Power Agency

121 Village Drive
Greer, SC 29651
www.pmpa.com

(864) 877-9632
(864) 879-2122 fax
(877) 236-3547 toll free

PMPA is requesting either the documents be returned or a response from you by August 22, 2014.

Should you have any questions about this process, feel free to contact me at PMPA (864.848.5409 or mfrazier@pmpa.com) or Marc Regier at the City of Newberry (803.321.1018 or mregier@cityofnewberry.com). Thank you for helping PMPA improve the electric reliability and service to the City of Newberry and Newberry County.

Sincerely,

Michael T. Frazier
Director of Engineering and Power Supply

cc: M. Regier – City of Newberry
J. Wyatt – Bannister, Wyatt, & Stalvey
no attachments



JOSEPH W. HUDGENS
THOMAS H. POPE III
W. CHAD JENKINS

KYLE B. PARKER

POPE & HUDGENS ATTORNEYS, P.A.

1508 COLLEGE STREET-P.O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108
PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

THOMAS H. POPE
(1913-1999)
ROBERT D. SCHUMPERT
(1927-1994)

September 29, 2014

VIA MAIL AND FAX: 864-298-0146
Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: PMPA - Olen Family

Dear Bill:

I understand that you represent PMPA. Since I am new to this case, I had a meeting this morning with the City of Newberry and my clients. It is obvious there have been miscommunications about this property. To clear these miscommunications, I think that it is important for us all (our clients, you and me) to meet for the purpose of discussing resolution of this case and the documents necessary to wrap it up.

While I have some concern about the public purpose of the project, I am not interested in arguing about the law. My clients are most interested in having the line routed in a fashion that does not ruin the value of the property for them (they've invested hundreds of thousands of dollars on this property already). From our brief discussion this morning, it is obvious that there are misconceptions about the Olens' position is in this case, and we can resolve it if we can have a meeting. In my view, telephones don't work on things like this.

Please let me know when you are available. I am available Thursday, Friday morning and Monday, Tuesday Wednesday and Thursday of next week. We will need to meet in Newberry, either in my office or at City Hall or wherever else you prefer, because I think that we may need to visit the site. It will be important for decision makers to be present; therefore, an official with PMPA who has that authority will need to be present as well.

If you want to give me a call, please do so, and I can give you some background as to what I believe are the miscommunications that have preceded where we are now.

Sincerely,

POPE AND HUDGENS, P.A.

Tom

Thomas H. Pope III

THP III/lg

P.S. I am also available next Friday (until 11:30), in addition to the other dates this week and next.

Lynne Grant

From: "Thomas H. Pope, III" <thpope@popeandhudgens.com>
To: <owBannister@bannisterwyatt.com>; "John Wyatt" <jwyatt@bannisterwyatt.com>
Cc: "Betsy Alexander" <balexander@popeandhudgens.com>; "Lynne Grant" <lgrant@popeandhudgens.com>
Sent: Wednesday, October 01, 2014 10:05 AM
Subject: Olen -PMPA -NEWBERRY COUNTY condemnation

Bill and John
I communicated with each of you separately about getting in touch with me ,and specifically
meeting to try to resolve this matter . I have not had a return call .
Bill : can I call you this afternoon ?
Let me know what time suits .
Thanks.
tom

Thomas H. Pope III
Pope & Hudgens, PA
P.O. Box 190
1508 College St.
Newberry, S.C. 29108
803-276-2532
Fax: 803-276-8684
thpope@popeandhudgens.com

THOMAS H. POPE III
W. CHAD JENKINS
KYLE B. PARKER

POPE & HUDGENS ATTORNEYS, P.A.

JOSEPH W. HUDGENS
Of Counsel
THOMAS H. POPE
(1913-1999)

1508 COLLEGE STREET-P.O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108
PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

October 3, 2014

VIA U.S. MAIL & EMAIL
Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: PMPA – My Clients, Mr. & Mrs. Olen

Dear Bill:

As I promised, I am enclosing herein a memo regarding some relevant points for concluding this condemnation matter. Attached with the memo is a copy of the map drawn by PMPA showing the route that the Olens can live with. PMPA would need to compute the acreage in this right-of-way and present an offer for discussion.

I am glad that you are now involved in the case because, it is my understanding from my clients, that PMPA has been quite abusive towards them in their view and the meetings which have been scheduled in the matter have all been initiated by the landowners rather than by PMPA. All that is past history as far as I am concerned and I am ready to seriously discuss trying to resolve this matter.

As you will see from the attached memo, one of the large bones of contention is the fact that PMPA sent an easement agreement to Mr. & Mrs. Olen that contained terms that were far more burdensome or unfair than are necessary. The Olens, as indicated in the memo, are willing to sign any reasonable easement consistent with normal condemnation practices.

In any event, if you have questions about this, you can give me a call today or Monday. Based on what I am submitting herein, I would hope that we can set up a meeting to resolve these things or at least get full clarification.

In fact, I think it would be beneficial if I drafted an easement agreement which would suit the easements and submit it to you for review by PMPA.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.

Thomas H. Pope III

THP III/ba
Enclosures

F

MEMO

To: Olen file

Date: 10/1/2014

RE: Desires and Concerns by Mr. & Mrs. Lynn Olen as to the Condemnation by PMPA on Their Property

1. **Route of the Line:**
The Olens (reluctantly) will agree to have the southern route (along the southern boundary of their property) which PMPA drew several months ago – to put the line anywhere else would violate Southern Development v. S.C. Public Service Authority (1991).

2. Because the southern route opens up the easement area for a distance of hundreds of feet to potential trespassers, the Olens want a 6' chain link fence on the edge of the right of way as a security measure.

3. The substation "meter box" will be on Pole 330 (rather than Pole 331 which is right by the entrance to the Olens' property), and access to the right of way for PMPA will be off the current Duke right of way point as shown on the attached drawing marked with an "X." PMPA can fence and gate this access point.

4. **Terms of the Right of Way Easement:**
The Olens are agreeable to a normal, standard easement/right of way agreement – in my 40 years that I have practiced, I have never seen an easement as onerous as the one presented by PMPA to the Olens a couple of months ago – it can easily be amended to reflect normal terms.

5. Some of the details of the easement which are either unconscionable or present questions for which we need answers:

   (a) Where will the poles physically be? As I understand it, PMPA advised the Olens that they would be told this well in advance of signing an easement – this can be corrected by a simple map showing where the poles will be.

   (b) The height of the poles – this is obviously an aesthetic issue, and we need to know if the poles are going to be 40' high or 100' high and what they will be constructed of (metal, concrete, wood, etc.)

   (c) What plans does PMPA have for the communications equipment referenced in the easement it sent? We need specifics about this and what revenue sharing they propose to make with the Olens for any attachment fees, profit splitting fees or whatever revenue is to be gained from such communication devices.

   (d) Danger tree zone needs to be explicit: i.e., the right to harvest dead trees only, not healthy ones.

(e) While the easement is in perpetuity, there needs to be added the standard reverter clause: if PMPA ceases to use the easement for electrical transmission, the land reverts to the Olens or their successors, assigns, heirs, etc.

710

Lynne Grant

From: "Thomas H. Pope, III" <thpope@popeandhudgens.com>
To: <owBannister@bannisterwyatt.com>
Cc: "Lynne Grant" <lgrant@popeandhudgens.com>; "Betsy Alexander" <balexander@popeandhudgens.com>
Sent: Tuesday, October 14, 2014 10:36 AM
Attach: DOC101414.pdf
Subject: Olen -PMPA

Bill
My clients and I are in no rush about this matter ,but they are most interested in meeting to resolve this situation at a mutually convenient time . My letter is attached .
When you have a couple of proposed dates and times from your client to meet let me know .
Best regards,
Tom

Thomas H. Pope III
Pope & Hudgens, PA
P.O. Box 190
1508 College St.
Newberry, S.C. 29108
803-276-2532
Fax: 803-276-8684
thpope@popeandhudgens.com

-----Original Message-----
From: Pope & Hudgens Scanner [mailto:copier@popeandhudgens.com]
Sent: Tuesday, October 14, 2014 2:23 PM
To: T Pope
Subject: Scanned from MFP-07091179 10/14/2014 11:22

Scanned from MFP-07091179.
Date: 10/14/2014 11:22
Pages:1
Resolution:200x200 DPI

THOMAS H. POPE III
W. CHAD JENKINS
KYLE B. PARKER

POPE HUDGENS ATTORNEYS, P.A.

JOSEPH W. HUDGENS
Of Counsel
THOMAS H. POPE
(1913-1999)

1508 COLLEGE STREET - P.O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108
PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

October 14, 2014

VIA EMAIL ONLY:
Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: Olen Property - PMPA

Dear Bill:

My client is certainly not in a rush on this matter, but we were interested in hearing back from you with regard to my letter to you of September 29. If your clients have dates in mind for us to meet onsite, I would appreciate hearing from you about those dates. It would be helpful for us to have several days advance notice of any proposed meeting so that we can coordinate everyone's schedule. Please let me know when you have dates that suit you and your client.

Sincerely,

POPE AND HUDGENS, P.A.

Thomas H. Pope III

THP III/lg
Enclosures

THOMAS H. POPE III
W. CHAD JENKINS
KYLE B. PARKER

POPE HUDGENS ATTORNEYS, P.A.

JOSEPH W. HUDGENS
Of Counsel
THOMAS H. POPE
(1913-1999)

1508 COLLEGE STREET-P.O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108
PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

November 11, 2014

VIA EMAIL ONLY:
Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: Olen - PMPA

Dear Bill:

I sent you a letter several weeks ago about trying to resolve this matter but have not heard back from you. If you and PMPA are available, as we mentioned, the Olens are happy to meet to discuss any details. There still remain a couple of questions which were referred to in the attachment to my letter to you of October 3.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.

Thomas H. Pope III

THP III/lg

Lynne Grant

From: "Betsy Alexander" <balexander@popeandhudgens.com>
To: <owBannister@bannisterwyatt.com>
Cc: "Thomas H. Pope, III" <thpope@popeandhudgens.com>; "'Lynne Grant'" <lgrant@popeandhudgens.com>
Sent: Wednesday, November 12, 2014 5:26 PM
Attach: Letter to Bill Bannister - 11 12 14.pdf
Subject: PMPA/OIEN: Correspondence from Tom Pope

Mr. Bannister:

Attached you will find correspondence to you from Mr. Pope.

Sincerely,

Betsy Alexander
Litigation Paralegal to Thomas H. Pope III

Pope & Hudgens
1508 College Street
Post Office Box 190
Newberry, South Carolina 29108
balexander@popeandhudgens.com
www.popeandhudgens.com

THOMAS H. POPE III
W. CHAD JENKINS
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November 12, 2014

VIA EMAIL ONLY
Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: PMPA - Olen Family

Dear Bill:

Thank you for calling today. You had a question about the grantor of the Olen property and I understand that you are looking into resolving that. As I mentioned to you, since I wrote you a number of weeks ago, we have heard nothing from PMPA about our offer and also answers to some questions we had. In my previous letter to you over five weeks ago, I identified the fact that the Olens were agreeable for PMPA to use the southern route, which PMPA had originally drawn up. They are also willing to sign a reasonable right of way easement (with a reverter clause as mentioned in my memo).

It is my understanding that you are going to contact Ben Rook, who was one of the children of Benetta Rook, and who got title via the estate of Benetta Rook. If you need us to shed any light on why Ben's sister, Donna, did not sign a deed to the Olens (only Ben apparently), please let us know and we will try to assist and expedite.

In any event, it is my understanding that you said you would get back in touch with your people about arranging a meeting time to discuss the questions that were set forth in my memo of October 1, 2014, which I sent you with my letter of my October 3.

I think a meeting would expedite the chances of a resolution and avoid a challenge to the right to take, etc. I look forward to hearing back from you soon about a date for a meeting. In the event that you cannot set up a meeting in the next ten days or two weeks, then I would suggest that we have a conference call at a minimum. I will be in the office the rest of this week and virtually all of next week as well. Call me tomorrow to arrange a meeting or conference call date and time.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.

Thomas H. Pope III

THP III/ba

THOMAS H. POPE III
W. CHAD JENKINS
KYLE B. PARKER

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WWW.POPEANDHUDGENS.COM

December 12, 2014

VIA EMAIL ONLY:
Oscar W. Bannister, Jr., Esquire
Bannister Wyatt & Stalvey, LLC
PO Box 10007
Greenville, SC 29603

RE: Olen - PMPA

Dear Bill:

I write again regarding the above matter. Is your client PMPA agreeable with setting up a meeting with me and my clients or, at a minimum, to answer the questions that I sent to you in my letter of October 3? I am in the office today and all of next week. I would appreciate hearing from you before Christmas. My clients are concerned that PMPA continues to ignore their requests.

With kind regards.

Sincerely,

POPE AND HUDGENS, P.A.

Thomas H. Pope III

THP III/lg

cc: Mr. & Mrs. Lynn Olen


75Ft.
75Ft.
75Ft.
75Ft.
134Ft.
75Ft.
75Ft.
75Ft.
11,798 FEET
APPROX. 20+ ACRES

717

Marc Regier

From: Marc Regier
Sent: Sunday, April 28, 2013 4:27 PM
To: Alan Cobb; Mike PMPA
Cc: Mike Dawson; Lloyd; Todd Guy
Subject: RE: Other Possible Routes



He was pretty adamant that he wanted the line at his southern most property line...

Thanks,

Marc

From: Alan Cobb [rac@pecinc.net]
Sent: Sunday, April 28, 2013 4:19 PM
To: Marc Regier; Mike PMPA
Cc: Mike Dawson; Lloyd
Subject: Other Possible Routes

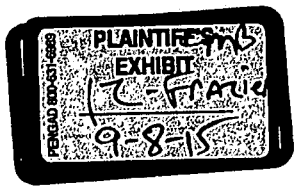
Since the Oien folks have offered the North side of their property to mitigate the pond issues, we have got some more options to review. Leaving Duke's Str 334 and heading west and then southerly, we can intercept the most recent route to cross the Kibler property (longest route). We can also cross the property at the same location as our original route had shown and not need to build as far south.

The third option would be to turn as shown with the most northern crossing of the property (shortest route).

Marc, what do you think we will hear from the owners on the west side of 121 if we cross more toward the middle of their property?

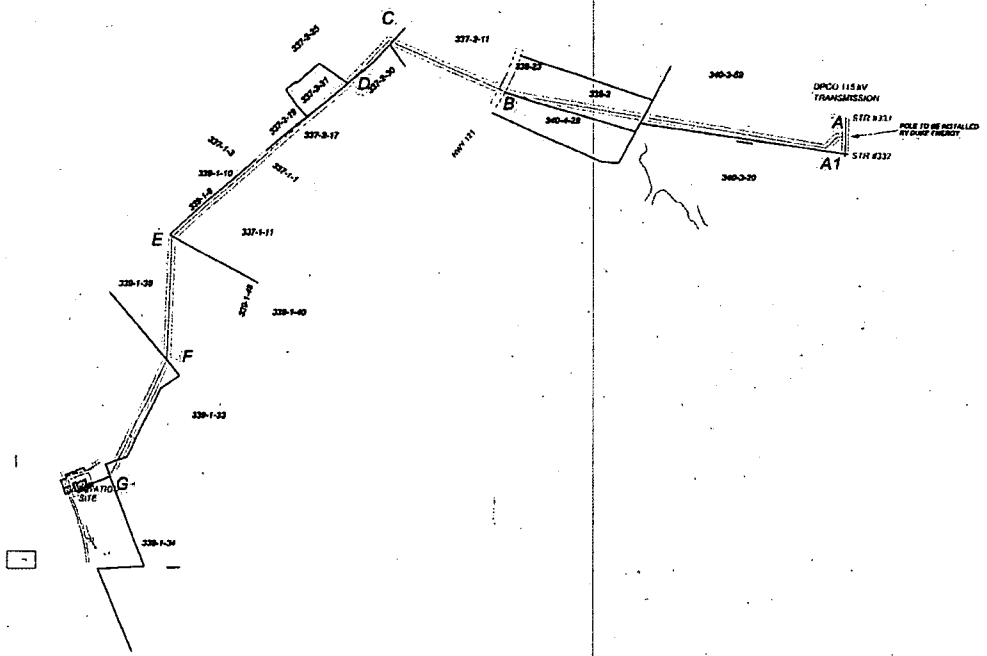
Please let me know what you think!

Thanks
Alan



PLAINTIFF'S EXHIBIT





REVISIONS			REVISIONS		
NO.	DATE	DESCRIPTION	NO.	DATE	DESCRIPTION
1	12/09/13	REVISED ROW REQ'D FOR TAP POINT AT DUKE 115 kV LINE			

SCALE: AS NOTED
DATE ISSUED: 11/12/2013
DESIGNED BY: BAC
DRAWN BY: BAC
CHECKED BY: BAC
APPROVED BY: BAC

PROGRESSIVE ENGINEERING CONSULTANTS, INC.
Complete Power Engineering Services
P.O. BOX 690638
CHARLOTTE, N.C. 28227
OFFICE (704) 545-7327
FAX (704) 545-8315

PIEDMONT MUNICIPAL POWER AGENCY
CREER, SOUTH CAROLINA

NEWBERRY 115 kV TRANSMISSION
REVISED LINE ROUTE FOR SURVEY

DRAWING NO. 152-03-009 Revision #1

SHEET 1 OF 1

720

tabbies
PLAINTIFF'S
EXHIBIT
12
75Ft.
75Ft.
75Ft.
75Ft.
75Ft.
134Ft.
75Ft.
75Ft.
75Ft.
STR #330
STR #329
11,798 FEET
APPROX. 20+ ACRES
PLAINTIFF'S
EXHIBIT
2-Frazier
9-8-15

~~800 845-4955~~

803-321-1000
C.ty ADMIN

321-1018
UTILITIES

~~ALEX~~. MARC REGIER

803-321-2100
COUNTY ADMIN
WAYNE ADAMS

Power Line for New KRAFT FOODS FACILITY

POLE 330 IS THE CONNECTION POINT

PLAINTIFF'S EXHIBIT 13



PLAINTIFF'S EXHIBIT 3-FRAUD 9-8-15

PMPA000012


PROPOSED ROUTE
PMPA0000012



TRANSMISSION COMMITTEE

PIEDMONT MUNICIPAL POWER AGENCY

MARCH 5, 2013

8:30 AM

Present	Committee:	Joe Nichols	Union
		Tim Baker	Abbeville
		John Young	Laurens
		Jimmy Powell	Westminster
	Others:	Coleman Smoak	PMPA
		Mike Frazier	PMPA
		Jeff Bridgland	PMPA
		Marc Regier	Newberry
		Alan Cobb	Progressive Engineering
		Mark Dawson	Progressive Engineering

Newberry Transmission Line

Mr. Frazier reviewed with the Committee an aerial photo, route plan, and cost estimate (all of which are attached) for a proposed transmission line to serve a proposed new delivery point in Newberry near Kraft Foods.

A motion was made by Mr. Baker, seconded by Mr. Young, to recommend to the Board that the subject transmission line be constructed by PMPA.
Approved unanimously.

Engineering

A motion was made by Mr. Young, seconded by Mr. Baker, to utilize Progressive Engineering for design and construction services for the subject transmission line.
Approved unanimously.

Adjournment

There being no further business, the meeting was adjourned.

Respectfully submitted,

Coleman F. Smoak, Jr.
General Manager/Secretary

C



PMPA Transmission Committee

- Welcome Jimmy Powell
- Approve Agenda
- Request from Newberry for PMPA to build a two mile transmission line to the city's new substation site.

March 5, 2013

PMPA®

Piedmont Municipal Power Agency

REPORT ON NEWBERRY 2.1 MILE 115 kV TRANSMISSION LINE ROUTE SELECTION

FOR

PIEDMONT MUNICIPAL POWER AGENCY GREER, SOUTH CAROLINA

PROGRESSIVE ENGINEERING CONSULTANTS, INC.
P.O. BOX 690638 CHARLOTTE, NC 28227 - 7011
TELEPHONE (704) 545-7327 FACSIMILE (704) 545-2315
progress@pecinc.net

February 28, 2013

PMPA000007

BACKGROUND

The City of Newberry, South Carolina owns and operates a 25 kV municipal electric distribution system by receiving service from three power deliveries owned by Duke Energy. The City's electric distribution system had a peak kW demand in the summer of 2012 of 41,337 kW. The City has received notice from their largest customer of a planned increase of their facility electrical demand in the immediate future with plans to further expand their electrical demand over the course of the next few years. This customer presently has an electrical demand of 12,634 kW.

The customer's plans for growth include an immediate 5% increase, with growth over the next 5 years to possibly reach 20%.

The capacity of the City's existing power deliveries from Duke Energy are not capable of adequately and reliably providing service to this customer at the projected load levels. The City's Delivery #4 which serves this customer is presently operating at 85% to 90% of the available capacity.

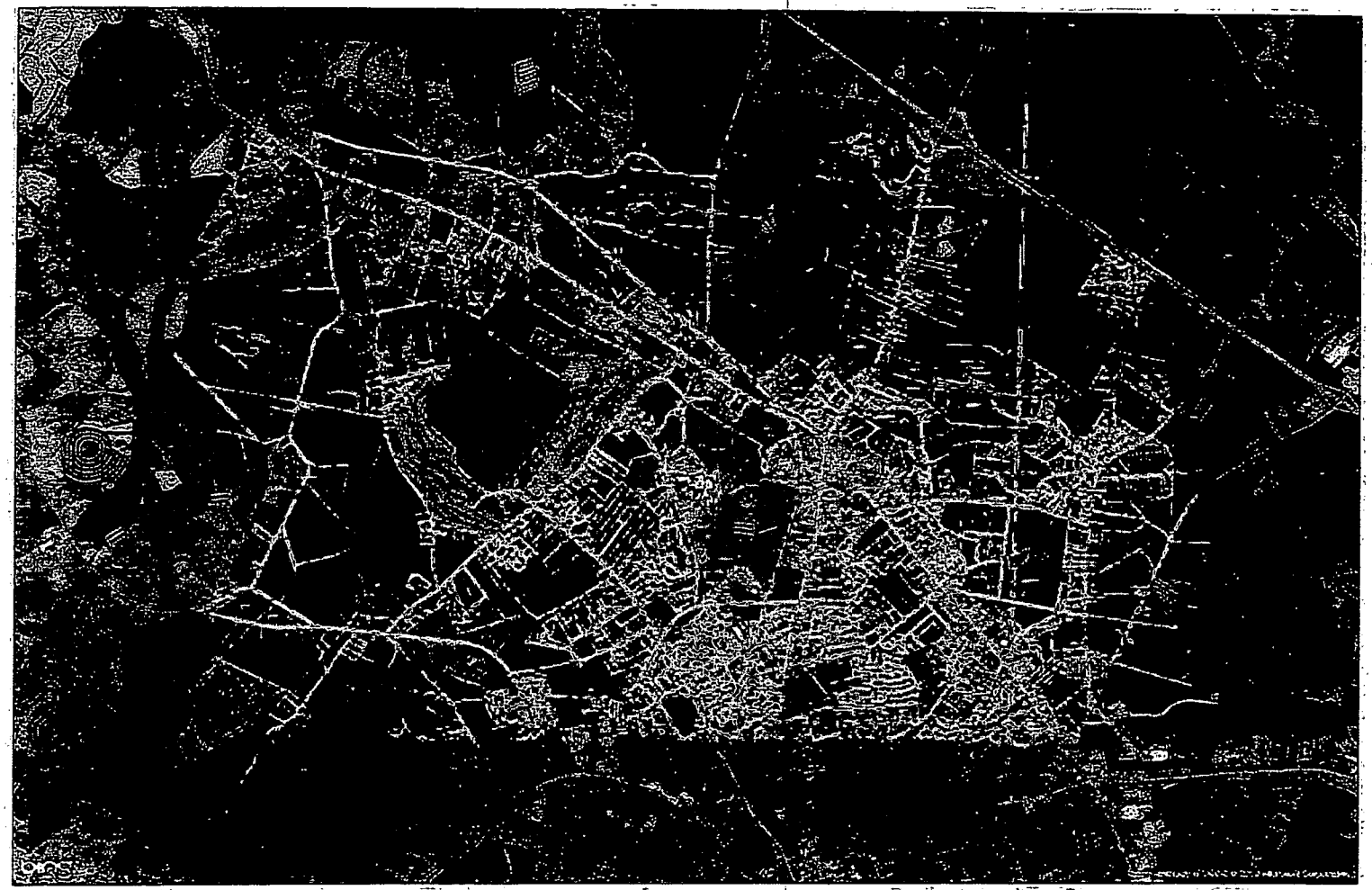
As a result of this Customer's load growth, the City has requested that the Piedmont Municipal Power Agency (PMPA) review options for a new 115 kV transmission line to provide service to the City's proposed new substation which is planned to be operational by the spring of 2014. This new substation will adequately serve the increase in load for the near term, and provide for additional growth of the City's electric system for many years into the future.

COST OF THE ROUTE

The recommended route has been initially designed with the fewest practical angles in an effort to continually balance the construction cost with the impacts to the property owners. The estimated transmission line installed cost is $2.082.000.00 in accordance with the following line item summary

Right of Way Purchase	$100.000.00
Right of Way Surveying/Clearing	$292.500.00
Purchase Steel Poles	$292.500.00
Purchase Conductor and Support Hardware	$210.000.00
Line Construction	$840.000.00
Estimated Material/Construction Cost	$1.735.000.00
20% Allowance for Contingency. Overhead. and Engineering	$347.000.00
Total Estimated Installed Cost	**$2,082,000.00**

PMPA000009



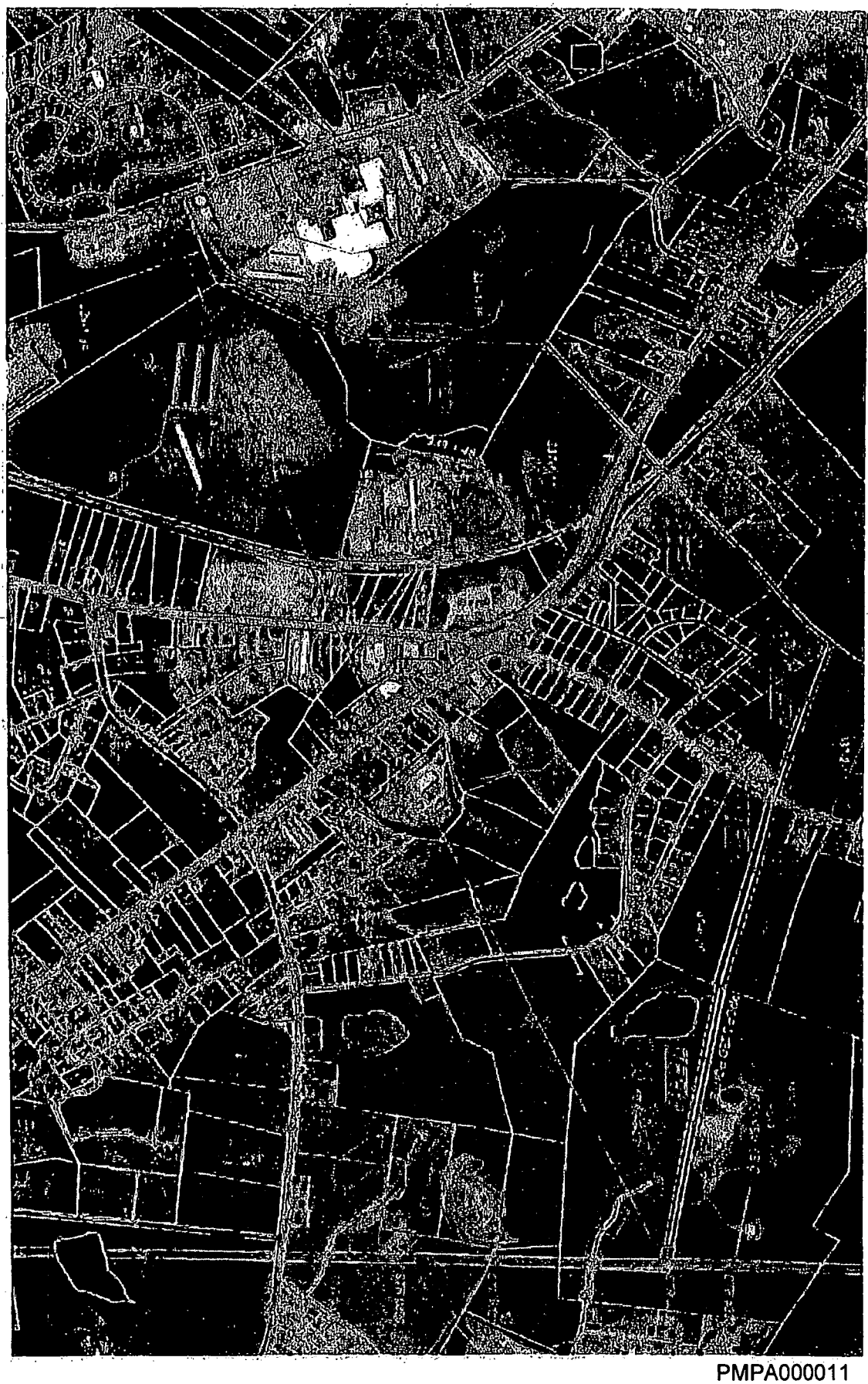
REVISIONS			REVISIONS		
By	DATE	DESCRIPTION	No	DATE	DESCRIPTION

PROGRESSIVE ENGINEERING CONSULTANTS, INC.
Complete Power Engineering Services
P.O. BOX 690630
CHARLOTTE, N.C. 28227
(704) 545-7220 FAX (704) 545-0276

PIEDMONT MUNICIPAL POWER AGENCY
GREER, SOUTH CAROLINA

NEWBERRY 115 KV
TRANSMISSION LINE OPTIONS

PMPA000010



PMPA000011



PMPA000012



PMPA000013



AS NOTED ED: 02/28/2013 BY: RAC BY: RAC CK: RAC BY: RAC	PROGRESSIVE ENGINEERING CONSULTANTS, INC. Complete Power Engineering Services P.O. BOX 690638 CHARLOTTE, N.C. 28227 OFFICE (704) 545-7527 FAX (704) 545-2315		PIEDMONT MUNICIPAL POWER AGENCY CREER, SOUTH CAROLINA NEWBERRY 115 kV TRANSMISSION LINE ROUTE	DRAWING NO. 162-03-002 SHEET 1 OF 1

NO.

PMPA000014

734

162-03-002 Model_5March2013.pdf

PLAINTIFF'S EXHIBIT 15

PMPA

Piedmont Municipal Power Agency

REPORT ON NEWBERRY 2.1 MILE 115 kV TRANSMISSION LINE ROUTE SELECTION

FOR

PIEDMONT MUNICIPAL POWER AGENCY GREER, SOUTH CAROLINA

PROGRESSIVE ENGINEERING CONSULTANTS, INC.
P.O. BOX 690638 CHARLOTTE, NC 28227 - 7011
TELEPHONE (704) 545-7327 FACSIMILE (704) 545-2315
progress@peeinc.net
February 28, 2013

PLAINTIFF'S EXHIBIT 4 Cobb 12-02-15

BACKGROUND

The City of Newberry, South Carolina owns and operates a 25 kV municipal electric distribution system by receiving service from three power deliveries owned by Duke Energy. The City's electric distribution system had a peak kW demand in the summer of 2012 of 41,337 kW. The City has received notice from their largest customer of a planned increase of their facility electrical demand in the immediate future with plans to further expand their electrical demand over the course of the next few years. This customer presently has an electrical demand of 12,634 kW.

The customer's plans for growth include an immediate 5% increase, with growth over the next 5 years to possibly reach 20%.

The capacity of the City's existing power deliveries from Duke Energy are not capable of adequately and reliably providing service to this customer at the projected load levels. The City's Delivery #4 which serves this customer is presently operating at 85% to 90% of the available capacity.

As a result of this Customer's load growth, the City has requested that the Piedmont Municipal Power Agency (PMPA) review options for a new 115 kV transmission line to provide service to the City's proposed new substation which is planned to be operational by the spring of 2014. This new substation will adequately serve the increase in load for the near term, and provide for additional growth of the City's electric system for many years into the future.

OBJECTIVES

The objectives of this report are to present our approach and recommendations for the siting of the new City of Newberry substation and PMPA transmission line as follows:

Coordinate the locations of the substation and transmission line to insure that the substation meets the immediate, as well as, long term needs of the City while not unduly impacting the cost or routing of the transmission line.

Carefully review the options for transmission line routing to insure the proper balance of cost, land use, environmental, and visual impact.

APPROACH

The initial approach to this project was to review the most viable routes for the 115 kV transmission line to serve the City substation in the planned location adjacent to the customer. Our initial review revealed the difficulties for the line route to this location given that it is in an area of substantial commercial and residential development.

Duke Energy operates 115 kV transmission lines on both the East and West sides of the City. Routes for the PMPA line were reviewed from both directions. Transmission line routing from the West side would be longer and would be faced with the same, if not more challenges as the routes from the East, hence we focused our efforts on finding a suitable route from the Eastern side Duke Energy 115 kV line.

Following our initial transmission line routing review, we investigated the possibility of alternate locations for the City substation, with the goal of satisfying the load serving needs of the customer and the City, while also searching for a more suitable transmission line route. While alternate sites were found to be available for the substation, no site was found that would satisfy the underlying need for the original substation location and also mitigate the routing issues for the transmission line.

RESULTS

Following our review of the options for the City substation location and the impact on routing of the transmission line, it was determined that the City substation would be best served in the original location.

Subsequently we reviewed multiple options for the siting of the transmission line with regard to:

Environmental impact
Land use
Impact to individual property owners
Cost of the route
Visual impact

The preferred line routing, depicted in the attached file, was selected based on these criteria and resulted in a proposed length of 2.1 miles of 115 kV transmission line.

ENVIRONMENTAL IMPACT

While we are not presently aware of any adverse environmental impacts of the proposed line routing, any wetlands or other environmental impact issues will be revealed and mitigated as required during the permitting process with the South Carolina Department of Health and Environmental Control.

LAND USE

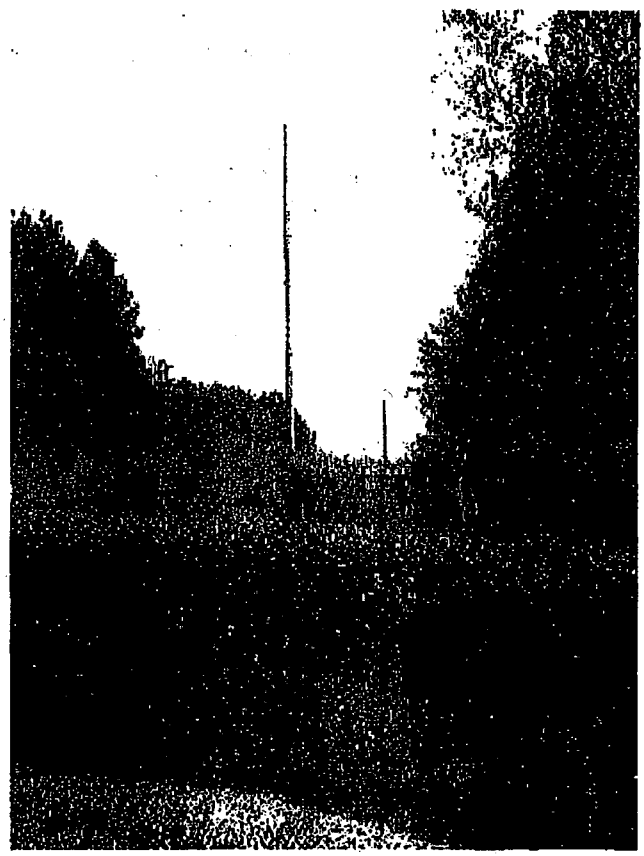
Land use in the area of the proposed 2.1 mile transmission line route is sparse residential at the tap point and for most of the route then becoming more primarily commercial at the destination. As shown by the attached aerial view of the planned route, the line follows property lines when practical, in an effort to reduce the impacts on land use and right of way acquisition costs while not adversely impacting the construction cost of the line. Estimated right of way to be acquired is approximately 20 acres with a proposed 75 ft. width.

IMPACT TO INDIVIDUAL PROPERTY OWNERS

While minor adjustments may need to be made to accommodate individual property owner preferences, we believe the proposed route adequately balances the intent for minimal property impacts and the construction cost of the transmission line.

VISUAL IMPACT

The proposed transmission line route is heavily wooded for most of the path and as a result will be much less noticeable than if it were to be placed in more of an urban setting. Nominal pole height should be 90 ft. with the transmission line to be placed on single steel poles utilizing framing hardware much like the following picture. The single pole structures require less right of way, reduce hardware and construction cost, and with a smaller profile are more visually appealing than the conventional transmission tower.



PMPA000171

COST OF THE ROUTE

The recommended route has been initially designed with the fewest practical angles in an effort to continually balance the construction cost with the impacts to the property owners. The estimated transmission line installed cost is $2,082,000.00 in accordance with the following line item summary:

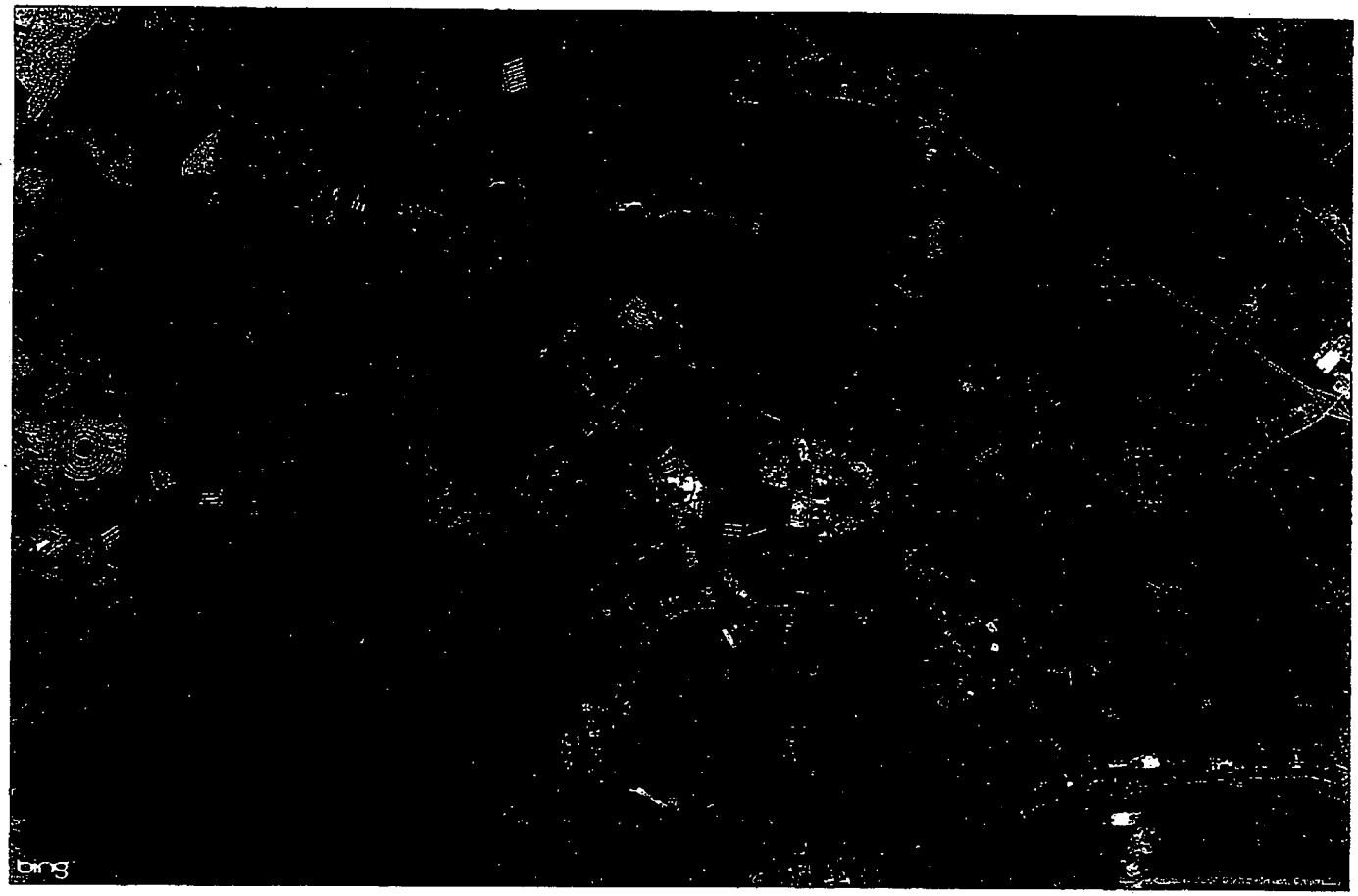
Right of Way Purchase	$100.000.00
Right of Way Surveying/Clearing	$292,500.00
Purchase Steel Poles	$292,500.00
Purchase Conductor and Support Hardware	$210,000.00
Line Construction	$840,000.00
Estimated Material/Construction Cost	$1,735,000.00
20% Allowance for Contingency, Overhead, and Engineering	$347,000.00
Total Estimated Installed Cost	**$2,082,000.00**

We appreciate the opportunity to present this report to the transmission committee at PMPA and will be pleased to answer any questions or provide additional information as necessary.

Respectfully Submitted,

Progressive Engineering Consultants, Inc.
By *R. Alan Cobb*
R. Alan Cobb, P.E.

PMPA000172



REVISIONS			REVISIONS		
NO.	DATE	DESCRIPTION	NO.	DATE	DESCRIPTION

PROGRESSIVE ENGINEERING CONSULTANTS, INC.
Complete Power Engineering Services
P.O. BOX 680638
CHARLOTTE, N.C. 28227
OFFICE (704) 845-0887
FAX (704) 845-3246

PIEDMONT MUNICIPAL POWER AGENCY
GREER, SOUTH CAROLINA

NEWBERRY 115 kV
TRANSMISSION LINE OPTIONS

PMPA000173

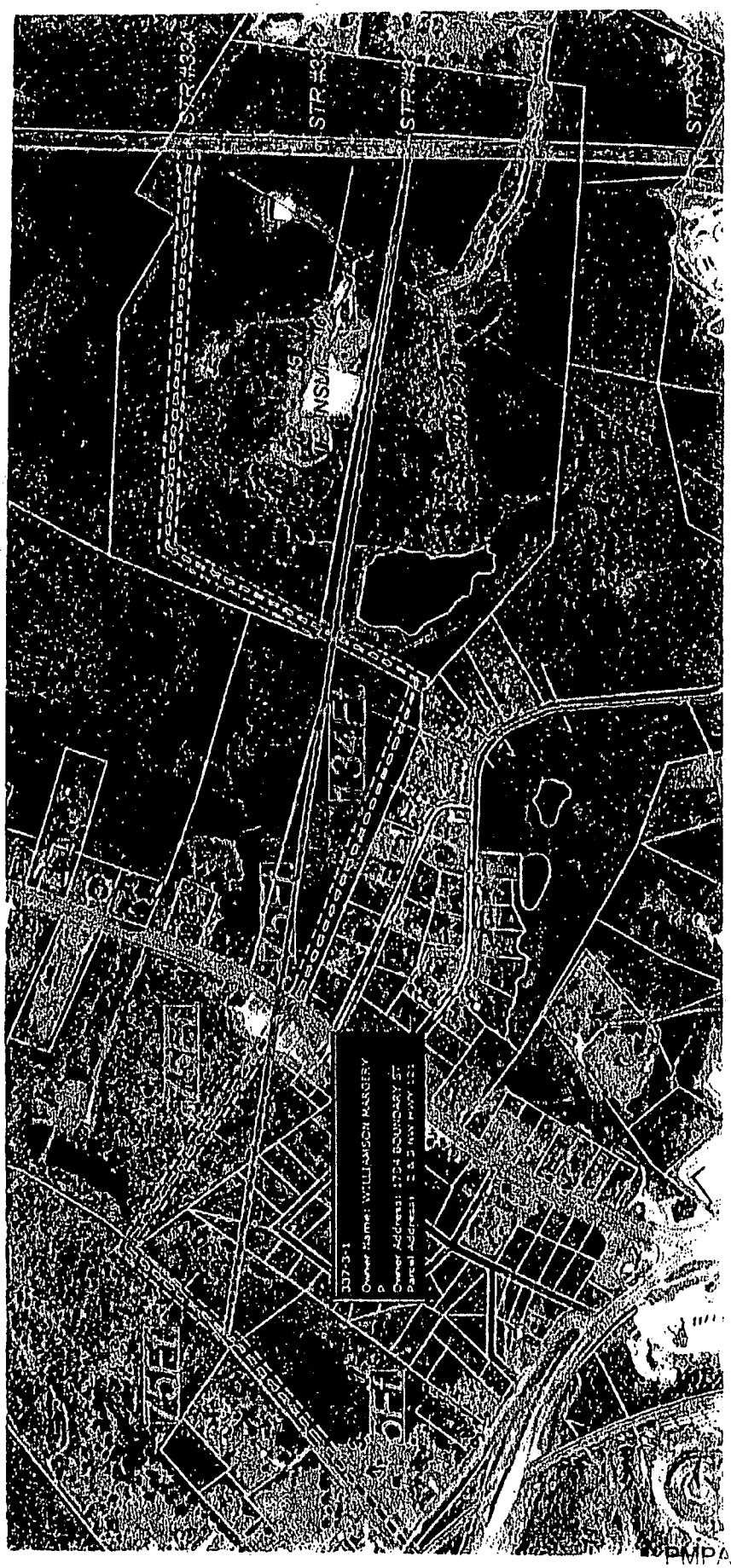
Blow up of transmission line route

PMPA000174

PLAINTIFF'S EXHIBIT 16



PLAINTIFF'S EXHIBIT S-Frazier 9-8-15


STR 430
STR 43
STR
STR
NSN 45
337-01-1
Owner Name: WILLIAMSON MARGERY
Owner Address: 1734 BOUNDARY ST
Parcel Acres: 2.5

PMPA000198

Mike Frazier



From: Mike Frazier
Sent: Thursday, June 13, 2013 11:39 AM
To: Marc Regier
Cc: rac@pecinc.net; Todd Guy
Subject: RE: Revised Route for Newberry

Does 3:00 work for you?

Mike

PMPA

-----Original Message-----
From: Marc Regier [mailto:mregier@cityofnewberry.com]
Sent: Thursday, June 13, 2013 11:16 AM
To: Mike Frazier
Cc: rac@pecinc.net; Todd Guy
Subject: Re: Revised Route for Newberry

Lets talk this afternoon if that works for you guys...

Marc

On Jun 13, 2013, at 11:14 AM, "Mike Frazier" <MFrazier@pmpa.com> wrote:

> Marc,
>
> Just checking to see if you got this email. I haven't heard from you regarding this last draft. Do you have time today to discuss it?
>
>
> Mike
>
> PMPA
>
> From: Mike Frazier
> Sent: Monday, June 10, 2013 11:38 AM
> To: Mr. Marc Regier (mregier@cityofnewberry.com)
> Cc: rac@pecinc.net
> Subject: Revised Route for Newberry
>
> Marc,
>
> Attached is Alan's revised line path. It shows the center line running over the Olens line. By going any farther north, it worsens the King's crossing. Also, the north Kibler is now more involved than the south Kibler.
>



PMPA000186

> When we get to Hwy 121, there are some options. We could proceed as drawn, which takes more of the King's property; we could continue straight some and then turn such that the angle by Russell Frankilin's property is no more less than 90 degrees; or if you think it's possible, take the line straight through Williamson's property.
>
> Also, Alan has straightened the angle by Boris Alvarado. While it looks cleaner, the danger tree rights issue still exists on the Ronald Charette property. If there are any tall trees, they will need to be topped.
>
> What is Newberry's take on the route? I'd like to get a call together to talk about it. Are you (and Todd) available this afternoon or tomorrow morning for a call?
>
>
> Mike
>
> PMPA
> <162-03-005 Model (1).pdf>

PLAINTIFF'S EXHIBIT 19



PLAINTIFF'S EXHIBIT 8-Frazer 9-8-15

000198

Final Route
NSM
134 FL
75
Feet

PLAINTIFF'S EXHIBIT 20

tabbies

PLAINTIFF'S EXHIBIT 115

9-8-15

PENDAD 800-631-6989

000195

748

162-03-004-R Model V2_13 Jun 2013. pdf

PLAINTIFF'S EXHIBIT

bobbler

162-03-004-R Model V2_13 Jun 2013.pdf

Mike Frazier

From: Marc Regier <mregier@cityofnewberry.com>
Sent: Thursday, June 13, 2013 5:40 PM
To: Mike Frazier
Cc: Todd Guy; rac@pecinc.net
Subject: Re: Oiens Big Oaks

We will try and check it out tomorrow.

Todd just talked with the king. He says essentially come straight across his property - right through the middle.

Alex will send out a revised drawing showing the kings changes - first thing in the morning.

Thanks,

Marc

On Jun 13, 2013, at 5:35 PM, "Mike Frazier" <MFrazier@pmpa.com> wrote:

> Marc,
>
> To make sure the line is sighted far enough away so that we don't have to top any of those oaks, Alan will need to know (1) where they are and (2) how tall they are. If Todd knows where they are, I suggest he and Tad take a GPS reading at them and figure out how tall they are and put both of those things on a map. Then Alan can see where he needs to be based on the danger trees.
>
> Is that something that can be done soon?
>
>
> Mike
>
> PMPA
>
>

Mike Frazier

From: Mike Frazier
Sent: Wednesday, July 03, 2013 3:50 PM
To: Alan Cobb
Subject: RE: Revised Route for Newberry
Attachments: 162-03-005 Model (1).pdf

Alan,

Funny you should ask. I was writing the email below yesterday and never finished. Let's go ahead as I mention below.

If memory serves, you are waiting for the oaks' location before you updated the map. Go ahead and modify the map based on what we know. Keep the starting point where it is so it touches both sides of the property line. Draw it where you think the king will be happy (split the baby) and let's look at it. Also, while you are doing that, I need the acreage or sq. ft. of each of the 15 ROWs (if I counted right).

Happy Fourth.

Mike

PMPA

From: Alan Cobb [mailto:rac@pecinc.net]
Sent: Monday, June 10, 2013 10:19 AM
To: Mike Frazier
Subject: Revised Route for Newberry

Mike,

Please call when you get this. Have some things to discuss prior to sending it to Marc.

Thanks
Alan

PLAINTIFF'S EXHIBIT 21

PLAINTIFF'S EXHIBIT MAB 1 D FRAZIER 9-8-15

Newberry County GIS
PLAINTIFF'S EXHIBIT 23
tabbies
PLAINTIFF'S EXHIBIT
9-8-15
340-3-59
340-3-25
340-3-9
340-4-50
340-3-20
340-4-28
338-2
338-1
340-3-28
340-3-17
340-3-50
340-4-55
340-4-56
340-4-54
340-3-52
340-3-22
340-3-23
340-3-24
340-3-26
340-3-27
340-3-13
340-4-50



Piedmont Municipal Power Agency

Electric Transmission Rights of Way Guidelines/Restrictions

The following list of guidelines and restrictions for electric transmission rights of way address questions most commonly asked by property owners. Items not covered on this list may require additional restrictions to be put in place if use by the property owner or others of the rights of way endangers the poles, conductors, or equipment owned by Piedmont Municipal Power Agency. Please contact Piedmont Municipal Power Agency if you have additional questions or concerns about rights of way.

This list of restrictions is subject to changes at any time and without notice. Any changes made where property owners are immediately impacted, Piedmont Municipal Power agency (PMPA) will work with the property owner to minimize that impact to the extent no poles, conductors, or equipment are immediately endangered. Property owners should receive a 30-day written or electronic notice, except during times of crisis as determined by PMPA, prior to any right of way (ROW) clearing or other heavy equipment work. Work will begin after that period has expired. PMPA shall not relinquish any of its rights conveyed by its rights of way agreements. All activity within the rights of way shall be reviewed by PMPA.

1. The following are typically not allowed within the right of way limits: structures, buildings, mobile homes and trailers, satellite signal receiver systems and equipment, swimming pools and associated equipment, human graves, billboards, signs, wells, septic tanks or septic systems, absorption pits, storage tanks (both above and below ground), garbage, trash, rubble, flammable material, building material, junk and wrecked or disabled vehicles.

2. Fences shall not be attached to PMPA's poles. Fences shall be installed at least 10 feet from such poles and shall not exceed 10 feet in height. Fences shall not parallel the center line within the right of way, but may cross at any angle not less than 30 degrees with centerline. If a fence crosses the right of way, a gate shall be installed by the property owner per PMPA specifications to allow free access required by PMPA equipment.



3. Contact PMPA before grading or filling on the right of way. Grading shall be at least 20 feet from a pole, and slope shall not exceed 3:1 on the right of way. Grading or filling within the right of way or near a structure, which will prevent free access, will not be permitted. Sedimentation control, including re-vegetation, is required per state regulations.



4. Streets, roads, driveways, sewer lines, water lines, or any underground facilities shall not parallel the center line within the right of way, but may cross at any angle not less than 30 degrees with the center line and cross no closer than 20 feet to any structure. Man holes and underground vaults within the right of way limits must be approved by PMPA before installation.

5. Contact PMPA before installing any overhead or underground utilities (e.g., electric, gas, telephone, cable, etc.).

6. Any drainage ditch that allows water to pond or to cause erosion around a structure is prohibited.

7. Contact PMPA prior to the construction of lakes or ponds within the right of way limits.

8. PMPA does not recommend the practice of using the area under transmission lines for parking, but will not object if the following restrictions are followed:
    - A barrier, sufficient to withstand a 15 mph vehicular impact, shall be erected by the party constructing the parking area to protect the pole or tower. The barrier shall be located in such a manner as to restrict parking to at least five feet from the structure.
    - Any access areas, entrances, or exits shall cross the right of way at or near right angles to the centerline, and shall not pass within 20 feet of any structure.
    - Lighting structures higher than 15 feet are not allowed within the right of way limits.
    - Signs and other attachments to PMPA structures are prohibited.

9. PMPA will not object to certain beautification measures as long as they do not interfere with existing structures or access to such structures.
    - Any plants within the right of way such as flowering shrubs, bushes, hedges, or low growing species must not exceed 20 feet in height at maturity. Commercially grown plants must be removed when they reach 20 feet tall or be subject to the ROW clearing notice provision.
    - Trees, except ornamentals or commercially grown, are not allowed within the right of way limits. Commercially grown trees must be removed when they reach 20 feet tall or be subject to the ROW clearing notice provision.
10. PMPA may exercise its right to cut, fall, and remove any trees on the property that are tall enough to fall on its line or other facility or structure within the ROW area ("Danger Trees Rights") as allowed by the right of way agreement and as required to properly maintain and operate the transmission line. Refer to the Figure 1 as to what trees may be in this category.

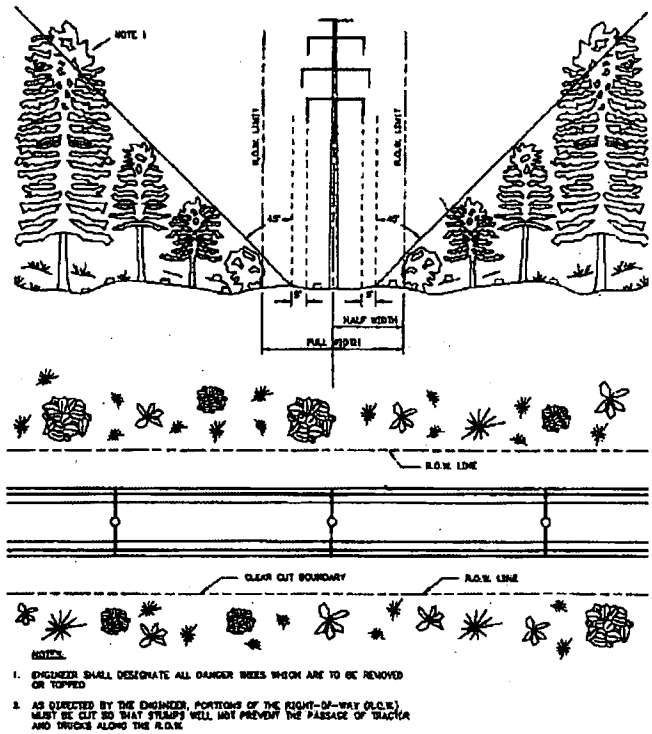


Figure 1 – ROW Clearing Diagram

PMPA - NEWBERRY 115 KV ROW ACQUISITION ESTIMATE

PARCEL NUMBER	GIS PARCEL ID	APPROXIMATE TOTAL SQUARE FEET	APPROXIMATE ACRES EACH
1	340-3-59	167061	3.84
2	338-2	118789	2.73
3	340-4-28	5060	0.12
4	337-2-11	97620	2.24
5	337-2-25	45257	1.04
6	337-2-30	6615	0.15
7	337-2-17	57402.5	1.32
8	337-2-31	17194	0.39
9	337-2-19	2983	0.07
10	337-1-3	22334	0.51
11	339-1-10	3849	0.09
12	339-1-9	9289	0.21
13	337-1-11	61722	1.42
14	339-1-38	183683	4.22
15	339-1-34	20822	0.48
		TOTAL REQUIRED	18.82

THE ACREAGE REQUIRED IS ESTIMATED FROM THE NEWBERRY GIS DATA AND IS APPROXIMATE UNTIL SURVEY IS COMPLETED.





AN APPRAISAL REPORT OF
ACQUISITION
FOR
PIEDMONT MUNICIPAL POWER AGENCY
FOR A 115 kV RIGHT OF WAY
TRANSMISSION LINE ROUTE FROM STR 332
OF
NEWBERRY COUNTY
TMS 340-3-59 Tract 1A
TMS 340-3-20 Tract 1B
OWNER: OIEN FAMILY INVESTMENTS LLC

Date of Appraisal Value: January 23, 2014
Date of Appraisal Report: February 27, 2014

Prepared for:
Mr. Mike Frazier
Piedmont Municipal Power Agency
121 Village Drive
Greer, SC 29651

Prepared by:
David R. Graydon, Jr., MAI
State Certified General Real Estate Appraiser, CG 1337
Wilkins Norwood Appraisal Associates, Inc.
250 South Pleasantburg Drive
Greenville, South Carolina 29607

Mike Frazier

From: Coleman Smoak
Sent: Friday, March 28, 2014 7:55 PM
To: Mike Frazier
Subject: Re: Meeting this morning



Thanks

Sent from my Verizon Wireless 4G LTE DROID

Mike Frazier <MFrazier@pmpa.com> wrote:

The Olen meeting went worse than expected (Marc's notes are below). I'm ready to pull the trigger. I have sent a note to our attorney as to what route is best to file. Hopefully we can finalize this on Monday.

Mike

Piedmont Municipal Power Agency
121 Village Dr.
Greer, SC. 29651
(864) 848-5409 office
(864) 414-9614 cell
mfrazier@pmpa.com

-------- Original Message --------
Subject: Fwd: Meeting this morning
From: Marc Regier <Marc@regier.us>
To: Mike Frazier <MFrazier@pmpa.com>
CC:

Begin forwarded message:

> **From:** Marc Regier <mregier@cityofnewberry.com>
> **Date:** March 28, 2014 at 5:40:37 PM EDT
> **To:** "marc@regier.us" <marc@regier.us>
> **Subject: Fwd: Meeting this morning**

> Begin forwarded message:
>
> > **From:** Marc Regier <mregier@cityofnewberry.com>
> > **Date:** March 28, 2014 at 9:11:18 AM EDT

To: "Mike Frazier (MFrazier@pmpa.com)" <MFrazier@pmpa.com>
Subject: Meeting this morning

Mike:

Give me a call at your convenience to discuss the meeting we had this morning. My mobile number is 803-944-2934.

Cliff notes:

They are not interested in seeing the line down the middle of their property, and their attorney has advised them not to sign anything. "We are devaluing their property by cutting it down the middle"

They are however, interested in negotiating a value IF we moved the line to the topside of the property as they had originally discussed last year.

Hope you are having fun in Charleston.

Thanks,

Marc

Mike Frazier

From: Mike Frazier
Sent: Monday, March 31, 2014 9:29 AM
To: 'Marc Regier (mregier@cityofnewberry.com)'
Subject: Oiens

Marc,

Are you and Al ready for PMPA to start condemnation? Was condemnation mentioned Friday? During condemnation, the parties can always talk and work things out, and then the condemnation can be removed. To get this project moving, I strongly suggest we proceed.

Mike

Piedmont Municipal Power Agency
121 Village Drive
Greer, SC 29651
O: 864.848.5409
M: 864.414.9614
mfrazier@pmpa.com



PMPA

Piedmont Municipal Power Agency

121 Village Drive
Greer, SC 29651
www.pmpa.com

(864) 877-9632
(864) 879-2122 fax
(877) 236-3547 toll free

August 14, 2014



Lynn Oien
June Oien
1216 SE Colony Way
Jupiter, FL 33478

RE: Right of Way Agreements with Piedmont Municipal Power Agency

Dear Mr. and Mrs. Oien:

PMPA has been proceeding with the transmission line route that was agreed to by both of you at the meeting we had at the City of Newberry City Hall on March 14, 2014. Attached to this letter are three copies of three right of way agreements, the appraisal covering the area PMPA wishes to have as right of way on your property, a restrictions/guidelines document on what typical things the right of way can and can't be used for since this property still belongs to you, and a blank W-9 IRS form. One agreement covers the bulk of the route, the second covers a small amount on the southern property, and the third is the area that PMPA will transfer to Duke Energy so they may build their connection point (a pole with or without a GOAB (gang-operated air-break) switch on it). All three agreements have exhibits attached showing the location of the right of way.

The right of way ("ROW") allows PMPA to construct and maintain the transmission line. Any trees on the ROW will need to be cleared and any that may fall on the line will also be topped. Loss of any trees has been taken into consideration in the appraisal. You are welcome to remove the trees yourself or hire someone to do this prior to PMPA's contractor doing the clearing.

For allowing PMPA the ROW across your property, PMPA is going to compensate you for the ROW area based on the appraised value of your property. In order to begin this process and get you your check, please date the agreement and you both need to execute these documents (all nine) in front of a notary and two non-related witnesses (the notary can be a witness). If you come in to the City of Newberry City Hall, the city can provide a notary and witnesses. Come to the utility office and ask for Marc Regier for assistance. If you execute the documents on your own, please return these documents to me in the enclosed envelope. Please keep one set of agreements for your records. I will reimburse you the postage paid for returning them.

The enclosed W-9 form needs to be filled out and signed for tax purposes. The W-9 form should be completed in the name of Oien Family Investments, LLC. Please include the completed W-9 form with the agreements you return.

PMPA®

Piedmont Municipal Power Agency

121 Village Drive (864) 877-9632
Greer, SC 29651 (864) 879-2122 fax
www.pmpa.com (877) 236-3547 toll free

PMPA is requesting either the documents be returned or a response from you by August 22, 2014.

Should you have any questions about this process, feel free to contact me at PMPA (864.848.5409 or mfrazier@pmpa.com) or Marc Regier at the City of Newberry (803.321.1018 or mregier@cityofnewberry.com). Thank you for helping PMPA improve the electric reliability and service to the City of Newberry and Newberry County.

Sincerely,

Michael T. Frazier

Michael T. Frazier
Director of Engineering and Power Supply

cc: M. Regier – City of Newberry
J. Wyatt – Bannister, Wyatt, & Stalvey
no attachments

Mike Frazier

From: Coleman Smoak
Sent: Monday, September 29, 2014 1:47 PM
To: Mike Frazier
Subject: Re: Newberry

Thanks

Sent from my Verizon Wireless 4G LTE DROID

Mike Frazier <MFrazier@pmpa.com> wrote:

Coleman,

I talked with Marc this morning. He got pulled into a meeting with the Oiens and Al. Marc said the Oiens want to settle, money isn't an issue, and the line needs to go on the south side. They want to get all parties together with decision makers so a solution can be come to at this meeting.

I will talk with Alan about a possible route. I don't think there is one. The end result of the meeting most likely would be condemnation. Let me get Alan's opinion and I'll get back to you.

Mike

Piedmont Municipal Power Agency
121 Village Dr.
Greer, SC. 29651
(864) 848-5409 office
(864) 414-9614 cell
mfrazier@pmpa.com





Mike Frazier

From: Mike Frazier
Sent: Monday, November 25, 2013 7:56 PM
To: Coleman Smoak
Subject: Re: A little help with a couple of matters

9:30 at his office, which is now back at city hall (where Charles Guerry was).

Mike

Piedmont Municipal Power Agency
121 Village Dr.
Greer, SC. 29651
(864) 848-5409 office
(864) 414-9614 cell
mfrazier@pmpa.com

Coleman Smoak <csmoak@pmpa.com> wrote:

At city hall at 9:30? Or across the street at Marc's office?

Sent from my Verizon Wireless 4G LTE DROID

Mike Frazier <MFrazier@pmpa.com> wrote:

COG is 5th. I was looking at the wrong week.

Alan is going to be there. Your welcome to come. We could probably end this tomorrow if you came.

Mike

Piedmont Municipal Power Agency
121 Village Dr.
Greer, SC. 29651
(864) 848-5409 office
(864) 414-9614 cell
mfrazier@pmpa.com

Coleman Smoak <csmoak@pmpa.com> wrote:

First, yes, we should have one of the Garys with us if possible. I can meet the 9th, 10th, or 11th. COG is on the 5th, isn't it?

Second, would you like for me to be with you at the meeting in Newberry in the morning?

Coleman

Sent from my Verizon Wireless 4G LTE DROID

Mike Frazier <MFrazier@pmpa.com> wrote:

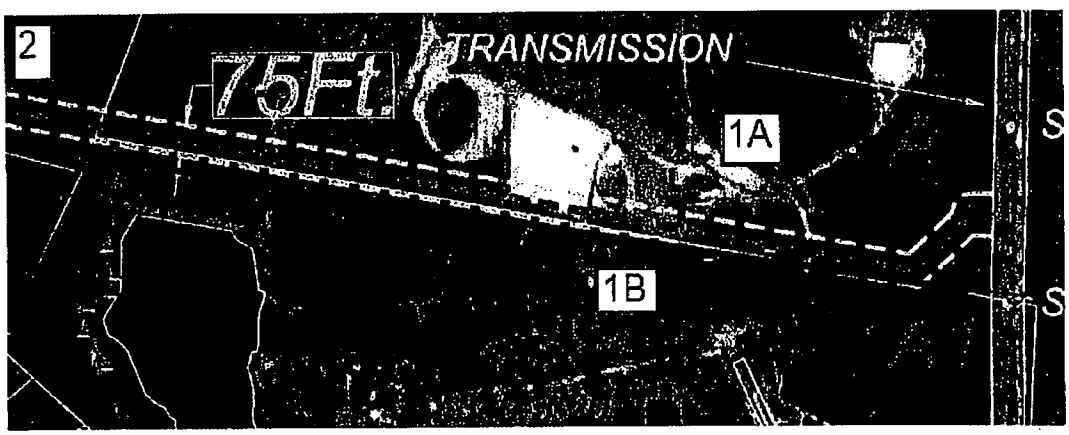
Coleman,

A couple of issues have come up this morning. First was Kent Fonvielle calling me to say let's have a meeting and put this LDER issue to bed. I can't see them agreeing to our point of view and I doubt PMPA (and Rock Hill) will agree to theirs. This is probably just so they can tell the judge they tried to work it out. They want us to pick a day the week of December 9th and they will come to PMPA. Kent said he would be there as well as either Mike Anthony (Charlotte Glassman's boss) or somebody Peeler (Mike Anthony's boss). Probably Charlotte as well. QUESTION: Do want anyone at the meeting other than you and me (i.e. Garys or Jimmy)? What days are you available that week (Thursday is the COG meeting)?

Second issue revolves around the almost never ending saga of the Newberry transmission line and the lingering property owner. That property owner (the Oiens) and their property manager (Paul Major) showed up at City Hall in Newberry this morning wanting to see Al. Since he was out, they begrudgingly talked with Marc. Marc called me during their meeting and relayed that the Oiens want to hear from PMPA (the horse's mouth). The Oiens (really the property manager) were upset that the transmission line did not "hug" the property line as they thought they had requested. PMPA's latest route (should be the first attachment or picture), that Newberry thought the Oiens agreed to, had the line starting on the east side of the property hugging the line, but by the time it got to the west side, it was about 35 ft. of the line. As designed, it is a straight line from the Duke line to Hwy 121. The Oiens feel Marc's isn't tell them the whole story and want to talk with PMPA. I have agreed to meet with them at 9:30 tomorrow morning.

After talking with Alan, he doesn't see an issue if we moved to the property line. The issue that does exist is that it requires another bend for $30k or $40k. The second and third pictures show two alternatives. One put the ROW 5 ft. over the property line and the other puts the centerline on the property line. I know what I want to tell them, which is we're not moving it.

QUESTIONS: Should I hold the line or try to convince them to stay with the current design, but cave in the end to one of the latter line hugging designs and suggest this is the compensation for the ROW?



PMPA®

Piedmont Municipal Power Agency

REPORT ON NEWBERRY 2.1 MILE 115 kV TRANSMISSION LINE ROUTE SELECTION

FOR

PIEDMONT MUNICIPAL POWER AGENCY GREER, SOUTH CAROLINA

PROGRESSIVE ENGINEERING CONSULTANTS, INC.
P.O. BOX 690638 CHARLOTTE, NC 28227 - 7011
TELEPHONE (704) 545-7327 FACSIMILE (704) 545-2315
progress@pecinc.net

February 28, 2013

PLAINTIFF'S EXHIBIT 33
tabbies

BACKGROUND

The City of Newberry, South Carolina owns and operates a 25 kV municipal electric distribution system by receiving service from three power deliveries owned by Duke Energy. The City's electric distribution system had a peak kW demand in the summer of 2012 of 41,337 kW. The City has received notice from their largest customer of a planned increase of their facility electrical demand in the immediate future with plans to further expand their electrical demand over the course of the next few years. This customer presently has an electrical demand of 12,634 kW.

The customer's plans for growth include an immediate 5% increase, with growth over the next 5 years to possibly reach 20%.

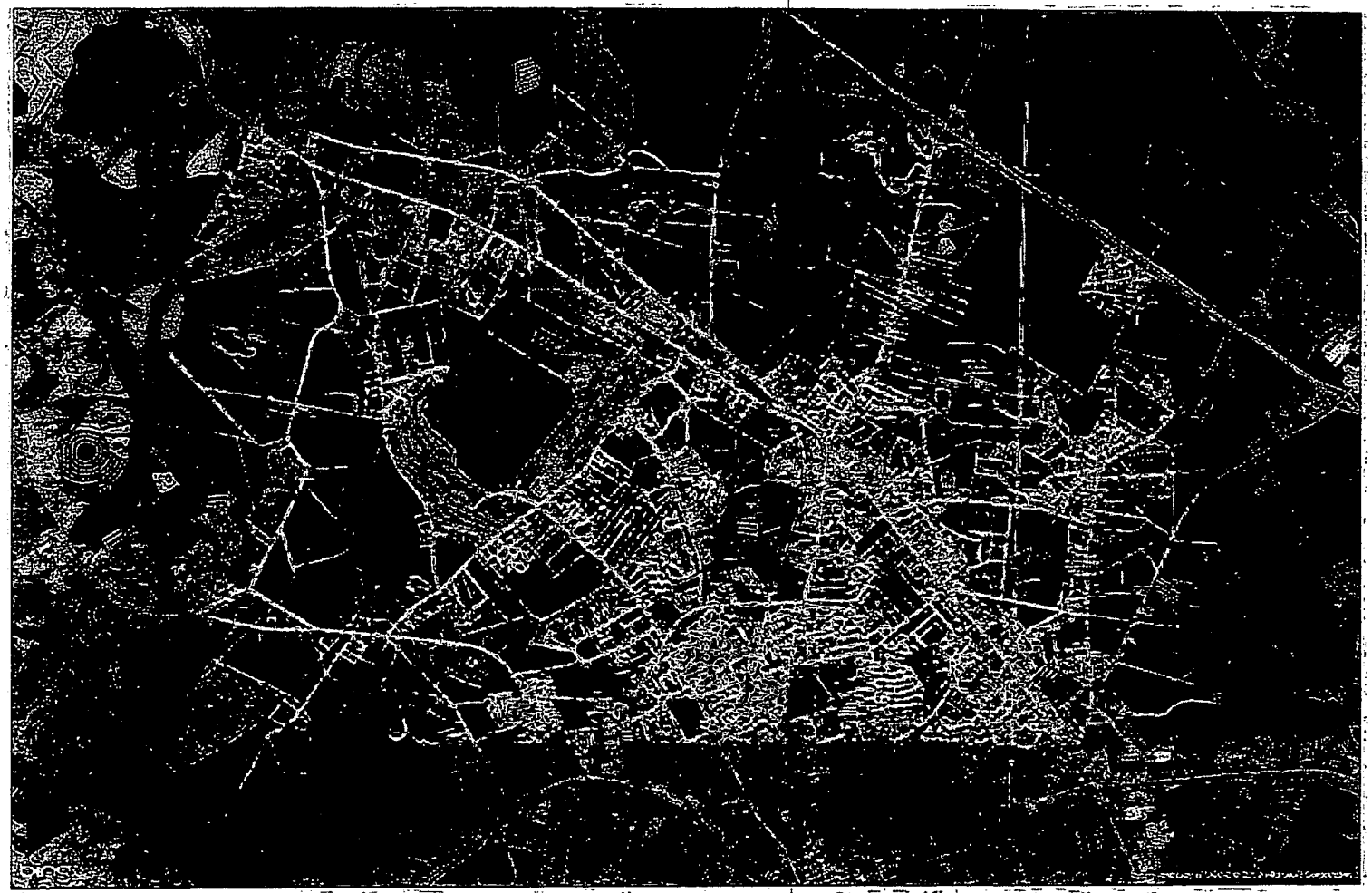
The capacity of the City's existing power deliveries from Duke Energy are not capable of adequately and reliably providing service to this customer at the projected load levels. The City's Delivery #4 which serves this customer is presently operating at 85% to 90% of the available capacity.

As a result of this Customer's load growth, the City has requested that the Piedmont Municipal Power Agency (PMPA) review options for a new 115 kV transmission line to provide service to the City's proposed new substation which is planned to be operational by the spring of 2014. This new substation will adequately serve the increase in load for the near term and provide for additional growth of the City's electric system for many years into the future.

COST OF THE ROUTE

The recommended route has been initially designed with the fewest practical angles in an effort to continually balance the construction cost with the impacts to the property owners. The estimated transmission line installed cost is $2,082,000.00 in accordance with the following line item summary:

Right of Way Purchase	$100,000.00
Right of Way Surveying/Clearing	$292,500.00
Purchase Steel Poles	$292,500.00
Purchase Conductor and Support Hardware	$210,000.00
Line Construction	$840,000.00
Estimated Material/Construction Cost	$1,735,000.00
20% Allowance for Contingency, Overhead, and Engineering	$347,000.00
Total Estimated Installed Cost	**$2,082,000.00**



REVISIONS			ADDENDUMS		
No	DATE	DESCRIPTION	No	DATE	DESCRIPTION

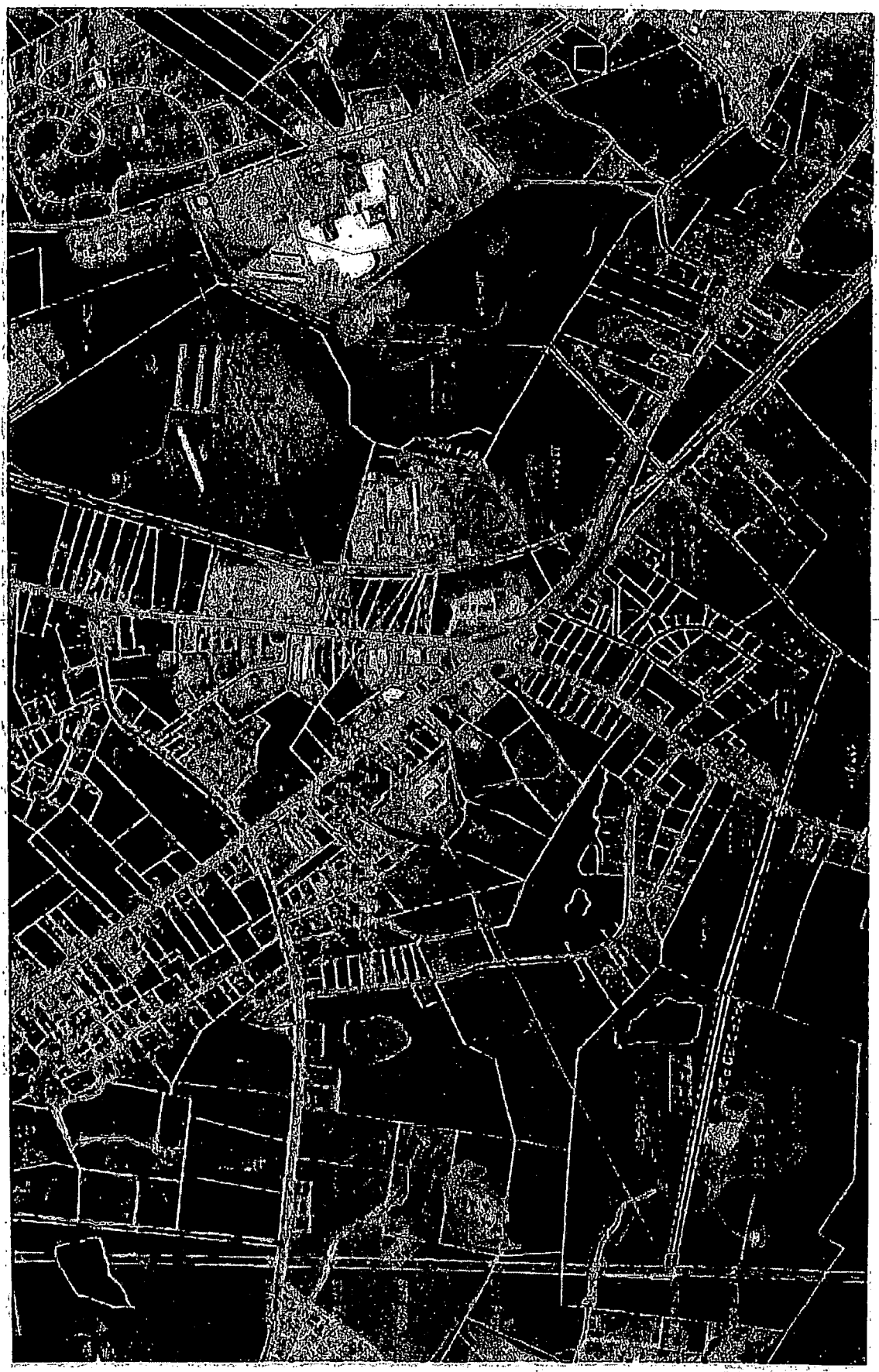
DRAWN BY
CHECKED BY
APPROVED BY

PEC
PROGRESS ENERGY CAROLINAS, INC.
Complete Power Engineering Services
P.O. BOX 600638
CHARLOTTE, N.C. 28227
OFFICE (704) 548-7227
FAX (704) 548-7276

PIEDMONT MUNICIPAL POWER AGENCY
GREER, SOUTH CAROLINA

NEWBERRY 115 kV
TRANSMISSION LINE OPTIONS

PMPA000010



PMPA000011



PMPA000012



PMPA000013

AS NOTED	PROGRESSIVE ENGINEERING CONSULTANTS, INC.	PIEDMONT MUNICIPAL POWER AGENCY	DRAWING NO.
DATE 02/25/2013	Complete Power Engineering Services	CREER, SOUTH CAROLINA	162-03-002
BY RAC	P.O. BOX 690638	NEWBERRY 115 kV	
CHK RAC	CHARLOTTE, N.C. 28227	TRANSMISSION LINE ROUTE	SHEET 1 OF 1
QC RAC	OFFICE: (704) 845-7327 FAX: (704) 845-8316		
ST RAC			

162-03-002 Model_5March 2013.pdf

PMPA000014

773

Mike Frazier

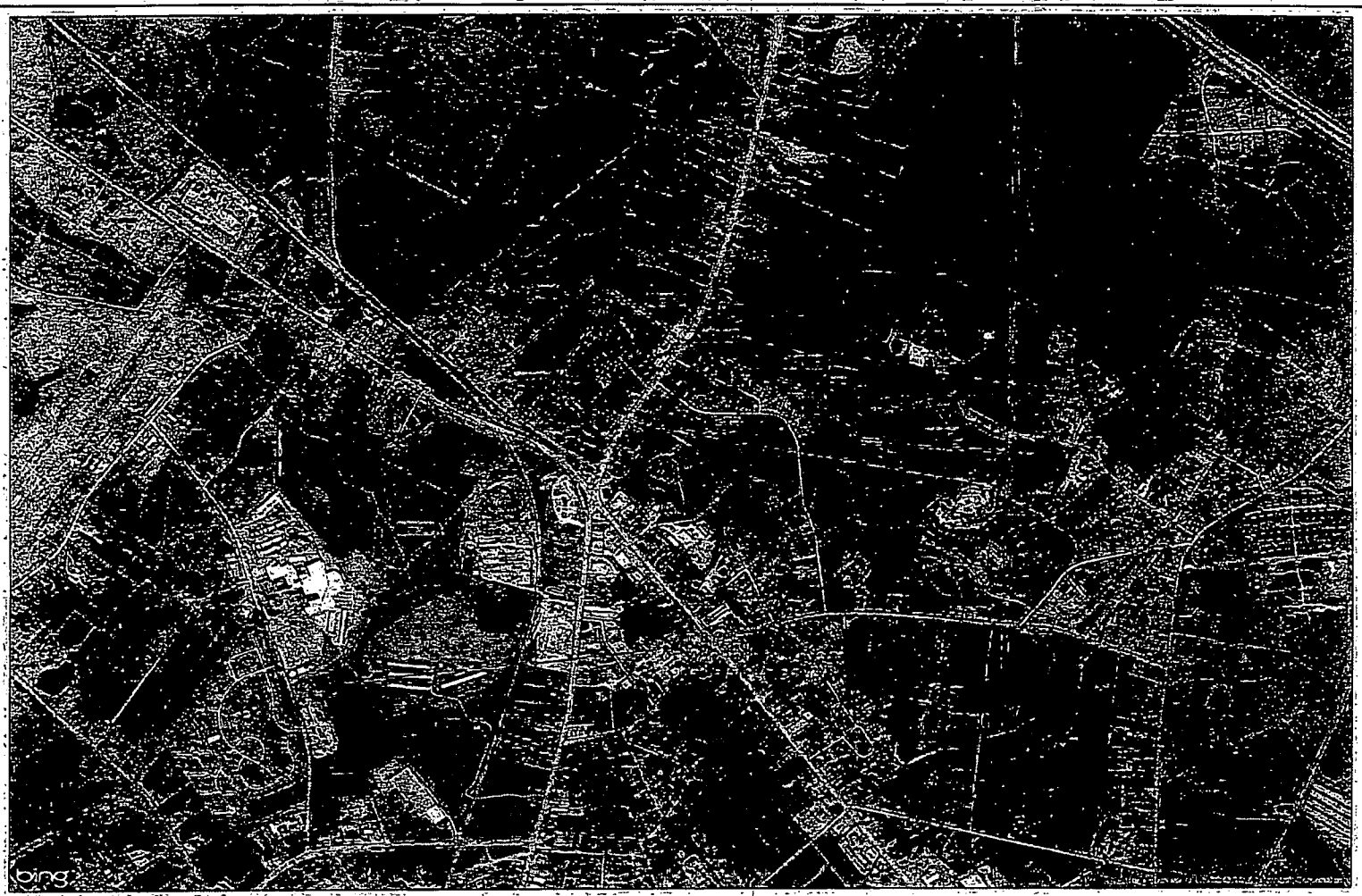
From: Alan Cobb <rac@pecinc.net>
Sent: Thursday, March 14, 2013 3:27 PM
To: Mike Frazier
Subject: Some Alternates
Attachments: 162-03-003 Alt Model (1).pdf

Would you call when you get this?

Thanks
Alan

e

PMPA000015



SCALE FEET 0 1000 2000 3000 500 1500 2500

REVISIONS			REVISIONS		
NO.	DATE	DESCRIPTION	NO.	DATE	DESCRIPTION
1	5/12/13	RESCALED DWG. 162-03-002			

SCALE: AS NOTED
DATE ISSUED: 03/15/2013
DESIGNED BY: RAC
DRAWN BY: RAC
CHECKED BY: RAC
APPROVED BY: RAC

PROGRESSIVE ENGINEERING CONSULTANTS, INC.
Complete Power Engineering Services
P.O. BOX 690638
CHARLOTTE, N.C. 28227
OFFICE (704) 545-7527
FAX (704) 545-5314

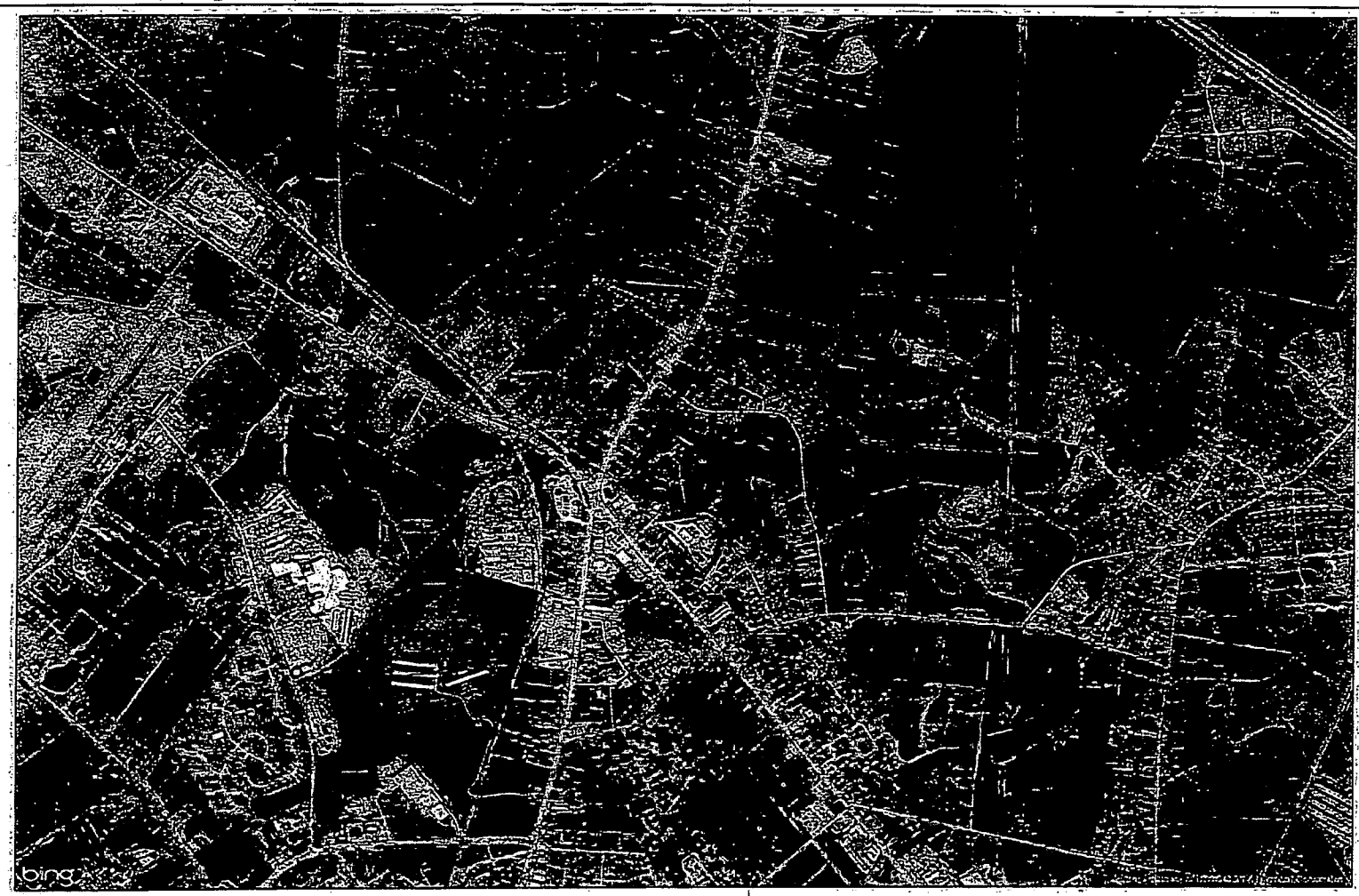
PIEDMONT MUNICIPAL POWER AGENCY
GREER, SOUTH CAROLINA

NEWBERRY 115 kV
TRANSMISSION LINE ROUTE

DRAWING NO 162-03-003

SHEET 1 OF 1

PMPA000016



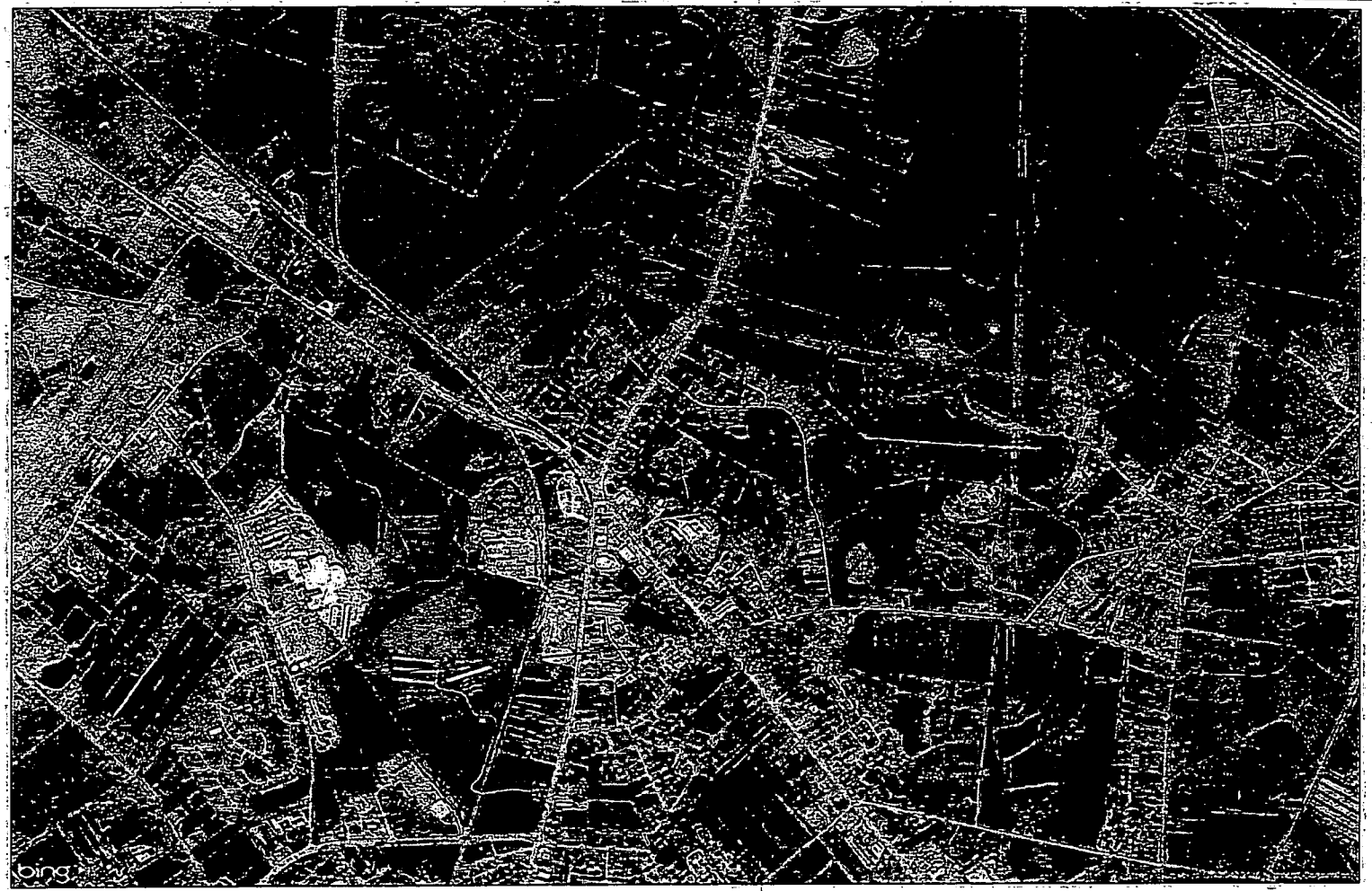
SCALE FEET 0 500 1000 1500 2000 2500 3000

SCALE: AS NOTED DATE ISSUED: 05/13/2013 DESIGNED BY: MJC DRAWN BY: MJC CHECKED BY: MJC APPROVED BY: MJC	PROGRESSIVE ENGINEERING CONSULTANTS, INC. Complete Power Engineering Services P.O. BOX 690638 CHARLOTTE, N.C. 28227 OFFICE (704) 846-9337 FAX (704) 846-9316	PIEDMONT MUNICIPAL POWER AGENCY GREER, SOUTH CAROLINA NEWBERRY 115 kV TRANS. LINE ROUTE FROM STR 334

162-03-004 Tap From Str 334 Model (1).pdf

PMPA000017

776



REVISIONS			REVISIONS		
NO.	DATE	DESCRIPTION	NO.	DATE	DESCRIPTION

SCALE: AS NOTED
DATE ISSUED: 06/10/2013
DESIGNED BY: RMC
DRAWN BY: RMC
CHECKED BY: RMC
APPROVED BY: RMC

PEC PROGRESSIVE ENGINEERING CONSULTANTS, INC.
Complete Power Engineering Services
P.O. BOX 690638
CHARLOTTE, N.C. 28227
OFFICE (704) 846-7887
FAX (704) 846-8316

PIEDMONT MUNICIPAL POWER AGENCY
GREER, SOUTH CAROLINA

NEWBERRY 115 kV
TRANS. LINE ROUTE FROM STR 332

DRAWING NO. 162-03-005

SHEET 1 OF 1

162-03-004-R Model_10Jun2013.pdf

PMPA000018

777



SCALE FEET 0 1000 2000 3000 500 1500 2500

REVISIONS			REVISIONS		
NO.	DATE	DESCRIPTION	NO.	DATE	DESCRIPTION

SCALE: AS NOTED
DATE ISSUED: 05/16/2013
DESIGNED BY: BAC
DRAWN BY: BAC
CHECKED BY: BAC
APPROVED BY: BAC

PEC PROGRESSIVE ENGINEERING CONSULTANTS, INC.
Complete Power Engineering Services
P.O. BOX 690638
CHARLOTTE, N.C. 28227
OFFICE (704) 845-1327 FAX (704) 845-2315

PIEDMONT MUNICIPAL POWER AGENCY
GREER, SOUTH CAROLINA

DRAWING NO. 162-03-005

NEWBERRY 115 kV
TRANS. LINE ROUTE FROM STR 332

SHEET 1 OF 1

162-03-005 Model_Final Draft.pdf

PMPA000019

778

Mike Frazier

From: Mike Frazier
Sent: Thursday, June 13, 2013 4:58 PM
To: Marc Regier; rac@pecinc.net; Todd Guy
Subject: RE: Newberry Transmission Line Route
Attachments: 162-03-004-R Modelv2_13Jun2013.pdf



Using Todd's drawing .....

Mike

PMPA

-----Original Message-----
From: Marc Regier [mailto:mregier@cityofnewberry.com]
Sent: Thursday, June 13, 2013 4:51 PM
To: Mike Frazier; rac@pecinc.net; Todd Guy
Subject: RE: Newberry Transmission Line Route

The "Squares" revision...

-----Original Message-----
From: Mike Frazier [mailto:MFrazier@pmpa.com]
Sent: Thursday, June 13, 2013 4:50 PM
To: Marc Regier; rac@pecinc.net; Todd Guy
Subject: RE: Newberry Transmission Line Route

I did. The bold yellow lines are what I propose. I just guessed at where Todd's drawing would put the line.

Or are you wanting me to draw-up the option where we run behind the squares?

Mike

PMPA

-----Original Message-----
From: Marc Regier [mailto:mregier@cityofnewberry.com]
Sent: Thursday, June 13, 2013 4:36 PM
To: Mike Frazier; rac@pecinc.net; Todd Guy
Subject: RE: Newberry Transmission Line Route



Would you mind sketching up the line the way you are envisioning it?

Thanks,

Marc

-----Original Message-----
From: Mike Frazier [mailto:MFrazier@pmpa.com]
Sent: Thursday, June 13, 2013 4:28 PM
To: Marc Regier; rac@pecinc.net; Todd Guy
Subject: Newberry Transmission Line Route

After discussing with Coleman, let me suggest another route we didn't think of (see drawing). If we angle up from 332 like we said to the high point on the Oiens, from that pole, come straight to the west-side of Kibler. If the King didn't mind, we could bend it up a little more, pass behind the little squares, and hit the southwest-side of his property (line not shown). My assumption has been that someone would have to buy the whole Kibler property. Coleman does not believe a court would do that. He believes only the affected portion would have to be purchased or an easement granted. With that change, we don't need to ask to buy Kibler's property and PMPA can straighten the line.

How does this approach sound?

Mike

PMPA

-----Original Message-----
From: Mike Frazier
Sent: Thursday, June 13, 2013 12:17 PM
To: 'Marc Regier'; rac@pecinc.net; Todd Guy
Subject: Conference Call - Newberry Transmission Line Route Discussion

Today - 3:00 PM

You have been invited to a phone conference. Please dial the conference bridge number at the conference scheduled time followed by your conference password as prompted.

Conference Topic : Newberry Transmission Line Route Discussion

Bridge Dial-in Number: 1-800-887-3199
TeleConference Password: 555333
Start Date and Time: Thurday, June 13, 2013 03:00 PM
Duration: 1 hr 30 min
Recurrence: Not Specified

Participants 4
1 Mike Frazier
2 Marc Regier
3 Alan Cobb
4 Todd Guy

If you feel you received this message in error, please do not reply to this message but, contact the conference organizer. Thank you. Multimedia Conference Manager

Mike Frazier

From: Mike Frazier
Sent: Wednesday, July 03, 2013 3:50 PM
To: Alan Cobb
Subject: RE: Revised Route for Newberry
Attachments: 162-03-005 Model (1).pdf



Alan,

Funny you should ask. I was writing the email below yesterday and never finished. Let's go ahead as I mention below.

If memory serves, you are waiting for the oaks' location before you updated the map. Go ahead and modify the map based on what we know. Keep the starting point where it is so it touches both sides of the property line. Draw it where you think the king will be happy (split the baby) and let's look at it. Also, while you are doing that, I need the acreage or sq. ft. of each of the 15 ROWs (if I counted right).

Happy Fourth.

Mike

PMPA

From: Alan Cobb [mailto:rac@pecinc.net]
Sent: Monday, June 10, 2013 10:19 AM
To: Mike Frazier
Subject: Revised Route for Newberry

Mike,

Please call when you get this. Have some things to discuss prior to sending it to Marc.

Thanks
Alan



Marc Regier

From: Marc Regier
Sent: Tuesday, August 06, 2013 6:44 PM
To: Todd Guy (TGuy@CityofNewberry.com)
Subject: FW: Contacts for appraiser / Surveyor invoice
Attachments: NewberryTLine_ContactList.xlsx



We will need to get together tomorrow on this...

Thanks,

Marc

From: Mike Frazier [mailto:MFrazier@pmpa.com]
Sent: Thursday, July 25, 2013 1:21 PM
To: Marc Regier
Cc: rac@pecinc.net
Subject: Contacts for appraiser / Surveyor invoice

Marc,

Attached is a list of properties and owners that the PMPA transmission line will cross per Alan's last drawing. Please provide any contact information (name and phone number) you may have regarding these properties. The appraiser needs to contact them regarding permission to be on-site and whether the owner wants to be there in person while it's being appraised. If you don't have any info, the appraiser can just use the property tax contact address.

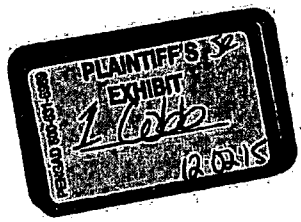
One caveat is Ronald Charette. I don't know if you've spoken with him or not. I am going to make sure Alan nips the corner of his property so PMPA has the danger tree rights from him.

Regarding the invoice for the surveying, I am processing it today.

Thanks.

Mike

Piedmont Municipal Power Agency
121 Village Drive
Greer, SC 29651
O: 864.848.5409
M: 864.414.9614
mfrazier@pmpa.com



Property Owner	Physical Address	Property ID #	Contact Person
Oien	Off Odell Rd	340-3-59	
Oien	680 Odell Rd	340-3-20	same as above
Thomas Kibler	on Hwy 121	338-2	
James William Kibler	E on Hwy 121	340-4-28	
Wilson-West	Hwy 121	337-2-11	
Norrine Kinard	430 Old Whitmire Hwy	337-2-25	
Russell Franklin	148 Old Whitmire Hwy	337-2-30	
Russell Franklin	228 Old Whitmire Hwy	337-2-17	same as above
Boris Alvarado	280 Old Whitmire Hwy	337-2-31	
Ronald Charette	296 Old Whitmire Hwy	337-2-19	
Hyang Lee	2644 Wilson Rd	337-1-3	
West Fraser	on Hwy 76	339-1-11	
Willene Shealy	E of Hwy 545	339-1-38	
Oscar Mayer & Co.	3704 Louis Rich Rd	339-1-37	
Packaging Corp. of America	on by-pass 121	339-1-34	



MEMO

To: Oien file

Date: 10/1/2014

RE: Desires and Concerns by Mr. & Mrs. Lynn Oien as to the Condemnation by PMPA on Their Property

1. **Route of the Line:**
The Oiens (reluctantly) will agree to have the southern route (along the southern boundary of their property) which PMPA drew several months ago – to put the line anywhere else would violate Southern Development v. S.C. Public Service Authority (1991).

2. Because the southern route opens up the easement area for a distance of hundreds of feet to potential trespassers, the Oiens want a 6' chain link fence on the edge of the right of way as a security measure.

3. The substation "meter box" will be on Pole 330 (rather than Pole 331 which is right by the entrance to the Oiens' property), and access to the right of way for PMPA will be off the current Duke right of way point as shown on the attached drawing marked with an "X." PMPA can fence and gate this access point.

4. **Terms of the Right of Way Easement:**
The Oiens are agreeable to a normal, standard easement/right of way agreement – in my 40 years that I have practiced, I have never seen an easement as onerous as the one presented by PMPA to the Oiens a couple of months ago – it can easily be amended to reflect normal terms.

5. Some of the details of the easement which are either unconscionable or present questions for which we need answers:

   (a) Where will the poles physically be? As I understand it, PMPA advised the Oiens that they would be told this well in advance of signing an easement – this can be corrected by a simple map showing where the poles will be.

   (b) The height of the poles – this is obviously an aesthetic issue, and we need to know if the poles are going to be 40' high or 100' high and what they will be constructed of (metal, concrete, wood, etc.)

   (c) What plans does PMPA have for the communications equipment referenced in the easement it sent? We need specifics about this and what revenue sharing they propose to make with the Oiens for any attachment fees, profit splitting fees or whatever revenue is to be gained from such communication devices.

   (d) Danger tree zone needs to be explicit: i.e., the right to harvest dead trees only, not healthy ones.



(e) While the easement is in perpetuity, there needs to be added the standard reverter clause: if PMPA ceases to use the easement for electrical transmission, the land reverts to the Oiens or their successors, assigns, heirs, etc.



ALTERNATE ROUTE STUDY

OIEN PROPERTY, NEWBERRY COUNTY, SC

PMPA 115 kV TRANSMISSION LINE PROJECT

FEBRUARY 29, 2016

WILLIAM J. ROGERS, JR- SRWA

WILLIAM ROGERS COMPANY, LLC

SUBJECT PROPERTY

The Olen property is comprised of 116.7 acres located Newberry County, SC and designated by the county assessor's office as TMS 340-00-03-020 and TMS 340-00-03-059. It is a beautiful generally wooded tract with gently rolling physical features and an open field. It also has a 4 acre +/- pond located in its southwestern corner of the tract. The Olens purchased the property to build a future home and in fact have spent $75,000 or more in developing plans and preparing for their home site.

The tract is accessed by a dirt road within easy access of I-26. There is a Duke Energy right of way traversing the property's eastern boundary. This is the power source PMPA would use as its tap point or beginning point of its proposed transmission line.

Three alternatives were reviewed for this report-Northern Route; Middle Route and Southern Route.

Northern Route

This route would run along the northern boundary of the Olen tract. This route would contain approximately 4.52 +/- acres of right of way being approximately 2,620' +/- in length. This route presents damages to three distinct areas of the property. Damage Area A consists of 1.21 +/- acres, triangular in shape and would be located on the north side of the proposed power line and the northern property line and Duke Energy right of way; Area B would consists of 11.70 +/-acres and located on the north side of the proposed power line and the property's northern boundary line and Area C would consists of .88 +/- acres and located to the west of the proposed power line and the property's western boundary line. This route would have accessibility issues as well as possible tap issues. As far as safety it would be equal to the other routes being evaluated. The accessibility would cause possible reliability issues. As far as aesthetics, it rank second among the routes being considered. This route would require two angle structures.

The estimated right of way costs is calculated as follows:

Right of way area:		4.52 acres @ $5,200 per acre (Major Report)	$23,504
Damage areas	:	A) 1.21 acres @ $5,200 per acre @ 90% damages	5,663
		B) 11.70 acres @ $5,200 per acre @ 50% damages	30,420
		C) .88 acres @ $5,200 per acre @ 90% acres	4,118
Duke Area	:	.08 acres @ $5200 per acre	416
TOTAL RIGHT OF WAY ACQUISITION COSTS ESTIMATED (rounded)			$ 64,120

MIDDLE ROUTE

This route practically cuts the 116 acre tract into two separate parcels. It taps the Duke Energy line and runs in a westerly direction to the western boundary line of the property. This route contains 3.95 +/- acres of right of way and is 2,200' +/- in length. This route, however, presents damages to the remaining 112 acres at 15% and damages to the proposed residential development of $75,000 (information from Major Report). From aesthetics point, this route would be rated the worst of the three routes being evaluated. It would be close to the proposed residential development site. From a safety and reliability point of view it would be close to the southern route but superior to the northern route.

The estimated right of way costs for this route is:

Right of way area of 3.95 +/- acres @ $5,200 per acre	$ 20,540
Damages to remainder of 112 +/- acres @$5,200 per acre @ 15 %	87,000
Residential Damages	75,000
Duke Area :08 acres @ $5200 per acre	416
TOTAL ESTIMATED RIGHT OF WAY COSTS	$182,960

SOUTHERN ROUTE

The southern route taps the existing Duke Energy line just off the current access road into the property and is near the southern boundary. It would proceed in a westerly direction making a turn at the pond and proceed along the pond to a point near the western boundary line of the property. It would then turn north to intersect the proposed middle route before existing the western boundary of the property. This route contains approximately 5.51 acres and is 3,200' +/- in length. As this route is located adjacent to the boundary lines, there are no damages assigned to it. Its access is superior to the other routes so safety and reliability factors are superior to the other routes under review. Aesthetically it is also superior to the other routes as it is located the farthest from the residential site.

The estimated cost to acquire this right of way would be:

Right of way area of 5.51+/- acres @ $5,200 per acre	$28,650
Duke Area of .08 acres @ $5200 per acre	416
Total estimated right of way cost (rounded)	$29,100

SUMMARY OF RW COSTS

The acreages and distances were scaled according to the attached Exhibit. The value numbers were derived from the appraisal report by Paul Major. The evaluations as to aesthetics, safety and reliability are based on my 46 years of experience in the right of way acquisition field. Damage estimates are based on my courtroom experience and litigation experience while conducting these types of acquisitions.

The attached tables and report represent the details of my findings.

MEMORANDUM

To: Thomas Pope, Esquire
From: William J. Rogers, Jr; SRWA
Date: 29-Feb-16
RE: Estimation of Right-of-way Acquisition Costs for Corridors "North", "Middle", "Southern"
Oien Family Property
Newberry County, South Carolina

As per your request for an "estimation of right-of-way acquisition costs" for the above referenced project, please find listed below a summary of my findings.

	Route "N"	Route "M"	Route "S"
Estimated Costs:	$64,120	182,960	29,100
Distance (feet):	2620	2200	3200
R/W Acres:	4.52	3.95	5.51
Total Tracts:	1	1	1
Property Types:	Acres/%	Acres/%	Acres/%
RAL RESIDENTIAL	4.52 100%	3.95 100%	5.51 100%

WILLIAM ROGERS COMPANY, LLC

Summary

Route "N"
Project Name/Account #
Some County

Land Use	Tracts	Distance	R/W Acres	% Total	Cost Estimate
RURAL RESIDENTIAL	1	2620	4.52	100	23,504
TOTALS:	1	2620	4.52	100	23,504

Estimated cost to acquire right-of-way:

1) Right-of-way = 4.52 ACS. @ $5200	23,504
2) DAMAGES TO REMAINDER	
AREA A: 1.21 @ 90%	5,663
AREA B: 11.70 @50%	30,420
AREA C: .88 @ 90%	4,118
3)Duke Area .08 @5200	416

TOTAL ESTIMATED RW COSTS **$64,120**

WILLIAM ROGERS COMPANY, LLC

Summary

Route "M"
Project Name/Account #
Some County

Land Use	Tracts	Distance	R/W Acres	% Total	Cost Estimate
RURAL RESIDENTIAL	1	2200	3.95	100	20,540
TOTALS:	1	2200	3.95	100	20,540

Estimated cost to acquire right-of-way:

1) Right-of-way = 3.95 ACS. @ $5200	20,540	
2) DAMAGES TO REMAINDER		
112 acs. +/- @ 15%	87,000	
House Site	75,000	
3) DUKE AREA; .08 acs @ 5000	416	
TOTAL ESTIMATED RW COSTS		**$182,960**

WILLIAM ROGERS COMPANY, LLC

Summary

Route "S"
OIEN PROPERTY
NEWBERRY COUNTY,SC

Land Use	Tracts	Distance	R/W Acres	% Total	Cost Estimate
RURAL RESIDENTIAL	1	3200	5.51	100	28,650
TOTALS:	1	3200	5.51	100	28,650

Estimated cost to acquire right-of-way:

1) Right-of-way = 5.51 ACS. @ $5200	28,650	
2) DAMAGES TO REMAINDER	0	
3) DUKE AREA; .08 acs @ 5200	416	
TOTAL ESTIMATED RW COSTS		**$29,100**

WILLIAM ROGERS COMPANY, LLC

ESTIMATED TOTAL COSTS

ROUTE	CONSTRUCTION	ENGINEERING	RIGHT OF WAY	TOTAL
N-NORTH	$161,261	45,826	64,120	$271,200 (RD)
M-MIDDLE	$135,410	45,826	182,960	$364,200 (RD)
S-SOUTH	$196,960	66,656	29,100	$292,700 (RD)

Construction and engineering costs are based on a recent line the writer of this report was involved with in Newberry County. It was a single pole 115 kV Transmission Line constructed by Central Electric in 2015 near Prosperity, SC.

Construction Costs Actual were $325,000 per mile or $61.55 per foot.

Engineering Costs Actual were $110,000 per mile or $20.83 per foot.

Right of Way Costs were based on Alternate Route Cost Study contained within this report.

The PMPA report of February 28, 2013 estimated construction costs at $378,570 per mile.

The Central overall actual was $435,000 per mile.

The Central numbers were used in this report as they are actual and represent angle turns, etc.

ROUTE RATINGS

ROUTE	COST	TAP	ACCESS	AESTHETICS	WETLANDS	STRUCTURES	ENVIRONM	RK
N-NORTH	1	3	3	2	1	2	EQUAL	12
M-MIDDL	3	2	2	3	2	3	EQUAL	15
S-SOUTH	2	1	1	1	3	1	EQUAL	9

SCALE: 1= BEST

2= BETTER

3= WORST

WILLIAM ROGERS COMPANY, LLC

CONCLUSIONS

The three routes that were evaluated in this report could all serve PMPA's needs for the electrical system upgrade. The easiest choice would be to select the middle route as it is a straight shot to the objective.

However, prudent route selection methodology and industry standards requires the siting authority to consider more than just taking the path of least resistance. One must consider the various impacts on the environment (human and natural), aesthetics, safety, reliability, land use and cost.

In this case, it does not appear PMPA conducted such a study to objectively review the alternatives. Prudent right of way practices begin with an objective in depth study of alternatives. Most right of way acquisitions do impact property and some more than others. Those impacts need to be included in the study.

The review of the alternatives across the Olen property does in fact evaluate or estimate those possible impacts. The result of that review would clearly favor the southern route. Even if self-supporting poles were used at a cost of $35,000- $50,000 were used on the southern route, it would be lower than or equal to the middle route. It would just as reliable and safe. The aesthetics of the southern route far exceeds the other routes under consideration.

Since this is an "after the fact study" where the landowner has been contacted and negotiations commenced, it has certainly proved that the southern route would be more favorable to the landowner and less expensive for PMPA.

In summary, the study of these alternatives as they pertain to the Olen property, clearly demonstrates that the southern route should be selected as the preferred route.

My review of the PMPA file provided to me, along with a review of the depositions, interviews with Mr. Olen and Mr. Major and personal site visits lead me offer the following opinions:

1) PMPA abused its discretion in that it did not follow industry routing standards
2) PMPA's process of route selection was arbitrary and capricious in that they ignored the effect of the project on landowner's property
3) PMPA did not follow the Santee Cooper case establishing route selection processes
4) PMPA deviated from acceptable right of way practices with regard to eminent domain

5) The Southern Route would have resolved the matter with the Oiens in that has much less impact on the property at a lower overall cost
6) PMPA failed to give proper notice to the Oiens once a selected route decision was made
7) The selection of the route is arbitrary as no detailed study was made comparing it to other route alternatives
8) PMPA did not review the Oien's property with enough study as it simply viewed the tract as a rural timberland property and not as a private retirement retreat without consideration of the Oien's future use of the property

All opinions expressed herein are to a reasonable degree of certainty in the field of route studies in condemnation matters.

Respectfully submitted,



William J. Rogers, Jr., SRWA



QUALIFICATIONS
OF
WILLIAM J. ROGERS, JR.

EDUCATION

Bachelor of Science Degree, Real Estate, Georgia State University, 1972

Graduate Studies, Georgia State University: Business Administration, Advanced Valuation of Real Estate, Real Estate Finance, Feasibility and Marketability Studies, Real Estate Investment and Taxation

Society of Real Estate Appraisers Courses

International Right Of Way Association Educational Courses

Georgia Bar Association Continuing Legal Education, Real Estate Law I, 1980

American Society of Farm Managers and Rural Appraisers -appraisal courses

Appraisal Institute- various appraisal courses and seminars

PROFESSIONAL EXPERIENCE

Georgia Power Company, Land Department from 1970 to 1984:
Right Of Way and site acquisition/appraisal of Right Of Way acquisitions/consultant work/site selection/expert witness testimony

Bell, Cowart and Jackson/CIR Real Estate from 1984 to 1990:
Brokerage of commercial properties/appraisals/feasibility studies/consultant work/expert witness testimony

William Rogers Company from 1990 to Present:
Contract right of way acquisition/appraisal of Right Of Way acquisitions/consultant work/site selection/ commercial real estate brokerage/expert witness testimony

Central Electric Power Cooperative 1999-Present: RW acquisition for electric transmission lines – Currently : Manager of Right of Way Services responsible for a right of way budget of $7,500,000

QUALIFICATIONS OF WILLIAM J. ROGERS, JR. Continued

LICENSES/PROFESSIONAL ASSOCIATIONS (current)

Senior Member of International Right of Way Association
State of South Carolina Licensed Real Estate Broker
Columbia Board of Realtors

CLIENTS (partial list)

Georgia Power Company
Bell South
Central Electric Power Co-Op
The Cain Company
Various Individuals/ Investors
The Southern Company
Fulcrum Development
SC Pipeline
SCDOT
JEBCO Development
Oglethorpe Power Company
Mississippi Power Company
The Colbert Company
L. H. Hearn
Progress Energy
Connolly Development
SCE&G
Ga DOT
WK Dickson

Blow up of transmission line route

PLAINTIFF'S EXHIBIT 42
tabbies

Mike Frazier

From: Mike Frazier
Sent: Thursday, August 21, 2014 2:37 PM
To: 'Lynn Oien'
Cc: Thomas Pope; John Wyatt (jwyatt@bannisterwyatt.com)
Subject: RE: Regarding R.O.W. Proposal



Mr. Oien,

I was referring to the meeting where PMPA was present, which occurred prior to the meeting with the City of Newberry. Forgive me as the date that I referred to may have been incorrect. At the meeting with PMPA present, PMPA's Engineering Consultant had laid out two proposed transmission line routes that you and your wife reviewed. Soon after, you let me know that the route that PMPA is now taking was your preferred route of the two shown during that meeting.

I suggest your attorney should contact PMPA's attorney, John Wyatt (864.298.0084), directly.

Mike

PMPA

-----Original Message-----
From: Lynn Oien [mailto:leo@deltatsystems.com]
Sent: Thursday, August 21, 2014 8:26 AM
To: Mike Frazier
Cc: Thomas Pope
Subject: Regarding R.O.W. Proposal

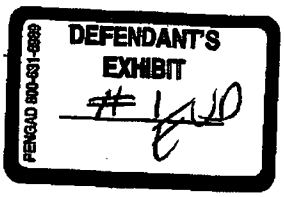
Dear Mr. Frazier,

We received your package with your proposal for a Right of Way through our property. I would like to clear up a point you made in the first sentence of your letter. We did not agree to any transmission line route or contract proposal. We were very specific about that issue in our last meeting with the City of Newberry and their representatives.

Our attorney, Mr. Thomas Pope, will be contacting you shortly in regards to any future matters on this issue.

Best regards,

Lynn Oien
President
Delta T Systems, Inc.
858 W. 13th Court
Riviera Beach, FL 33404
Tel: 561-204-1502
Fax: 561-848-1611
leo@deltatsystems.com



PIEDMONT MUNICIPLAL POWER AGENCY

RESOLUTION 14-04

A RESOLUTION REGARDING ACQUISTION OF RIGHTS-OF-WAY

FOR THE NEWBERRY TRANSMISSTION LINE PROJECT

Whereas, Piedmont Municipal Power Agency ("PMPA"), after research, study, and receipt of recommendations from its consulting engineer, has found that in connection with "The Newberry Transmission Line Project" located in Newberry County, it is necessary to install a 100 KV Transmission Line, which will serve the City of Newberry's new electrical substation, which will provide more reliable and responsive electric service to the citizens and electric customers of the City of Newberry; and

Whereas, based upon recommendations from PMPA's engineers and its own review, PMPA has determined that it is necessary to acquire rights-of-way as outlined in the recommendations referenced above from property owners located near or adjacent to The Newberry Transmission Line Project to accomplish this work; and

Whereas, negotiations with these property owners are underway at this time for the purchase of the aforementioned rights-of-way; now, therefore,

BE IT RESOLVED, that the General Manager and/or his designee are directed to proceed with this project and acquire, through gift, purchase, or exercise of right of eminent domain, as authorized under the provisions of S.C. Code Ann. §6-23-290, the rights-of-way over property mentioned above to construct, operate and maintain The Newberry Transmission Line Project. This authority is to include, but not be limited to, the institution of any and all legal actions necessary to obtain access to the properties, as referenced above, for the purposes of surveying and appraising the property, as well as any and all other actions reasonably associated with acquiring the necessary property for construction; and

BE IT FURTHER RESOLVED that in the event the properties cannot be acquired by gift or purchase, the General Manager and/or his designee shall cause to be instituted condemnation proceedings to exercise PMPA's right of eminent domain under the provisions of S.C. Code Ann. §28-2-10, et. seq., by way of trial as set forth in S.C. Code Ann. §28-2-240, as amended; and

BE IT FURTHER RESOLVED that the General Manager and/or his designee are authorized to negotiate special terms and conditions with property owners as part of such rights-of-way, where appropriate, which are not inconsistent with the needs of PMPA.

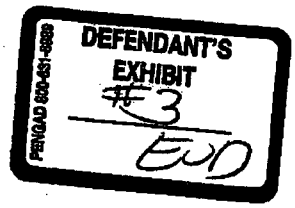
The above Resolution, upon motion duly made, was passed and approved by PMPA at its special meeting held on the 31st day of March, 2014.

PIEDMONT MUNICIPAL POWER AGENCY

BY: _____
Joel D. Ledbetter
ITS: Chairman of Board of Directors

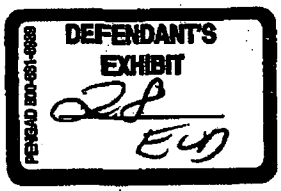
PIEDMONT MUNICIPAL POWER AGENCY
CORPORATE SEAL
1979
SOUTH CAROLINA

Attest: _____
Secretary



Transcript of Recording of Lynn Oien Voicemail to Michael Frazier:

Michael, It's Lynn Oien. We met with you the other day in regards to the power line coming through our property. We walked it. We made the decision that we want to stay with you have right now that you have originally drawn up originally as opposed to changing it so you can move forward and get the final surveying done and finish it up. My number here is 561-891-0831 in case you have any questions. I would appreciate a call just to let me know that you did get this and that everything is okay. Alright. Thanks. Bye.



MAJOR & Company
PHONE: (803) 276-7752 • FAX: (803) 276-7750
PROFESSIONAL FORESTRY • APPRAISALS • REAL ESTATE • WILDLIFE MANAGEMENT
Post Office Box 624 • 787 Wilson Road • Newberry, SC 29108
www.MajorandCo.net

20 November 2015

Thomas H. Pope, III, Esq.
Pope & Hudgens, PA
P.O. Box 190, 1508 College St.
Newberry, S.C. 29108
Via US Mail & E-Mail

Re: **Lands of the Oien Family Investments, LLC**, 116.17 Acres ±, TMS# 340-00-03-020 and TMS# 340-00-03-059, Newberry County, South Carolina

Dear Mr. Pope:

At your request, I have analyzed the subject property for the purpose of estimating its current market value with and without a condemnation for the proposed construction of an electric transmission line by Piedmont Municipal Power Agency (PMPA) through the middle of the subject property and the effect on the land value if the southern route of the proposed transmission line, were to be chosen. The effective date of the valuation is **9 February 2015**.

As you are aware, I am a South Carolina Registered Forester, a South Carolina Certified General Real Estate Appraiser, and a South Carolina Licensed Real Estate Broker, and have been for thirty years. My company specializes in the appraisal of real property and improvements thereon. We also represent sellers and purchasers of primarily rural tracts of real estate in counties all over South Carolina. I have personally handled appraisals, sales, and purchases of numerous rural properties, including forested properties, croplands, and rural residential tracts. My resume is attached.

Client: Oien Family Investments, LLC

Property Rights Appraised: Fee Simple.

Market Value Definition: "The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgably and assuming the price is not affected by undue stimulus. Implicit in this definition is the commutation of a sale of a specified date and the passing of title from seller to buyer under conditions whereby: 1) buyer and seller are typically motivated; 2) both parties are well informed or well advised, and acting in what they consider their own best interests; 3) a reasonable time is allowed for exposure to the market; 4) payment is made in terms of cash in United States dollars or in terms of financial arrangements comparable thereto; and 5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."
-- *Uniform Standards of Professional Appraisal Practice*, The Appraisal Foundation, 2001

Intended Users: Intended users of this report are limited to my client, its attorney, together with any others with whom they share the report. Also, this appraiser assumes the confidential nature of the appraiser-

client relationship and will comply with the confidentiality and privacy laws and regulations applicable to this assignment.

Objective & Purpose of Appraisal: The objective of this appraisal is too assist my client, estimate the market value of the subject real estate as of the effective date under three scenarios:

Scenario 1: The market value of the subject property before a condemnation through the middle of the property.

Scenario 2: The market value of the subject after said condemnation of the middle route.

Scenario 3: The market value of the subject after said condemnation of the southern route.

As a licensed appraiser, I am required to estimate market value based on the definition set forth in the definition above, i.e., what a willing seller would take, and what a willing buyer would pay, for land where neither is under any compulsion to do so. Where applicable, in a condemnation setting, an appraiser can and should consider whether there has been any damage to the remainder of said property as the result of the taking.

Highest and Best Use: "Highest and best use is the reasonably probable and legal use of vacant land or improved property which is physically possible, appropriately supported, financially feasible, and that results in the highest value for the land." – *The Appraisal of Real Estate*, Appraisal Institute, 1992

As a Registered Forester, I have been a forestry consultant for Oien Family Investments, LLC, for several years. I am very familiar with the subject property, which happens to be close to the city limits of the City of Newberry. In terms of total Market Value, this tract is a particularly desirable property because of its location near the City, its easy access to Interstate Highway 26, and because of its lovely, isolated wooded home site. The tract is one which has appeal to an ever-increasing segment of the public who desires a home and wooded environment, and yet be close and accessible to stores and restaurants.

In my opinion, the highest and best use of the subject property is as a high-end rural residential home site. The Oiens assembled this 116 acre tract by purchasing adjoining properties in 2005 and in 2008, which were owned by different landowners, resulting in an aesthetically pleasing tract which has no noisy traffic from public road frontage. The access to this property is via a dirt road of approximately one-half mile in length.

I am personally aware of the fact that the Oiens have spent considerable amounts of money in remodeling the existing pond-side cottage and in developing the home site by grading the site, having underground electric service provided to that site and by drilling a well in the area of the proposed home site. They have also constructed a large metal building which serves as storage for farm equipment and as a shop. This building is located approximately 300 feet from the home site.

Scope of Work: In the appraisal of the subject property, I have completed the following steps and analyses.

1. Inspected the subject property, the neighborhood and the comparables employed in arriving at the value estimates stated herein.
2. Gathered and analyzed data on regional, city and neighborhood characteristic.
3. Gathered pertinent data regarding the subject property and recent improved and unimproved property sales in the general market area.

4. Analyzed the site characteristics, existing improvements, existing and potential zoning, surrounding land uses, and supply and demand to establish the highest and best use of the site.

5. Analyzed the comparable property data to arrive at a probable range of value for the subject via the cost approach, sales comparison approach and the income approach, if appropriate.

6. Performed, or caused to be performed, a statistically accurate inventory of the timber located on the subject property by a licensed registered forester to estimate and analyze the volume and value of said timber.

7. Reconciled the results of these analyses into a final market value estimate as of the effective date of the appraisal and estimated an exposure time and a reasonable marketing period.

8. In connection with this assignment, the appraiser may have conducted interviews and/or possibly obtained information from various persons including, but not limited to:

    - Property Owner
    - Tax Assessor's Office
    - Tax Commissioner's Office
    - Zoning Department
    - Real Estate Brokers
    - Real Estate Appraisers
    - Grantors or grantees of comparable sales
    - Knowledgeable parties of improvements such as contractors, architects, etc.
    - Knowledgeable parties of business income and expenses

Extraordinary Assumptions and Limiting Conditions: An extraordinary assumption per USPAP is "an assumption directly related to a specific assignment which, if found to be false, could alter the appraiser's opinions or conclusion."

-- *Uniform Standards of Professional Appraisal Practice*, The Appraisal Foundation, 2006

A hypothetical opinion per USPAP is "that which is contrary to what exists but is supposed for the purpose of the analysis." -- *Uniform Standards of Professional Appraisal Practice*, The Appraisal Foundation, 2006

This appraisal analysis is subject to the following extraordinary assumptions and hypothetical conditions (if any). If any of the following prove to be false, the appraiser reserves the right to amend his analysis as it may have an effect on the value conclusions stated herein.

- As stated above under "Objective and Purpose of Appraisal," **Scenarios 2 and 3** will require the appraiser to consider the property as if it were subject to the proposed middle and southern transmission lines, respectively.

Proposed PMPA Transmission Line: I became aware of the proposed PMPA transmission line project in approximately June 2013. I saw various potential routes for the transmission line across the Oien property, including a southern route, a middle route, and a northern route. I understand that for various reasons, the northern route was never seriously considered by PMPA or Mr. and Mrs. Oien, primarily because it was too close to the proposed home site that was already in existence.
For the reasons set forth herein, it is my opinion that the southern route is far preferable over the middle route as the middle route will involve substantial diminution of value of the remainder of the Oiens' property because it splits it in the middle.

Concise Report: As agreed upon by myself and my client, this report is brief in nature. The estimated values shown herein are based upon a consideration of all of the pertinent data and all factors, both intrinsic and extrinsic, affecting the subject property. Complete documentation for the analysis and conclusions concerning the subject property is contained in my files and should be considered an integral part of this report. A more detailed Appraisal Report or Restricted Appraisal Report can be prepared for an additional fee.

My final estimates of value and current highest and best use should not be taken out of context or in any manner utilized for the valuation of the subject's component parts without full disclosure of the entire report and documentation.

SUMMARY ANALYSIS

I have considered the market value of the Oien property before a condemnation route through the middle of the property and the market value of the property after said condemnation. I have also considered the market value of the property before a condemnation along the southern border of said property and the market value of that property after said condemnation.

The Effect of the Middle Route on the Value to the Remainder of the Oien Property

The amount of the proposed taking per the PMPA condemnation notice is 3.93 acres. It is my opinion to a reasonable degree of certainty that if the middle route is utilized for the PMPA transmission line (as reflected in is Notice of Condemnation) that this will cause damage to the remaining acreage of the Oien property, i.e., damage to the value of the remaining 112 acres. This damage is because (1) the middle route goes through the tract in such a fashion as to "divide" it into two separate parcels; (2) the Oien home site is only approximately 500 feet from the proposed right of way; and, (3) the damage to its highest and best use is diminished because the transmission right of way and the poles installed thereon would create an aesthetic concern for a reasonable buyer that would devalue the remainder of the 112 acres.

In my opinion, the value of the 116 acres before the taking is $5,200 per acre. The value of the 112 acres after the taking is diminished by an amount between 10% and 20% per acre.

Damage to the Remainder

10% =	$ 520 per acre	x	112 =	$ 58,240	Rounded to	$ 58,000
15% =	$ 780 per acre	x	112 =	$ 87,360	Rounded to	$ 87,000
20% =	$1,040 per acre	x	112 =	$116,480	Rounded to	$116,000

It is my opinion that the increased damage to the Oiens' remaining 112 acres is $87,000 if the middle route were to be used. If a condemnation action using this route were tried, the damage to the Oiens would be increased by at least $87,000.

The Effect of the Southern Route on the Value to the Remainder of the Oien Property

The southern route involves a taking of approximately 3.93 acres for the PMPA right of way (and danger trees on only the southern portion of the Oien forested property). It is my opinion that the value of this taking would be $5,200 per acre x 3.93 acres, a total of $20,436. Damage to the remainder would be

minimal because the Oien home site is on the northern/central portion of the entire tract and over 1,600 feet from the southern right of way.

If the northern route were taken, it would involve approximately three acres for the PMPA right of way (and danger trees on only the northern portion of the tract). This route is too close to the Oien home site and would make it undesirable for a taking, as it would be very detrimental to the Oiens' use of their home site. The right of way taking would involve land worth $5,200 per acre x 3 acres, for a total of $15,600, but also damage to the remainder that I have not calculated precisely, because this route appears to be neither the choice of PMPA nor the Oiens. Also, the Oiens have spent in excess of $75,000 for preparation of their planned home site, including drilling a well, grading the home site, and obtaining buried electric service from Newberry Electric Cooperative for this home site which would not be useable if the northern route were selected.

The middle route, in addition to the value of the taking (3.93 acres x $5,200), would involve damage to the remainder of at least $142,000. This middle route would result in a loss of value to the Oiens of at least $142,000 more than the southern route.

There is no doubt that the effect of the middle route of a transmission line would be very detrimental to the value of the remainder of the Oien tract as it "splits" this lovely home site into two parcels of approximately equal size and adversely affects the tract's aesthetics.

All opinions expressed in this summary appraisal are rendered to a reasonable degree of certainty as a real estate appraiser and broker.

The preceding report is based upon those data, assumptions, and analyses that led to the market value estimate. It is a summary report based upon a complete appraisal process as defined by the Uniform Standards of Professional Practice.

I appreciate your allowing me to do this analysis for you and Mr. and Mrs. Oien. If there are any questions, please do not hesitate to call.

APPRAISAL CERTIFICATION:

I, C. Paul Major, the undersigned appraiser, do certify that, to the best of my knowledge and belief that:

1. I have personally inspected the property which is the subject of this appraisal report.

2. I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.

3. I have no personal interest or bias with respect to the subject property or any individual who does have such interests.

4. To the best of my knowledge and belief, the statements of fact contained in this report, upon which analyses, opinions, and conclusions are based are true and correct.

5. My compensation is not contingent upon an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this report.

6. This appraisal report sets forth all of the limiting conditions imposed by the terms of my assignment or by the undersigned affecting the analyses, opinions, or conclusions in, or the use of, this report.

7. The analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.

8. No one provided significant professional assistance to the person signing this report, except as disclosed herein.

9. This appraisal assignment was not made, nor the appraisal rendered on the basis of a requested minimum valuation, a specific valuation, or the approval of a loan.

10. Information Considered: This appraisal report has been prepared based on the facts and information furnished to this appraiser by the client. This appraiser is not responsible for any information or facts about the subject property not furnished to this appraiser by the client. This information can be in the form of: leases, deed restrictions, title searches, plats, plans and specifications, special assessments, easements, rights of way, flood zones, wetlands, acreages, air rights, mineral rights, subsurface rights, and/or any other facts or data.

Respectfully submitted,

C. Paul Major, ACF, CF
SC Registered Forester #714
SC Certified General Real Estate Appraiser #CG1126

Date

Attachments:

- Assumptions and Limiting Conditions
- Aerial Photo of Middle Route
- Appraiser's Qualifications

ASSUMPTIONS AND LIMITING CONDITIONS

This appraisal is based on the following assumptions, except as otherwise noted in the report.

1. The title is marketable and free and clear of all liens, encumbrances, encroachments, easements and restrictions. The property is under responsible ownership and competent management and is available for its highest and best use.
2. There are no existing judgments or pending or threatened litigation that could affect the value of the property.
3. There are no hidden or undisclosed conditions of the land or of the improvements that would render the property more or less valuable. Furthermore, there is no asbestos in the property.
4. The revenue stamps placed on any deed referenced herein to indicate the sale price are in correct relation to the actual dollar amount of the transaction.
5. The property is in compliance with all applicable building, environmental, zoning, and other federal, state and local laws, regulations and codes.
6. The information furnished by others is believed to be reliable, but no warranty is given for its accuracy.

This appraisal is subject to the following limiting conditions, except as otherwise noted in the report.

1. An appraisal is inherently subjective and represents our opinion as to the value of the property appraised.
2. The conclusions stated in our appraisal apply only as of the effective date of the appraisal, and no representation is made as to the effect of subsequent events.
3. No changes in any federal, state or local laws, regulations or codes (including, without limitation, the Internal Revenue Code) are anticipated.
4. No environmental impact studies were either requested or made in conjunction with this appraisal, and we reserve the right to revise or rescind any of the value opinions based upon any subsequent environmental impact studies. If any environmental impact statement is required by law, the appraisal assumes that such statement will be favorable and will be approved by the appropriate regulatory bodies.
5. Unless otherwise agreed to in writing, we are not required to give testimony, respond to any subpoena or attend any court, governmental or other hearing with reference to the property without compensation relative to such additional employment.
6. We have made no survey of the property and assume no responsibility in connection with such matters. Any sketch or survey of the property included in this report is for illustrative purposes only and should not be considered to be scaled accurately for size. The appraisal covers the property as described in this report, and the areas and dimensions set forth are assumed to be correct.
7. No opinion is expressed as to the value of subsurface oil, gas or mineral rights, if any, and we have assumed that the property is not subject to surface entry for the exploration or removal of such materials, unless otherwise noted in our appraisal.
8. We accept no responsibility for considerations requiring expertise in other fields. Such considerations include, but are not limited to, legal descriptions and other legal matters such as legal title, geologic

considerations such as soils and seismic stability, and civil, mechanical, electrical, structural and other engineering and environmental matters.

9. The distribution of the total valuation in the report between land and improvements applies only under the reported highest and best use of the property. The allocations of value for land and improvements must not be used in conjunction with any other appraisal and are invalid if so used. The appraisal report shall be considered only in its entirety. No part of the appraisal report shall be utilized separately or out of context.

10. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraisers, or any reference to the Appraisal Institute) shall be disseminated through advertising media, public relations media, news media or any other means of communication (including without limitation prospectuses, private offering memoranda and other offering material provided to prospective investors) without the prior written consent of the person signing the report.

11. Information, estimates and opinions contained in the report and obtained from third-party sources are assumed to be reliable and have not been independently verified.

12. Any income and expense estimates contained in the appraisal report are used only for the purpose of estimating value and do not constitute predictions of future operating results.

13. If the property is subject to one or more leases, any estimate of residual value contained in the appraisal may be particularly affected by significant changes in the condition of the economy, of the real estate industry, or of the appraised property at the time these leases expire or otherwise terminate.

14. No consideration has been given to personal property located on the premises or to the cost of moving or relocating such personal property; only the real property has been considered.

15. The current purchasing power of the dollar is the basis for the value stated in our appraisal; we have assumed that no extreme fluctuations in economic cycles will occur.

16. The value found herein is subject to these and to any other assumptions or conditions set forth in the body of this report but which may have been omitted from this list of Assumptions and Limiting Conditions.

17. The analyses contained in the report necessarily incorporate numerous estimates and assumptions regarding property performance, general and local business and economic conditions, the absence of material changes in the competitive environment and other matters. Some estimates or assumptions, however, inevitably will not materialize, and unanticipated events and circumstances may occur; therefore, actual results achieved during the period covered by our analysis will vary from our estimates, and the variations may be material.

18. The Americans with Disabilities Act (ADA) became effective January 26, 1992. We have not made a specific survey or analysis of the property to determine whether the physical aspects of the improvements meet the ADA accessibility guidelines. We claim no expertise in ADA issues, and render no opinion regarding compliance of the subject with ADA regulations. Inasmuch as compliance matches each owner's financial ability with the cost to cure the non-conforming physical characteristics of a property, a specific study of both the owner's financial ability and the cost to cure any deficiencies would be needed for the Department of Justice to determine compliance.

19. The appraisal report is prepared for the exclusive benefit of the Client, its subsidiaries and/or affiliates. It may not be used or relied upon by any other party. All parties who use or rely upon any information in the report without our written consent do so at their own risk.

20. No studies have been provided to us indicating the presence or absence of hazardous materials on the subject property or in the improvements, and our valuation is predicated upon the assumption that the subject property is free and clear of any environment hazards including, without limitation, hazardous wastes, toxic substances and mold. No representations or warranties are made regarding the environmental condition of the subject property and the person signing the report shall not be responsible for any such environmental conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because we are not experts in the field of environmental conditions, the appraisal report cannot be considered as an environmental assessment of the subject property.

21. The person signing the report may have reviewed available flood maps and may have noted in the appraisal report whether the subject property is located in an identified Special Flood Hazard Area. We are not qualified to detect such areas and therefore do not guarantee such determinations. The presence of flood plain areas and/or wetlands may affect the value of the property, and the value conclusion is predicated on the assumption that wetlands are non-existent or minimal.

22. Major & Company, Inc. is not a building or environmental inspector. Major & Company, Inc. does not guarantee that the subject property is free of defects or environmental problems. Mold may be present in the subject property and a professional inspection is recommended.

23. The appraisal report and value conclusion for an appraisal assumes the satisfactory completion of construction, repairs or alterations in a workmanlike manner.

24. It is expressly acknowledged that in any action which may be brought against Major & Company, Inc. or their respective officers, owners, managers, directors, agents, subcontractors or employees, arising out of, relating to, or in any way pertaining to this engagement, the appraisal reports, or any estimates or information contained therein, shall not be responsible or liable for any incidental or consequential damages or losses, unless the appraisal was fraudulent or prepared with gross negligence. It is further acknowledged that the collective liability of Major & Company, Inc. in any such action shall not exceed the fees paid for the preparation of the appraisal report unless the appraisal was fraudulent or prepared with gross negligence. Finally, it is acknowledged that the fees charged herein are in reliance upon the foregoing limitations of liability.

25. Major & Company, Inc. an independently owned and operated company, has prepared the appraisal for the specific purpose stated elsewhere in the report. The intended use of the appraisal is stated in the General Information section of the report. The use of the appraisal report by anyone other than the Client is prohibited except as otherwise provided. Accordingly, the appraisal report is addressed to and shall be solely for the Client's use and benefit unless we provide our prior written consent. We expressly reserve the unrestricted right to withhold our consent to your disclosure of the appraisal report (or any part thereof including, without limitation, conclusions of value and our identity), to any third parties. Stated again for clarification, unless our prior written consent is obtained, no third party may rely on the appraisal report (even if their reliance was foreseeable).

26. The conclusions of this report are estimates based on known current trends and reasonably foreseeable future occurrences. These estimates are based partly on property information, data obtained in public records, interviews, existing trends, buyer-seller decision criteria in the current market, and research conducted by third parties, and such data are not always completely reliable. Major & Company, Inc. and the undersigned are not responsible for these and other future occurrences that could not have reasonably been foreseen on the effective date of this assignment. Furthermore, it is inevitable that some assumptions will not materialize and that unanticipated events may occur that will likely affect actual performance. While we are of the opinion that our findings are reasonable based on current market conditions, we do not represent that these estimates will actually be achieved, as they are subject to considerable risk and uncertainty. Moreover, we assume

competent and effective management and marketing for the duration of the projected holding period of this property.

27. All prospective value estimates presented in this report are estimates and forecasts which are prospective in nature and are subject to considerable risk and uncertainty. In addition to the contingencies noted in the preceding paragraph, several events may occur that could substantially alter the outcome of our estimates such as, but not limited to changes in the economy, interest rates, and capitalization rates, behavior of consumers, investors and lenders, fire and other physical destruction, changes in title or conveyances of easements and deed restrictions, etc. It is assumed that conditions reasonably foreseeable at the present time are consistent or similar with the future.

28. The estimate of value in this report has been made assuming no impact on value because of "Section 404 Wetlands" as defined by the U.S. Army Corps of Engineers. We wetlands are not experts and urge the client to seek the advice of an expert to determine any potential impact of "wetlands" on the property.

29. It is assumed that the subject structure or structures are free and clear of any and all termites or other wood destroying insects, and that there are no present or past visible lathed damage from past infestation.

30. It is assumed that all mechanical systems located in or part of the subject improvements are in proper working order.

31. The cost numbers and calculations used in the cost approach are for valuation purposes only and should under no circumstances be used for insurance purposes.

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FEB 23 2017
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

Appellate Case No. 2016-001037

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2015-CP-36-00120

RECEIVED
FEB 23 2017
SC Court of Appeals

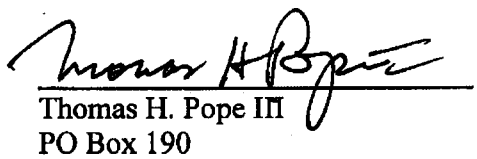
Oien Family Investments, LLC.....Appellant

v.

Piedmont Municipal Power Agency.....Respondent

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Record on Appeal complies with Rule 210(g), SCACR.



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February 24, 2017

Attorneys for Appellant Oien Family Investments, LLC