PASSED 9-0

ORDINANCE 16-12

TO VACATE PUBLIC PARCELS - Re: Two 12-Foot Wide Alley Segments and Two Fifty-Foot Wide Street Segments Located at the Northwest Corner of West 11th Street and North Rogers Street (Duke Energy Indiana, LLC, Petitioner)

WHEREAS, I.C. §36-7-3-12 authorizes the Common Council to vacate public ways and places upon petition of persons who own or are interested in lots contiguous to those public ways and places; and

WHEREAS, the petitioner, Duke Energy Indiana, LLC, (hereafter, "Duke") has filed a petition to vacate four parcels of City property more particularly described below; and

WHEREAS, pursuant to I.C. §36-7-3-16, the City received written communications from utility services regarding their interests in the right-of-way and those communications are on file and available for inspection at the City Planning and Transportation Department and the Clerk and Council Office at 401 North Morton Street, Bloomington, Indiana 47402; and

WHEREAS, pursuant to I.C. §36-7-3-12(c), the City Clerk has provided notice to owners of abutting property and published notice of the public hearing on this matter, which was held during the Common Council Regular Session on Wednesday, June 29, 2016 at 7:30 p.m. in the Council Chambers, Room 115, of City Hall, 401 North Morton Street; and

WHEREAS, as represented in its petition, Duke intends to use the proposed vacated property described below, along with other parcels acquired from private property owners, for the construction of an electrical substation facility; and

WHEREAS, in response to concerns expressed by residents and members of the Common Council, the Council President assigned Councilmember Sturbaum to serve as the Council's representative in negotiations with Petitioner regarding the proposed substation facility site plan; and

WHEREAS, Councilmember Sturbaum, representatives from City Administration, and the Petitioner have negotiated in good faith; and

WHEREAS, as a result of these negotiations, Petitioner has agreed to certain commitments, and
the City and the Petitioner have memorialized those commitments in a Memorandum of Understanding (the "MOU"); and

WHEREAS, the MOU and its attendant exhibits is attached to this Ordinance as Exhibit A; and

WHEREAS, in vacating a public way, the legislative body must find that the vacation is for the public good; and

WHEREAS, the Council finds that the vacation of the below-listed property is for the public good provided the MOU, attached here as Exhibit A, is executed;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Through the authority of I.C. §36-7-3-12, four portions of City owned property shall be vacated.

SECTION 2. The first property is a north/south alley segment running between Lots 59 and 60, north from West 11th Street, more particularly described as follows:

> Beginning at the Southeast corner of Lot 60 in said Maple Heights and on the north right-of-way line of West 11th Street; Thence on the east line of Lot 60 North 00 degrees 33 minutes 13 seconds East 132.24 feet to the south line of an east west alley; Thence leaving said east lines and on said south line North 89 degrees 35 minutes 29 seconds East 12.00 feet to the west line of Lot 59; Thence leaving said south line and on the west line of Lot 59 South 00 degrees 33 minutes 13 seconds West 132.25 feet to the north line of said West 11th Street; Thence leaving said west lines and on said north line South 89 degrees 37 minutes 37 seconds West 12.00 feet to the Point of Beginning containing within said bounds 0.04 ACRES (1,586.7 sq. ft.) be the same more or less but subject to all rights-of-way and easements according to a survey by Douglas R. Curry, Registered Land Surveyor No. 890006 in April of 2015.

SECTION 3. The second property is an east/west alley segment running between Lots 57, 58, 59, 60, 61, 62, 63, 64, 65 and 66 west from North Rogers Street, more particularly described as follows:

> Beginning at the Southwest corner of Lot 62 in said Maple Heights; Thence on the south line of Lots 62, 63, 64, 65 and 66 North 89 degrees 35 minutes 29 seconds East 285.10 feet to the west right-of-way of Rogers Street; Thence leaving said south lines and on said right-of-way South 00 degrees 31 minutes 31 seconds West 12.00 feet to the north line of Lots 57, 58, 59, 60 and 61; Thence on said north line South 89 degrees 35 minutes 29 seconds West 285.11 feet to the Northwest corner of Lot 61; Thence leaving said north lines North 00 degrees 34 minutes 25 seconds East 12.00 feet to the Point of Beginning containing within said bounds 0.08 ACRES (2,421.2 sq. ft.) be the same more or less but subject to all rights-of-way and easements according to a survey by Douglas R. Curry, Registered Land Surveyor No. 890006 in April of 2015.

SECTION 4. The third property is a street segment of North Jackson Street bordered by a previously vacated segment of North Jackson Street, West 11th Street and Lots 2 and 61, more particularly described as follows:

> Beginning at the Southwest corner of Lot 61 in said Maple Heights and on the north right-of-way line of West 11th Street; Thence on said north line South 89 degrees 37 minutes 37 seconds West 50.01 feet to the Southeast corner of Lot 2 of said Maple Heights; Thence leaving said north line and on the east line of said Lot 2 and Lot 1 North 00 degrees 34 minutes 25 seconds East 144.13 feet to the north line of an east west alley; Thence leaving said east line and on said north line North 89 degrees 35 minutes 29 seconds East 50.01 feet; Thence leaving said north line and on said west line of Lot 61 South 00 degrees 34 minutes 25 seconds West 144.17 feet to the Point of Beginning containing within said bounds 0.17 ACRES (7,207.5 sq. ft.) be the same more or less but subject to all rights-of-way and easements according to a survey by Douglas R. Curry, Registered Land Surveyor No. 890006 in April of 2015.

SECTION 5. The fourth property is a street segment of West 12th Street bordered by a previously vacated segment of West 12th Street, North Rogers Street, and Lots 66 and 73 in the Maple Heights Second Addition, more particularly described as follows:

> Beginning at the Southeast corner of Lot 73 in said Maple Heights and on the west right-of-way line of North Rogers Street; Thence on said west line South 00 degrees 31 minutes 31 seconds West 50.01 feet to the northeast corner of Lot 66; Thence leaving said west line and on the north line of Lot 66 South 89 degrees 33 minutes 20 seconds West 43.99 feet to the northwest corner of said Lot 66; Thence leaving said north line North 00 degrees 31

minutes 20 seconds East 50.01 feet to the southwest corner of said Lot 73; Thence on the south line of said Lot North 89 degrees 33 minutes 20 seconds East 43.99 feet to the Point of Beginning containing within said bounds 0.05 ACRES (2,199.59 sq. ft.) be the same more or less but subject to all rights-of-way and easements according to a survey by Douglas R. Curry, Registered Land Surveyor No. 890006 in April of 2015.

SECTION 6. The Common Council hereby authorizes and approves the MOU and authorizes its execution by the Mayor on behalf of the City.

SECTION 7. This ordinance shall be in full force and effect upon: (a) adoption; and (b) the execution of the MOU, attached as Exhibit A, no later than September 2, 2016.

SECTION 8. The executed MOU shall be filed in the City Clerk's Office. Pursuant to §36-7-3-12(e), the City Clerk is directed to furnish a copy of this ordinance, duly adopted, and a copy of the executed MOU to the Monroe County Recorder's Office to be recorded and to the Monroe County Auditor. If the MOU is not executed by September 2, 2016, the City Clerk shall append an annotation to this ordinance indicating as much.

SECTION 9. If any section, sentence or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

PASSED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 31st day of August, 2016.

ANDY RUFF, President
City of Bloomington, Common Council

ATTEST:

NICOLE BOLDEN, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 1st day of September, 2016.

NICOLE BOLDEN, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 1st day of September, 2016.

JOHN HAMILTON, Mayor
City of Bloomington

Distributed to: Planning and Transportation, Legal, Mayor, CCA

Monroe County Recorder, Monroe County Auditor

SYNOPSIS

The petitioner, Duke Energy Indiana, LLC, requests vacation of two segments of alley right-of-way and two segments of street right-of-way at the northwest corner of West 11th Street and North Rogers Street in order to facilitate construction of a utility substation.

Note: This ordinance was amended by Am 01 to refer to a MOU memorializing conditions agreed to by Petitioner and the City. The amendment authorizes and approves the MOU and its execution by the Mayor on behalf of the City. The amendment also makes the ordinance effective upon both adoption and the execution of the MOU.

EXHIBIT
A

MEMORANDUM OF UNDERSTANDING
between the
CITY OF BLOOMINGTON
and
DUKE ENERGY INDIANA, LLC

This Memorandum of Understanding, entered into this 31st day of August, 2016, by and between the City of Bloomington, Indiana (the "City") and Duke Energy Indiana, LLC ("DEI") WITNESSETH THAT:

WHEREAS, DEI plans to construct an electric substation facility ("Substation") upon approximately 2.7 acres of land located at the northwest corner of 11th Street and Rogers Street in Bloomington (the "Site"); and

WHEREAS, the Substation is the subject of DEI's Petition for Vacation of Rights of Way identified as Ordinance 16-12, to be voted upon by the City of Bloomington Common Council on August 31, 2016; and

WHEREAS, DEI and the City have agreed to certain commitments on the part of DEI in conjunction with its construction and operation of the Substation and associated transmission and distribution lines;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. DEI will situate the Substation substantially in accordance with **Exhibit A** attached hereto and made a part hereof (the "Site Plan"). DEI anticipates the Substation and the Site will have the following characteristics:

a. Eastern Access-- DEI: Exclusive DEI access from Rogers Street

b. Southern Access-- DEI: DEI anticipates utilizing an easement that it will retain

c. Site Access-- 3rd Parties: From 11th Street at a location to be determined by DEI

d. Reserved Setback: 20' exclusive use surrounding the Substation enclosure

e. Other Characteristics: As determined by DEI during engineering and construction

f. Drainage: DEI will determine necessary and appropriate drainage needs for the Site and will construct infrastructure as necessary.

2. DEI will build, or cause to be built, an enclosure wall around the Substation substantially similar to the enclosure described below and illustrated on **Exhibit B** attached hereto and made a part hereof. DEI anticipates the wall will have the following characteristics:

a. Height: 18'

b. Thickness: 6"

c. Material: Primarily concrete; may be pre-cast

d. Appearance: Brick appearance (e.g., stamped brick) with accents

e. Color: "Brandywine" or similar shade as supplied by a vendor

f. Gate: At present, no specific gate design or product has been selected. DEI agrees to install a gate that will partially or fully obstruct the view of the interior of the Substation by passersby and that will complement the wall. Specifications and details of the gate will be determined as engineering and construction proceed.

3. Following completion of the Substation and all associated improvements, and any and all other necessary access and other infrastructure needs and requirements (as determined solely by DEI), the remaining land upon the Site will be offered for sale for development purposes that are consistent with the adjoining Substation use. An approximation of the land anticipated to be made available for sale is shown in **Exhibit A** attached hereto and made a part hereof (the "Remaining Land"), subject to reservation of easements for future transmission and/or distribution lines or other electrical distribution facilities. Any sale of all or any portion of the Remaining Land shall be made subject to covenants, easements, conditions and other restrictions as may be determined by DEI in its sole and absolute discretion (collectively, the "Restrictions"). DEI shall make commercially reasonable good faith efforts to sell the Remaining Land, with any such sale being subject in all respects to the Restrictions. If all or any portion of the Remaining Land has not been sold within five years following completion of the Substation, DEI agrees to enter into negotiations with the City for the sale of such Remaining Land, subject in all respects to the Restrictions. Portions of the Site generally identified in **Exhibit A** as "Dry Detention Basin and Transmission Line" may be suitable for future parking needs associated with the Remaining Land and may also be necessary for DEI or future owners of the Remaining Land to meet Site drainage needs and requirements. To the extent possible, as determined by DEI in its sole discretion, DEI agrees to make an as yet undetermined portion of the "Dry Detention Basin and Transmission Line" area available for parking needs associated with the Remaining Land. Any such parking area will be offered by DEI pursuant to a license agreement containing terms, conditions and restrictions acceptable to DEI in its sole discretion.

4. DEI agrees to meet with the City regarding plans for the route(s) for transmission and distribution lines serving the Substation, and to hold at least one (1) public meeting and consider public comment when determining such route(s).

5. Following completion of the Substation and all associated improvements, and any and all other necessary access and other infrastructure needs and requirements (as determined solely by DEI), the City may submit a landscaping plan for the Site (collectively, the "Landscaping Plan") for DEI's review, comment and approval. Following DEI's review and comment upon, and final approval of, the Landscaping Plan, DEI agrees that the City shall have the right (but not the obligation) to install plants, trees and other landscaping upon the Site (collectively, the "Landscaping") in accordance with the Landscaping Plan, and to maintain such Landscaping,

subject to and in accordance with the following conditions, limitations and restrictions: (a) no Landscaping may be installed within the Substation area and/or the Reserved Setback; (b) strict limits (including prohibitions) may be placed upon installation of Landscaping under or in close proximity to electrical transmission and/or distribution lines and related electrical facilities as necessary to protect DEI facilities and to secure continuous operation thereof, in accordance with DEI's customary facilities protection requirements; (c) the Landscaping shall not interfere with any utility, drainage and/or other facilities installed or to be installed upon the Site; (d) the Landscaping and associated maintenance shall not otherwise interfere with DEI's operation of the Substation; and (e) all Landscaping must be maintained by the City, and any Landscaping that dies or is not otherwise being maintained shall be replaced or removed with reasonable promptness by the City following written notice from DEI (or, failing such replacement or removal after notice, such Landscaping may be removed by DEI at the City's expense). Following DEI approval of the Landscaping Plan, the City shall be granted a conditional and limited right of entry upon the Site for the sole and exclusive purpose of installing and maintaining the Landscaping contemplated by the Landscaping Plan (the "Right of Entry"). The Right of Entry may be exercised by the City upon not less than forty-eight (48) hours' prior written notice to DEI, and the City shall be required to coordinate all such activities with DEI and to comply with any and all other DEI insurance, Site protection and related requirements.

6. The commitments made by DEI in this MOU shall be contingent upon, and subject to, DEI's approval of final construction specifications, details, and engineering (the "Substation Plans"). While DEI does not anticipate material amendments or modifications to the Site Plan or the Substation Plans, DEI must (to protect the interest of the public served by DEI) reserve the right to amend or modify its commitments due to unforeseen circumstances, as development of the Site and construction of the Substation proceeds.

7. The commitments made by DEI in this MOU shall be further contingent upon, and subject to, the City of Bloomington Common Council passing Ordinance 16-12 at its meeting on August 31, 2016. Such passage must be made by the Common Council without conditions or stipulations which are: (a) in significant addition to those contained in this MOU; and/or (b) unacceptable to DEI because of material additional unreimbursed cost, difficulty of execution or possible interference with DEI's current or proposed future use the Site, all as determined by DEI in its sole discretion.

8. DEI makes no commitments concerning its plans for development of the Site or construction of the Substation other than as set forth in this MOU.

9. This MOU may only be relied upon by DEI and the City. Nothing contained in this MOU shall create or be deemed to create any right of action or other legal rights in favor of or enforceable by any third party or by the public in general.

10. If a court declares that any section, sentence, provision or application of Ordinance 16-12 is invalid and such invalidity has the effect of depriving DEI of the permanent vacation of the parcels referenced in Ordinance 16-12, then at DEI's election, the MOU shall be terminated and shall be rendered null and void and of no further force or effect.

[SIGNATURE PAGE FOLLOWS]

CITY OF BLOOMINGTON

BY: _____
John Hamilton, Mayor

DUKE ENERGY INDIANA, LLC

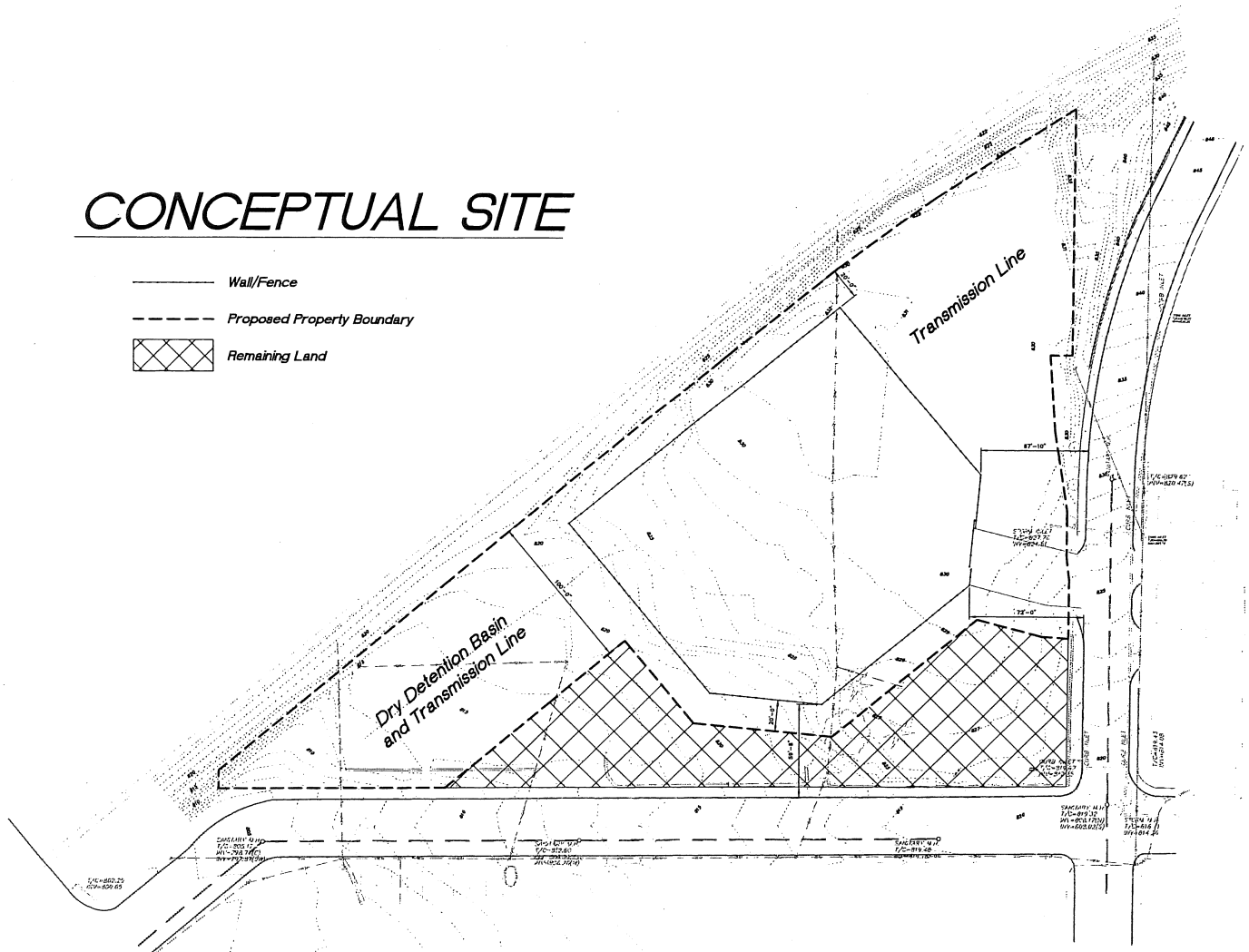
BY: _____
Melody Birmingham-Byrd, President

CONCEPTUAL SITE

Wall/Fence

Proposed Property Boundary

Remaining Land

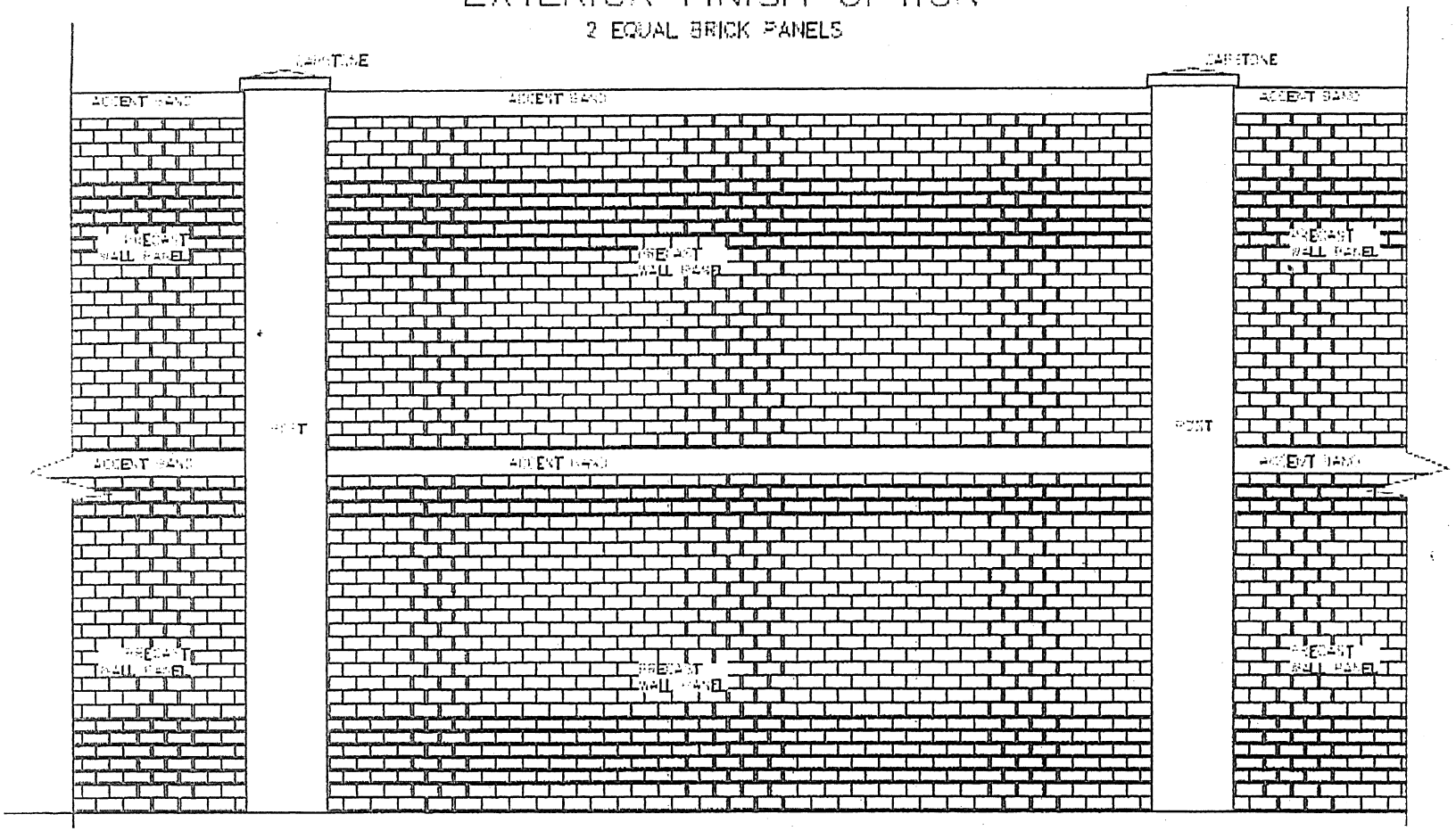


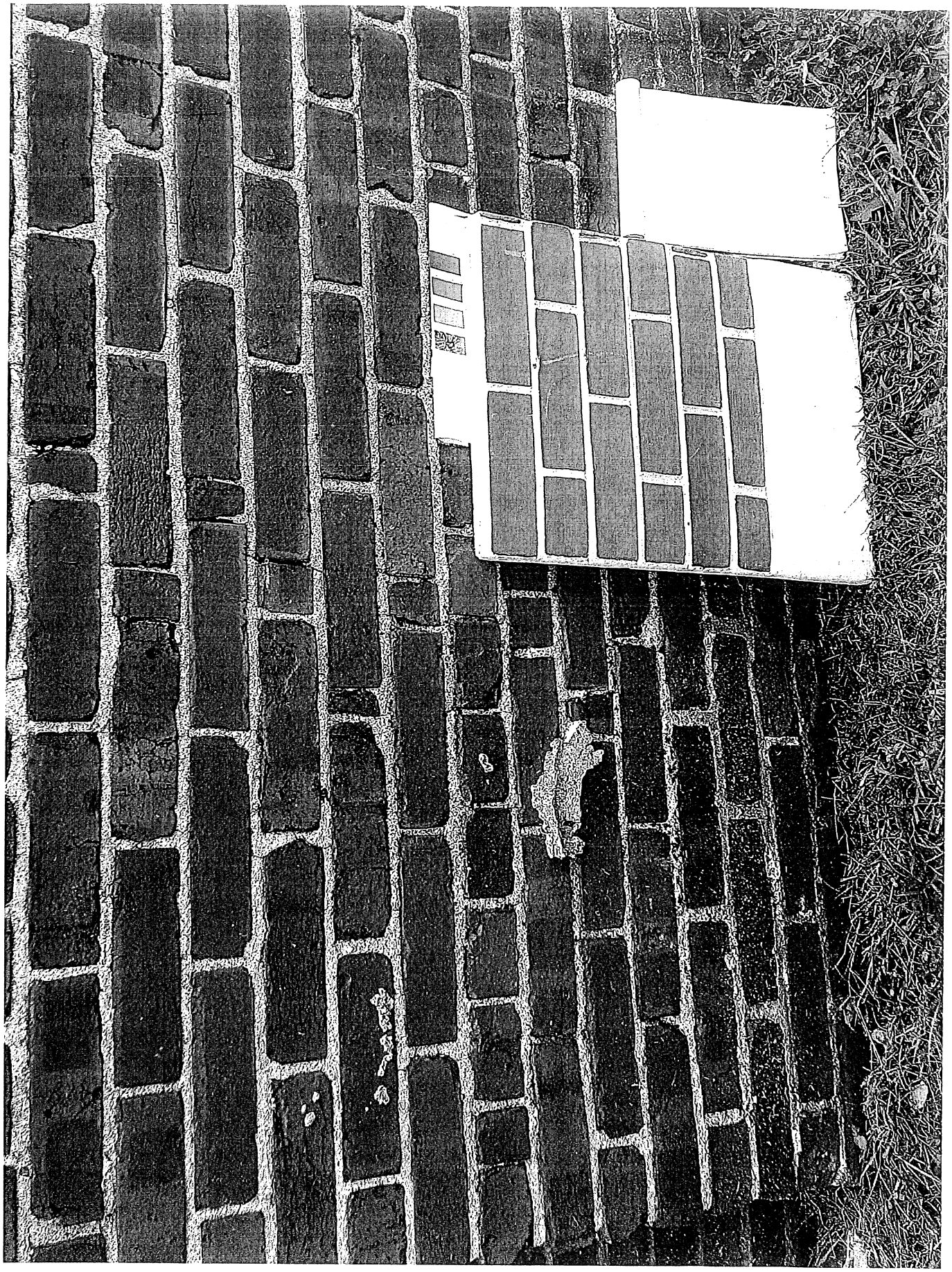
SEAL:	THIS DRAWING OR BILL OF MATERIAL IS CONFIDENTIAL AND MAY NOT BE LOANED, REPRODUCED OR COPIED, EITHER WHOLLY OR IN PART, OR MADE PUBLIC IN ANY MANNER WITHOUT THE WRITTEN CONSENT OF DUKE ENERGY CORPORATION.	DRAFTED BY: / DESIGNED/CHECKED BY: / ENGINEER: / DETAIL PROJECT NO: / BM/FUNDING PROJECT: / DATE ISSUED:	☐ PRELIMINARY ☐ APPROVAL ☐ AS BUILT DATE ____ NAME ____ DUKE ENERGY.	FILENAME: sim-11bst-conceptual.dwg TITLE: SITE LOCATION 69-13.09KV SUBSTATION PLAN PRELIMINARY LOCATION: BLOOMINGTON 11TH ST SCALE: 1"=30' SCALE FACTOR: 360 STA NO: XXX REV: 0 DWG NO: D-XXX-G-1

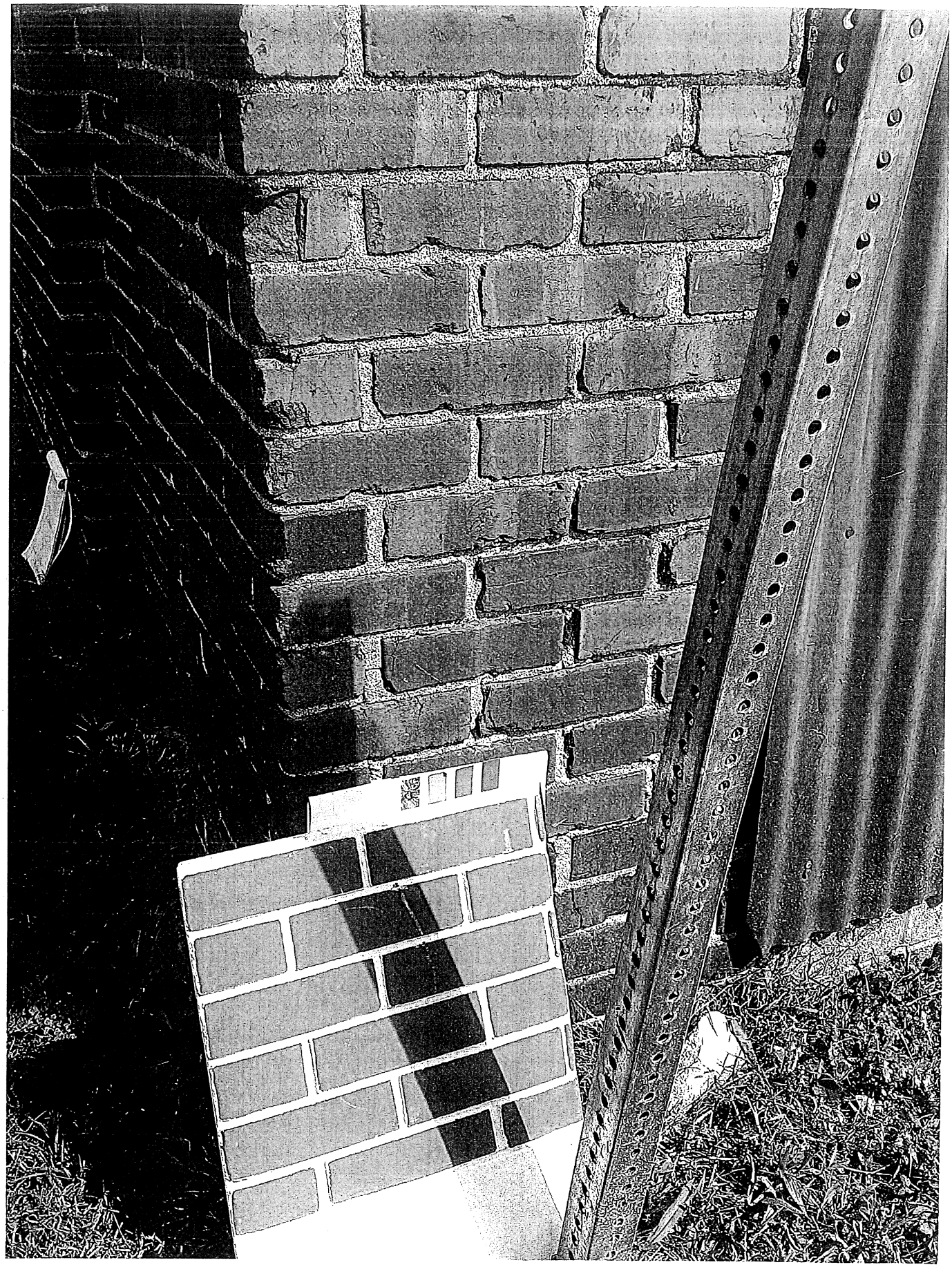
Ex A p. 1 of 1

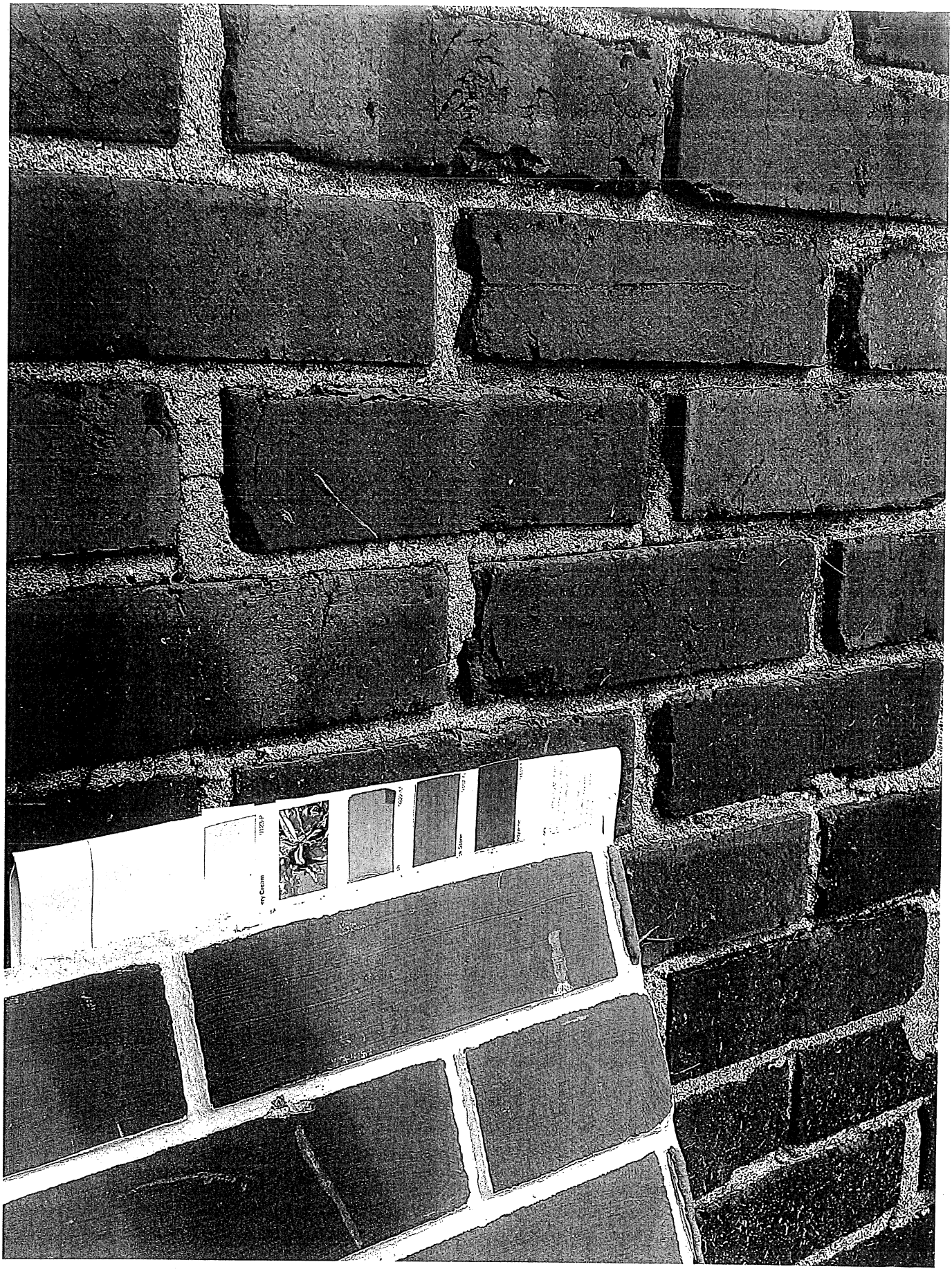
BLOOMINGTON SUBSTATION WALL
EXTERIOR FINISH OPTION

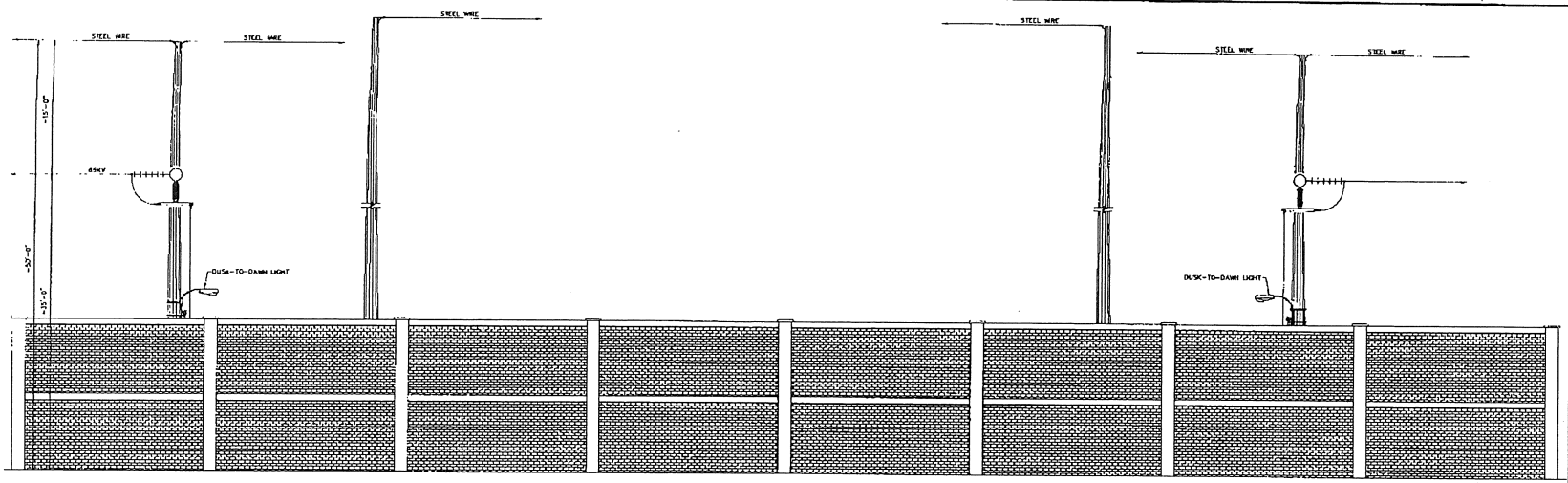
2 EQUAL BRICK PANELS



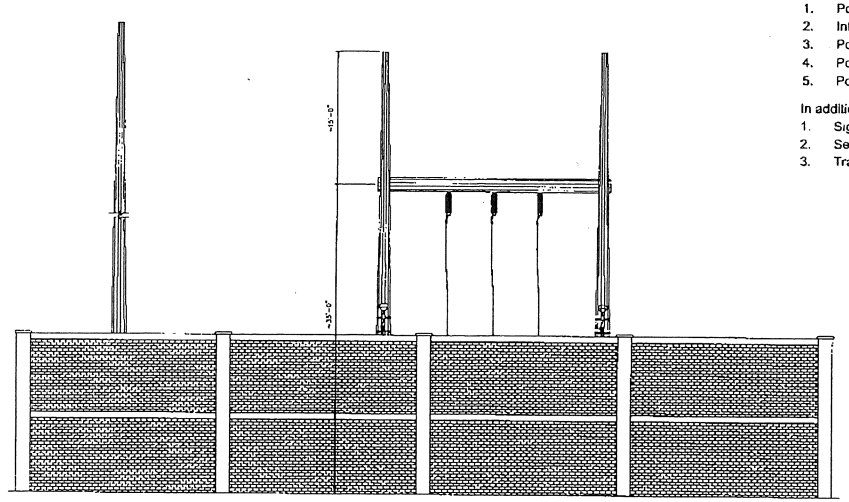








SECTION "A-A"



SECTION "B-B"

Notes:

At present, DEI does not anticipate significant changes to the conceptual design, but may require modifications due to:

1. Potential lighting codes and standards that require additional lighting fixtures.
2. Infrequent temporary use of structures and mobile equipment in the event of emergencies and repairs.
3. Potential future revisions to applicable codes and standards.
4. Potential safety concerns unique to the site that are not yet identified.
5. Potential operational limitations not yet identified.

In addition to the details found in the conceptual design, the following are anticipated to be added, but is not limited to:

1. Signage on the exterior of the Substation.
2. Security Cameras and associated equipment.
3. Transmission Poles and Structures outside of the substation wall.

CONCEPTUAL

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Ex B p. 5 of 5