

THE STATE OF ALABAMA )  
Shelby COUNTY )

2300  
Enc. No. 8

THIS AGREEMENT, made and entered into between ALABAMA POWER COMPANY, a corporation (hereinafter referred to as Licensor), and Paul E. Carlisle, Sr., and wife, Diane Carlisle, (hereinafter collectively referred to as Licensees).

WITNESSETH:

WHEREAS, Licensor has acquired and is the owner of an easement over a portion of the following described tract of land (which tract of land is owned by Licensees and will hereinafter be referred to as "Subject Land"):

Lot 4, Block 2 of Parker's Subdivision, a map or plat of which is recorded in the Probate Office of Shelby County, Alabama.

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which easement embraces, among other rights, the right to flood or cover with water from time to time all that portion of Subject Land which lies above that certain datum plane of 397 feet above mean sea level, as established by the United States Coast and Geodetic Survey, as adjusted in January 1955, but below that certain datum plane of 401 feet above mean sea level; and

WHEREAS, the said flood easement owned by Licensor over Subject Land will from time to time and without notice or warning be used by Licensor in the operation of its Lay Dam and Reservoir; and

WHEREAS, a portion of Subject Land is situated above said datum plane of 397 feet but below said datum plane of 401 feet and consequently is subject to flooding from time to time and without notice or warning by Licensor under its said easement; and

WHEREAS, Licensees have constructed or placed a five-room frame house on a portion of Subject Land which is subject to said flood easement of Licensor and which will be so flooded by Licensor from time to time such five-room frame house being hereinafter referred to as the "encroachment"; and

WHEREAS, the continued maintenance of said encroachment in the flood easement area benefits Licensees in the use of Subject Land and Licensees desire to retain said encroachment at its present location; and

WHEREAS, said encroachment at its present location interferes with and inconveniences Licensor in the exercise, use and enjoyment of its said flood easement and increases the risks to Licensor in connection with the exercise, use and enjoyment of such flood easement.

This instrument prepared in  
the Land Bank of Alabama  
Power Co., Birmingham, AL

by John B. King





NOW, THEREFORE, in consideration of the premises and the covenants and conditions herein contained, it is hereby agreed and covenanted between the parties hereto as follows:

1. The term of this license shall be for the period beginning October 19, 1973, for which license the Licensees herewith pay to the Licensor the sum of One and No/100 ----- DOLLARS (\$1.00), and thereafter until canceled as hereinafter provided.

2. Licensor hereby expressly gives, to the extent of its interest, its consent and permission to Licensees that such encroachment may remain upon Subject Land in its present location in the flood easement owned by Licensor subject to the terms and conditions of this agreement or any extension thereof.

3. Licensees shall not enlarge or add to the encroachment after the date hereof. ~~Licensees shall within \_\_\_\_\_ days from the date of execution of this instrument, at no cost or expense to Licensor, either raise the floor elevation of the encroachment listed herein on permanent-type foundation to elevation of \_\_\_\_\_ feet above mean sea level, or fill, dike and/or construct a protective barrier around such encroachment with impervious material taken from the lake or easement area and other impervious material in addition thereto necessary to protect said encroachment from flood waters to an elevation of \_\_\_\_\_ feet, or above. Licensees have the sole responsibility for compliance with this Paragraph 3 in all respects, including the manner and method of raising the floor level of the encroachment, the design and construction of any fill, dike, and/or protective barrier, and, in general, the adequate and safe protection of the encroachment. Any material used in constructing a dike, fill or protective barrier other than that taken from the lake and/or easement area shall be considered as a part of the encroachment, and shall be removed from Subject Land when the encroachment is removed in accordance with the terms of this agreement.~~

4. Licensees agree and covenant that neither by the occupancy of Subject Land with said encroachment, nor in any other way, are Licensees claiming adversely to Licensor in its ownership of such easement over Subject Land or denying the right of Licensor without notice of warning to exercise, use and enjoy its said easement pursuant to the terms thereof, but that the maintenance of said encroachment in the easement area by Licensees is with the recognition of the superior easement of Licensor.

5. Licensees agree and covenant to waive, and do hereby waive, any and all forms of notice by Licensor of its intention to flood Subject Land prior to such flooding or of the fact that Subject Land will be flooded prior to such flooding.

6. Licensees agree and covenant to release, indemnify, protect and hold harmless Licensor from and against any and all claims and demands by Licensees, any member of their family, their employees, their tenants, their guests, their invitees or any other person whomsoever, for damages to property and injury or death to persons (whether or not caused by Licensor's negligence, including, without being limited to, Licensor's contributory negligence, concurring negligence, active negligence and passive negligence) which may arise out of or be caused by, directly or indirectly, the use or exercise of said easement over Subject Land by Licensor or the flooding of Subject Land and said encroachment situated thereon by the waters of the Coosa River or its tributaries impounded by Licensor's Lay Dam and related facilities.

7. If Licensees shall fail to comply with any of the provisions of this agreement or default in any of their obligations under this agreement and shall fail within thirty (30) days after written notice from Licensor to correct such default or noncompliance, Licensor may, at its option, forthwith or at any time thereafter terminate the consent and permission granted under Paragraph 2 above. If such permission and consent is so terminated, Licensees shall within sixty (60) days after such termination, remove said encroachment from Subject Land. In the event it becomes necessary for Licensor to institute court proceedings to enforce the provisions of this agreement or to require Licensees to remove said encroachment, then Licensees expressly waive hereby any defenses of estoppel, laches, the statute of limitations and similar defenses in such court proceedings. Further, the Licensees for themselves, their heirs, and assigns expressly agree to reimburse Licensor, its successors, and assigns for all costs and expenses, including attorneys' fees incurred in seeking to enforce this agreement.



8. The licensed premises shall at all reasonable times be subject to inspection by the Licensor and the authorized agents of the Alabama State Health Department and any other department of the State or County having similar functions or duties, and the Licensees agree to abide by and perform any requested compliance with the health and sanitation provisions laid down by such departments, as well as those prescribed by the Licensor.

9. This license may be canceled by either party hereto by giving the other party thirty (30) days' notice in writing of their intent to so cancel.

10. It is understood and agreed between the parties hereto that this entire agreement touches, concerns and benefits both the dominant and servient estates in Subject Land, is intended by the parties hereto to be construed as covenants which run with the land and are to be binding upon and enforceable against the parties hereto and their respective heirs, successors and assigns. The continued use of the encroachment by an heir or assign of Licensees shall conclusively be deemed his agreement to be bound by all the covenants and agreements herein assumed by Licensees, including the acknowledgement of the permissive nature of the continuation of such encroachment and the agreements of indemnity.

11. The rights granted herein are subject to such rights as the United States of America, the Federal Power Commission, or any other agency of the United States of America may have in said lands under and by virtue of any license and amendments thereto which have been issued or which may be issued in the future by the Federal Power Commission to Licensor pursuant to the provisions of the Federal Power Act for the construction, operation, and maintenance of presently existing or future dam or dams, powerhouse or powerhouses and electrical appurtenances necessary or thereto convenient which are to be, or may be located on or near said lands.

12. The Licensees herein for themselves, their heirs and assigns, as a condition of this grant, shall give to Licensor, its successors, and assigns, notice in writing of the name and address of their proposed grantee of said lands within ten (10) days of his disposing of such lands. In the event that Licensor is not given such notice by Licensees or their heirs or assigns, then at the option of Licensor this license may be terminated.

13. Wherever in this agreement the term Licensor or Licensees is used, it shall be deemed to include their respective successors, heirs or assigns.

14. Where notices are provided for herein, such notices shall be conclusively deemed given when posted in the United States mail, addressed as follows:

Notice to Licensor

Alabama Power Company  
Land Department  
P. O. Box 2641  
Birmingham, AL 35291

Notice to Licensees

Paul E. Carlisle, Sr.

910 Palmetto Street

Birmingham, AL 35209

IN WITNESS WHEREOF the parties hereto have executed this agreement and affixed their hands and seals on this 19 day of October, 1973.

WITNESS AS TO LICENSOR:

Luzenia S. Ecken

ALABAMA POWER COMPANY, LICENSOR

By [Signature]  
Manager, Land Department

WITNESS AS TO LICENSEE:

Mrs. Margaret Hillhouse  
Thomas Howard

LICENSEES:

Paul E. Carlisle Sr.  
Diane Carlisle



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