

SOUTHERN ELECTRIC
GENERATING COMPANY

v.

J. H. LEIBACHER, SR., ET AL.

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IN THE COURT OF PROBATE
OF SHELBY COUNTY, ALABAMA

NOTICE TO COMMISSIONERS

TO:

KNOW YE, that having full faith and confidence in your integrity and competency, you have been by an order and decree of the Court of Probate of Shelby County, Alabama, appointed and constituted commissioners in the application and cause hereinabove set forth with all the power, authority and duties vested in or which may devolve on you as such commissioners under and by virtue of the provisions of Title 19, Chapter I, of the Code of Alabama of 1940.

BOOK 059 PAGE 667
You will be sworn as jurors are sworn and you, or a majority of you, shall assess the damages and compensation to which the owners of the lands hereinafter described and set forth are entitled on account of any injury that may result to them by reason of the Southern Electric Generating Company's taking and condemning the fee simple interest in the lands hereinafter described for portions of the site on and under which Southern Electric Generating Company shall erect, construct, operate and maintain a steam or other electric generating plant or plants for the manufacture, distribution and supply of electric power to the public, together with substations, structures, works, transmission and distribution lines and all appliances, equipment and appurtenances necessary, convenient or useful in connection with such plant or plants for such purposes, together with all the rights conferred by law and all rights that are necessary, convenient or useful for the enjoyment of such site for such uses and purposes.

The fee simple interest in the said lands situated in Shelby County, Alabama, are described as follows:

- Par. 1 That part of Fraction "I" lying north of Coosa River and southwest of Yellow Leaf Creek in Fractional Section 33, Township 20 South, Range 2 East. The said David A. Denham, Mable C. Denham, H. J. Franklin, W. T. Aldridge, R. E. Wainwright, A. N. Ladd, Gordon A. Brasher, Jesse J. Germany, Bruce Nails and Gordon N. Songer are the owners of, or the owners of an interest in, the lands described in this paragraph.
- Par. 2 That part of Fractions L and M lying north and east of Yellow Leaf Creek less and except the railway right of way owned by Southern Railway Company; South half of Southeast quarter of Northeast quarter ($8\frac{1}{2}$ of $SE\frac{1}{4}$ of $NE\frac{1}{4}$), all in Section 32, Township 20

cl. Power

South, Range 2 East. The said J. H. Leibacher, Sr. is the owner of, or the owner of an interest in, the lands described in this paragraph.

Par. 3 That part of the South half ($S\frac{1}{2}$) of Section 32, Township 20 South, Range 2 East, which lies north of the Coosa River and southwest of Yellow Leaf Creek, less and except the right of way through such lands owned by Southern Railway Company; the South half of Northeast quarter of Southeast quarter ($S\frac{1}{2}$ of $NE\frac{1}{4}$ of $SE\frac{1}{4}$) and that part of the Southeast quarter of Southeast quarter ($SE\frac{1}{4}$ of $SE\frac{1}{4}$) which lies south and east of the Southern Railway Company's right of way in Section 31, Township 20 South, Range 2 East. The following named persons are the owners of leasehold interests in the land described in this paragraph: James C. Phillips, Mrs. Henry T. Parker, Mrs. W. J. Pearce and J. M. Walton.

You may view the lands to be subjected and you must receive all legal evidence offered by any party touching the amount of damages the owners of the lands will sustain, and the amount of compensation they are entitled to receive, but the amount of compensation to which the owners are entitled must not be reduced or diminished because of any incidental benefits which may accrue to them or to their remaining lands in consequence of the uses to which the lands to be taken will be appropriated. Any person interested in the proceedings may be present in person or by attorney at any of the proceedings or trials which you may have.

You must within 20 days from the date of your appointment, which was, to wit, the 27th day of May, 1957, make a report in writing to the court, stating the amount of damages and compensation ascertained and assessed by you for the owners of the lands or persons injured, and file a certificate along with your award that none of you has ever been consulted, advised with or approached by any person in reference to the value of the lands, or the proceedings to condemn the same prior to the assessment of damages and that you knew nothing of the same prior to your appointment.

This the 27th day of May, 1957.

B. L. C. Walker
Judge of the Court of Probate
of Shelby County, Alabama

Case 12-259

SOUTHERN ELECTRIC GENERATING
COMPANY

v.

DAVID A. DENHAM, MABLE C. DENHAM,
J. H. LEIBACHER, SR., H. J.
FRANKLIN, W. T. ALDRIDGE, R. E.
WAINWRIGHT, A. N. LADD, GORDON A.
BRASHER, JESSE J. GERMANY, BRUCE
NAILS, GORDON N. SONGER, JAMES C.
PHILLIPS, MRS. HENRY T. PARKER,
MRS. W. J. PEARCE and J. M. WALTON

IN THE COURT OF PROBATE OF
SHELBY COUNTY, ALABAMA

FINAL ORDER OF CONDEMNATION

This cause coming on to be heard on this day for a decree confirming the report of the commissioners heretofore appointed in this cause, and for an order of condemnation in pursuance thereof as to the lands and interests described in Article Fourth of the application heretofore filed in this cause;

And it appearing to the Court that on, to wit the 11th day of May, 1957, this cause came on to be heard before this Court, and it appearing to the Court at such time that each of the respondents named in the application for condemnation had notice of the filing of said application and of the day set for the hearing thereof as provided by law, and in strict accordance with the former order of this Court made and entered in this cause on the 11th day of May, 1957; and it further appearing that David A. Denham and Mable C. Denham appeared by their attorney, George Frey; that J. H. Leibacher, Sr. appeared by his attorney, Handy Ellis; that J. M. Walton appeared by his attorney, Mayer Newfield; and that H. J. Franklin, W. T. Aldridge, R. E. Wainwright, A. N. Ladd, Gordon A. Brasher, Jesse J. Germany, Bruce Nails, Gordon N. Songer, James C. Phillips, Mrs. Henry T. Parker and Mrs. W. J. Pearce each had notice as set forth above but did not contest the allegations of the application, this Court heard the allegations of such application as to the parties and lands named and described in Article Fourth of such application and all legal evidence offered by the parties touching the same, and did make an order granting such application for the condemnation of the fee simple interest in certain lands, rights and interests therein described, and did also in and by such order and decree appoint J. L. Batson, Jr., J. F. McEwen and L. C. Taylor three citizens of said County of Shelby, in which county the lands sought to be condemned are situated, possessing the qualifications of jurors, and who are disinterested, to assess the damages and compensation to which the owners of the lands described in Article Fourth of said application are entitled;

And it further appearing to the Court that notice of the appointment of said three persons as commissioners was issued by this Court to the sheriff of said County of Shelby, as required by law, and by said sheriff served on said three named persons as commissioners within five days from the receipt thereof by him;

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And it further appearing to the Court that said commissioners, before entering upon the discharge of their duties in the premises, were sworn as jurors are sworn, and that they did thereafter receive all legal evidence offered by the parties touching the amount of damages the owners of, or the owners of an interest in, said lands will sustain and the amount of compensation they are entitled to receive;

And it further appearing to the Court that said commissioners did on, to wit, the 27th day of May, 1957, make their report in writing to this Court, stating the amount of damages and compensation ascertained and assessed by them for the owners of, or the owners of an interest in, the lands described in Article Fourth of said application as follows: To David A. Denham, Mable C. Denham, H. J. Franklin, W. T. Aldridge, R. E. Wainwright, A. N. Ladd, Gordon A. Brasher, Jesse J. Germany, Bruce Nails and Gordon N. Songer, (the owners of, or the owners of an interest in the lands described in Par. 1 of Article Fourth) - \$ 16,000.00; to J. H. Leibacher, Sr., (the owner of, or the owner of an interest in the lands described in Par. 2 of Article Fourth) - \$ 4,000.00; to James C. Phillips and Mrs. Henry T. Parker, (the owners of a leasehold interest in a portion of the lands described in Par. 3 of Article Fourth) - \$ 2,500.00; to Mrs. W. J. Pearce, (the owner of a leasehold interest in a portion of the lands described in Par. 3 of Article Fourth) - \$ 750.00; to J. M. Walton, (the owner of a leasehold interest in a portion of the lands described in Par. 3 of Article Fourth) - \$ 500.00;

And it further appearing to the Court that said commissioners did also file a certificate along with their award that none of them had ever been consulted, advised with or approached by any person in reference to the value of the lands or the proceedings to condemn the same prior to the assessment of damages and that they knew nothing of the same prior to their appointment;

It is, therefore, ordered, adjudged and decreed by the Court that the report of said commissioners be and the same is hereby ordered to be recorded, together with said application and all the orders and decrees made in the cause and the pleadings filed herein.

And it further appearing to the Court that the damages and compensation so ascertained and assessed by said commissioners for the said defendants, the owners of, or the owners of an interest in the lands described in Article Fourth of said application have been deposited in money in this Court by the applicant, Southern Electric Generating Company;

It is further ordered, adjudged and decreed by the Court that the applicant, Southern Electric Generating Company, pay all costs incurred in this cause.

And it further appearing to the satisfaction of the Court that all things necessary and required by Title 19, Chapter I, of the Code of Alabama of 1940, have been done and performed by the applicant.

It is further ordered, adjudged and decreed by the Court that the

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fee simple title in the land and other rights, interests and authority sought to be condemned as described in Article Fourth of said application and the rights and interests therein described, be condemned, granted and awarded to said applicant, Southern Electric Generating Company, with the rights and for the uses and purposes set forth in said application and that all rights, title and interests prayed for in said application which are now condemned, granted and awarded to the applicant in and by this decree, be and the same are hereby divested out of the said defendants, the owners of, or the owners of an interest in, the lands described in Article Fourth of said application and vested in the applicant;

And it is further ordered, adjudged and decreed by the Court that the applicant be and it is hereby granted, the right to erect, construct, operate and maintain steam or other electric generating plants, together with substations, structures, works, towers, poles and wire lines and other appliances necessary, convenient or useful in connection therewith for such purposes on, under, across and over the lands described in Article Fourth of said application;

And it is further ordered, adjudged and decreed by the Court that applicant be and it is hereby granted all the relief, rights, interests, easements, privileges and fee simple title in the lands set out, described and prayed for in said application.

Done in open court, this the 6th day of June, 1957.

/s/ L. C. Walker
Judge of the Court of Probate of
Shelby County, Alabama

BOOK 053 PAGE 671

STATE OF ALABAMA
SHELBY COUNTY

IN THE PROBATE COURT OF
SHELBY COUNTY, ALABAMA,

I, L. C. Walker, Judge of Probate in and for Shelby County, Alabama, hereby certify that on the 20th day of April, 1957, Southern Electric Generating Company filed in the Probate Court of Shelby County, Alabama, its petition to condemn certain lands, rights and interest for portions of the site on and under which said Company shall erect, construct, operate and maintain a steam or other electric generating plant or plants for the manufacture, distribution and supply of electric power to the public, together with substations, structures, works, transmission and distribution lines and all appliances, equipment and appurtenances necessary, convenient or useful in connection with such plant or plants for such purposes, together with all the rights conferred by law and all rights that are necessary, convenient or useful for the enjoyment of such site for such uses and purposes, and in said application or petition were set out a great number of parcels of property sought to be condemned as aforesaid, with the owners named as provided by law and among those was Parcel 3 described in Article Fourth of the application, to which reference will be made more specifically hereafter. Said petition in so far as it relates to the land described in Parcel 3 is as follows, to-wit:

"APPLICATION FOR ORDER OF CONDEMNATION

TO THE HONORABLE COURT OF PROBATE OF SHELBY
COUNTY, ALABAMA, AND THE HONORABLE L. C. WALKER,
THE JUDGE THEREOF

Comes Southern Electric Generating Company, an electric public utility corporation, and files this its application in the court of probate of Shelby County, Alabama, against the owners listed below in Article First for an order of condemnation of the lands, rights and interests therein, hereinafter described, and shows unto the Court as follows:

ARTICLE FIRST: That applicant, Southern Electric Generating Company, is a corporation organized and existing under the laws of the State of Alabama with its principal office at Birmingham, Jefferson County, Alabama; that the places of residence or post office addresses of the persons against whom this application is filed who are over the age of twenty-one (21) years, who are of sound mind and who are residents of the State of Alabama are as follows:

<u>Name</u>	<u>Address</u>
J. M. Walton	620 10th Avenue South Birmingham, Alabama;

(and other land owners)

that the said defendants are the owners of, or the owners of an interest in, the lands hereinafter described and as hereinafter set forth.

ARTICLE SECOND: That applicant is an electric public utility corporation and it has the powers under its charter specifically to be an electric public utility corporation and to engage in and carry on an electric public utility business, to erect, construct, operate and maintain steam or other electric generating plants, substations, transmission lines and distribution lines for the manufacture, transmission, distribution, supply, sale and furnishing to or for the public of electricity and electric power or energy, to generate, transmit and supply electricity to or for the public and for public use, to sell, exchange and otherwise dispose of all or any part of the power or energy output of the corporation or power or energy otherwise acquired by it to any one of more persons, firms and corporations, including Federal or State governmental bodies or agencies, public utility companies, industrial and commercial concerns, cooperatives, residential customers and others, and to enter into any contracts or other arrangements which are lawful regarding any such sale of power or energy; that applicant now owns, operates and controls property and facilities used and to be used for the generation, transmission, distribution, sale and furnishing to or for the public of electricity for light, heat or power, or other uses; that the lands, rights and interests herein described are sought to be condemned for the aforesaid purposes.

ARTICLE THIRD: That the uses and purposes for which the lands, rights and interests herein described are to be condemned and taken are for portions of the site on and under which applicant shall erect, construct, operate and maintain a steam or other electric generating plant or plants for the manufacture, distribution and supply of electric power to the public together with substations, structures, works, transmission and distribution lines and all appliances, equipment and appurtenances necessary, convenient or useful in connection with such plant or plants for such purposes, together with all the rights conferred by law and all rights that are necessary, convenient or useful for the enjoyment of such site for such uses and purposes; that applicant therefore seeks to acquire by condemnation the fee simple interest in the lands herein described in Paragraphs 1 and 2 of Article Fourth, below, and those interests not heretofore acquired by applicant in lands described in Paragraph 3 of Article Fourth so as to make applicant the fee simple owner of all lands described in said Article Fourth.

ARTICLE FOURTH: That the fee simple interest in Paragraphs 1 and 2 and the interests of those persons named in Paragraph 3 as described above are herein sought to be condemned in those lands in Shelby County, Alabama described as follows:

Par. 3. That part of the South half ($3\frac{1}{2}$) of Section 32, Township 20 South, Range 2 East, which lies north of the Coosa River and southwest of Yellow Leaf Creek, less and except the right of way through such lands owned by Southern Railway Company; the South half of Northeast quarter of Southeast quarter ($3\frac{1}{2}$ of NE $\frac{1}{4}$ of SE $\frac{1}{4}$) and that part of the Southeast quarter of Southeast quarter (SE $\frac{1}{2}$ of SE $\frac{1}{4}$) which lies south and east of the Southern Railway Company's right of way in Section 31, Township 20 South, Range 2 East. The following named persons are the owners of leasehold interests in the land described in this paragraph: J. H. Walton (and other named parties).

PREMISES CONSIDERED, applicant makes the said J. H. Walton (and other parties named therein) parties defendant to this application and prays that the Court will make and enter an order appointing a day for the hearing of this application; and that notice of this application and of the day so appointed for the hearing thereof may be issued to the resident defendants and that service thereof be had in this State in the manner required by law at least ten days before the day so appointed for such hearing; and that upon such hearing an order will be made by this Court condemning to the uses and purposes of your applicant all the rights, authority and power sought and described herein and for such other and further orders as may be authorized by law.

Said application was sworn to as provided by law and such bond as required by law was made and approved by the Court.

Upon the filing of said petition or application, the Court set said cause for hearing for the 11th day of May, 1957, and the hearing was had at that time and the Court entered an order granting said application as to the several tracts of land described therein and for the purposes sought and appointed three commissioners possessing the qualifications required by law to assess the damages and compensation to which the several respondent owners of said parcels of land in said application named would be entitled.

Said commissioners were duly notified and entered into the discharge of their duties as such and on the 27th day of May, 1957, said commissioners filed their written report in said cause in which the damages and compensation to J. M. Walton as to his leasehold interest to said Parcel 3 was fixed at \$500.00.

On June 6, 1957, the Court entered a decree reciting that the commissioners had made their report in said cause, and ordered the same filed and recorded together with all the pleadings in the case and entered an order confirming the report of the commissioners, but retaining jurisdiction over the cause pending payment of the several awards into said Court by the Applicant, Southern Electric Generating Company, which said payment was made to the Court on the said 6th day of June, 1957.

Thereupon, on the 3rd day of July, 1957, J. M. Walton who owns the land described in Parcel 3 of the petition filed notice of an appeal from the order of condemnation entered in said cause on the 6th day of June, 1957, in so far as the condemnation relates to said Parcel 3 on which he holds a leasehold interest. The original of said notice of appeal is incorporated in this certificate as follows:

Whereupon, said L. C. Walker, Judge of Probate, Shelby County, Alabama,
hereby certifies this case to the Circuit Court of Shelby County, Alabama, for
trial on appeal.

This the 6th day of June 1957.

18 L. C. Walker
Judge of Probate

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file

PROBATE COURT
OF
SHELBY COUNTY, ALABAMA

SOUTHERN ELECTRIC GENERATING
COMPANY,

VS.

J. H. LEIBACHER, SR., et al,

NO. 12-259

NOTICE OF APPEAL

BOOK 059 PAGE 676
Comes J. M. Walton, one of the parties respondent
in the above-entitled cause, and, pursuant to the provisions
of Section 17, Title 19, Code of Alabama of 1940, hereby prays
for and takes an appeal to the Circuit Court of the Eighteenth
Judicial Circuit from the order of condemnation entered in
said cause on the 6th day of June, 1957 insofar as said order
relates to the land or interest in land in which the said J.
M. Walton has a leasehold or other proprietary interest.

July 1, 1957.

J. M. Walton
Condemnee-Respondent

by Mayer U. Newfield
Mayer U. Newfield
Attorney at Law
626 First National Bldg.
Birmingham 3, Alabama

The aforesaid J. M. Walton hereby demands a trial
by jury of said cause.

J. M. Walton

by Mayer U. Newfield
Mayer U. Newfield
Attorney

To: Martin & Blakey
Attention: Harold Bowron, Esq.
Attorneys for Southern Electric Generating Company
Alabama Power Building
Birmingham 3, Alabama

Please take notice that the foregoing Notice of
Appeal was filed in the office of the Judge of Probate of
Shelby County, Alabama on the 3 day of July, 1957.

Witness my hand this 3 day of July, 1957.


L. C. Walker,
Judge of the Probate Court
of Shelby County, Alabama.

I hereby accept service of the notice of appeal filed
herein for Southern Electric Generating Company. This the 1st
day of July 1957.

(s) H. A. Bowron, Jr.

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059-678

SOUTHERN ELECTRIC GENERATING
COMPANY, a corporation,

VS.

J. H. LEIBACHER, SR.

IN THE PROBATE COURT OF

SHELBY COUNTY, ALABAMA

NOTICE OF APPEAL

Comes J. H. Leibacher, Sr. in the above cause and prays for and takes an appeal to the Circuit Court of Shelby County, Alabama, from the order of condemnation entered in said cause on the 11th day of May, 1957, and from the final order of condemnation entered in said cause on the 6th day of June, 1957, insofar as such orders of condemnation relate to the land described in Paragraph 2 of Article 4 of the application, said land being more particularly described as follows:

That part of Fractions L and M lying North and East of Yellow Leaf Creek; less and except the railway right of way owned by Southern Railway Company; South Half of Southeast Quarter of Northeast Quarter (S $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$), all in Section 32, Township 20, South, Range 2 East, Shelby County, Alabama.

Said J. H. Leibacher, Sr. does herewith file in the Probate Court of Shelby County, Alabama, the court rendering such orders of condemnation, this his written notice of said appeal.

This the 13th day of June, 1957.

Handy E. Lee
Attorney for J. H. Leibacher, Sr.

To: Karl C. Harrison, Attorney for
Southern Electric Generating Co., a corp.

You are hereby notified that the above notice of appeal was filed in the Office of the Judge of the Court of Probate of Shelby County, Alabama, on the 13th day of June, 1957.

Witness my hand this 13 day of June, 1957.

[Signature]
Judge of the Court of Probate of
Shelby County, Alabama

STATE OF ALABAMA

SHELBY COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA--GREETING:

You are hereby commanded to serve the foregoing notice of appeal upon Karl C. Harrison, as attorney for Southern Electric Generating Company, a corporation, and make due return to this Court of such service.

This the 13 day of June, 1957.


Judge of the Court of Probate of
Shelby County, Alabama

STATE OF ALABAMA

SHELBY COUNTY

I hereby certify that I have executed the within notice upon Karl C. Harrison, attorney for Southern Electric Generating Company, a corporation, by leaving a copy of the same with him.

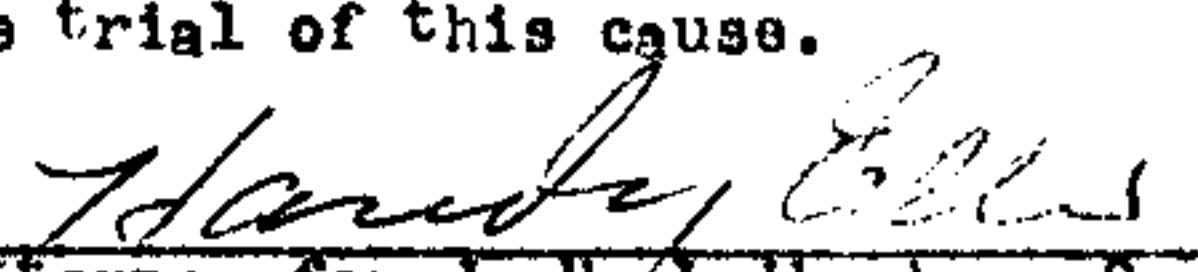
This the ____ day of June, 1957.

Sheriff, Shelby County, Alabama

By _____
Deputy Sheriff

DEMAND FOR JURY

Appellant demands a jury for the trial of this cause.


Attorney for J. H. Leibacher, Sr.

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SOUTHERN ELECTRIC GENERATING
CO., A CORP.

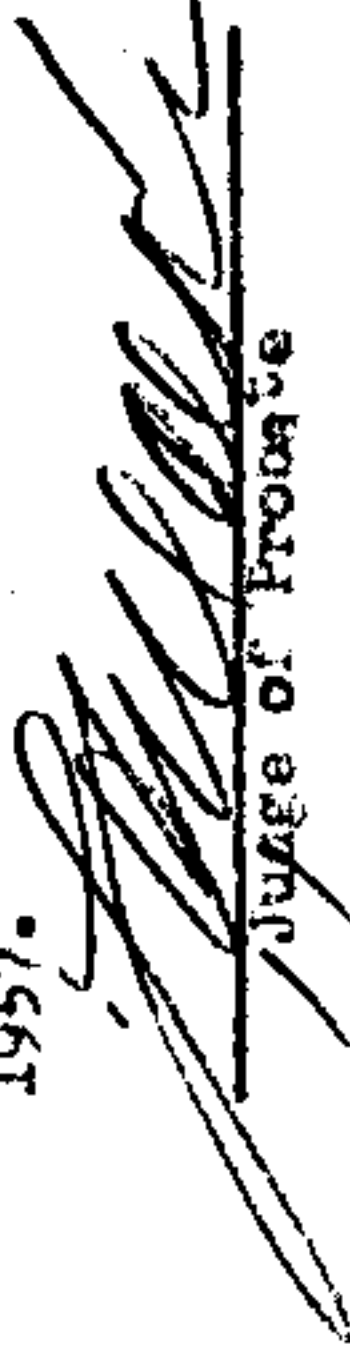
VS.

J. H. LEITCHER, SR.

NOTICE OF APPEAL

Filed this 13th day of June,

1957.


Judge of Probate

STATE OF ALABAMA }
JEFFERSON COUNTY }

KNOW ALL MEN BY THESE PRESENTS, That we, Southern Electric Generating Company, as principal, and St. Paul Fire & Marine Insurance Company, as surety, are held and firmly bound unto J. M. Walton in the just and full sum of One Thousand and No/100 (\$1,000.00) Dollars, for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents.

This the 3rd day of July, 1957.

WHEREAS said Southern Electric Generating Company heretofore filed its application in the Court of Probate of Shelby County, Alabama, against J. M. Walton seeking to condemn the lands, rights, interests and easements therein described;

AND WHEREAS the said Court of Probate did in and by a decree of date the 11th day of May, 1957, grant the prayer of said application and appoint commissioners, as required by law, to ascertain and assess the damages and compensation of the defendant as the owner of a leasehold interest in the lands, rights, interests and easements described in paragraph three of Article Fourth of said application;

AND WHEREAS said commissioners did ascertain and assess such damages and compensation of the said J. M. Walton in accordance with the statutes of the State of Alabama at the sum of Five Hundred and No/100 (\$500.00) Dollars, as shown in paragraph three of the report of said commissioners;

AND WHEREAS an order was thereafter made by said Court of Probate condemning the said lands, rights, interests and easements belonging to the said J. M. Walton;

AND WHEREAS the said J. M. Walton has taken an appeal from such order of condemnation to the Circuit Court of the Eighteenth Judicial Circuit of Alabama;

AND WHEREAS said Southern Electric Generating Company has paid into said Court of Probate in money the amount of said damages and compensation so assessed by said commissioners for said J. M. Walton and is desirous that said judgment, or order of condemnation, be not suspended pending such appeal and desires to enter upon and otherwise use said lands for the purposes stated in said application pending said appeal;

2.

NOW, THEREFORE, the condition of the above obligation is such that if the said Southern Electric Generating Company shall pay such damages as the said J. M. Walton may sustain, this obligation shall be void; otherwise to remain in full force and effect.

SOUTHERN ELECTRIC GENERATING COMPANY

Attest:

W. D. Ketchum

Secretary

By J. F. Crist
As Its

Approved and filed this *2nd* day
of *July*, 1957.

19 *L. E. Walker*
Judge of the Court of
Probate of Shelby County,
Alabama

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STATE OF ALABAMA }
JEFFERSON COUNTY }

KNOW ALL MEN BY THESE PRESENTS, That we, Southern Electric Generating Company, as principal, and St. Paul Fire and Marine Insurance Company, as surety, are held and firmly bound unto J. H. Leibacher, Sr. in the just and full sum of Four Thousand and no/100 Dollars (\$4,000.00), for the payment of which well and truly to be made we bind ourselves, our successors and assigns, jointly and severally by these presents

This the 19th day of June, 1957.

WHEREAS said Southern Electric Generating Company heretofore filed its application in the Court of Probate of Shelby County, Alabama, against J. H. Leibacher, Sr. seeking to condemn the fee simple interest in the lands, rights, interests and easements therein described;

AND WHEREAS the said Court of Probate did in and by a decree of date the 11th day of May, 1957, grant the prayer of said application and appoint commissioners, as required by law, to ascertain and assess the damages and compensation of the defendant as the owner of the fee simple interest in the lands, rights, interests and easements described in Paragraph 2 of Article Fourth of said application;

AND WHEREAS said commissioners did ascertain and assess such damages and compensation of the said J. H. Leibacher, Sr. in accordance with the statutes of the State of Alabama at the sum of Four Thousand and no/100 Dollars (\$4,000.00), as shown in Paragraph 2 of the report of said commissioners;

AND WHEREAS an order was thereafter made by said Court of Probate condemning the said fee simple interests in the lands, rights, interests and easements belonging to the said J. H. Leibacher, Sr.;

AND WHEREAS the said J. H. Leibacher, Sr. has taken an appeal from such order of condemnation to the Circuit Court of the Eighteenth Judicial Circuit of Alabama;

AND WHEREAS said Southern Electric Generating Company has paid into said Court of Probate in money the amount of said damages and compensation so assessed by said commissioners for said J. H. Leibacher, Sr. and is desirous that said judgment, or order of condemnation, be not suspended pending such appeal and desires to enter upon said lands for the uses and purposes stated in said application pending said appeal;

NOW, THEREFORE, the condition of the above obligation is such that if the said Southern Electric Generating Company shall pay such damages as the said J. H. Leibacher, Br. may sustain, this obligation shall be void; otherwise to remain in full force and effect.

ATTEST:

SOUTHERN ELECTRIC GENERATING COMPANY

W. D. Ketchum
Secretary

By Walter Bouldin
Its Executive Vice President

(SEAL)

ST. PAUL FIRE AND MARINE INSURANCE COMPANY

By Ben F. Drake
Its Attorney in Fact

(SEAL)

Approved and filed this 19th day of June, 1957.

/s/ L. C. Walker
Judge of the Court of Probate
of Shelby County, Alabama

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STATE OF ALABAMA }
JEFFERSON COUNTY }

RELEASE

KNOW ALL MEN BY THESE PRESENTS, that

WHEREAS, Maggie L. Walton, wife of J. M. Walton, has alleged that she received personal injuries in 1957 for which Southern Electric Generating Company or its employees or associates are liable by reason of or arising out of its possession, use and occupancy of a tract of land on the Coosa River near Wilsonville, Alabama, on which it proposes to construct a steam electric generating plant; and

WHEREAS, J. M. Walton has alleged that he owned a lease hold interest in a lot along the Coosa River and on said land where Southern Electric Generating Company proposes to build a steam electric generating plant on the Coosa River near Wilsonville, Alabama, which lease hold interest was allegedly damaged or depreciated by Southern Electric Generating Company or its employees by the removal of trees and in general by altering the surrounding terrain; and

WHEREAS, J. M. Walton has alleged that Southern Electric Generating Company or its employees trespassed upon the lot leased by him as described above and destroyed his boat dock and certain items of his personal property; and

WHEREAS, J. M. Walton has alleged that Alabama Power Company wrongfully cut off and discontinued service of electric power to his cabin which was upon the land leased as described above; and

WHEREAS, Southern Electric Generating Company has instituted proceedings against J. M. Walton for the condemnation of his interest in the land leased as described above, and the appeal by J. M. Walton in such proceeding is pending in the Circuit Court of Shelby County, Alabama; and

WHEREAS, J. M. Walton and wife, Maggie L. Walton, individually and jointly,

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2.

and Southern Electric Generating Company and Alabama Power Company have reached an agreement for the settlement of all claims and matters between them;

NOW, THEREFORE, in consideration of the premises, and in further consideration of the sum of Five Hundred Dollars(\$500.00) to the undersigned, J. M. Walton and Maggie L. Walton, in hand paid by Southern Electric Generating Company, the receipt whereof is hereby acknowledged, J. M. Walton and wife, Maggie L. Walton, individually and jointly, have released and forever discharged and by these presents do release and forever discharge the Southern Electric Generating Company its employees and associates and Alabama Power Company and their respective successors and assigns from any and all claim or claims, demand or demands, damages and actions or causes of action, by reason of or arising out of or resulting from any action of the said Southern Electric Generating Company as described above.

And for the consideration aforesaid, J. M. Walton and wife, Maggie L. Walton, individually and jointly, do hereby for themselves and for their heirs, representatives, and assigns release and forever discharge the said Southern Electric Generating Company, its employees and associates and Alabama Power Company and their respective successors and assigns, of and from all claim or claims, demand or demands, damages, actions or causes of action, which they have or can have or could maintain by reason of any matter or thing done or omitted to be done on or before the date hereof, or any agreement or contract entered into or any open account between Southern Electric Generating Company its employees and associates and Alabama Power Company, individually and jointly, and J. M. Walton and wife, Maggie L. Walton, individually and jointly, on or before the date hereof. It is J. M. Walton's and wife, Maggie L. Walton's intention to release hereby fully and completely all claims which they may have, individually and jointly, against Southern Electric Generating Company its employees and associates and Alabama Power Company on the date hereof whether or not

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specifically defined herein.

It is understood and agreed that a judgment by consent of the parties will be entered in the condemnation proceeding entitled Southern Electric Generating Company, a corporation, v. J. M. Walton, which now is pending in the Circuit Court of Shelby County, Alabama, for the reason that J. M. Walton and wife, Maggie L. Walton, have conveyed all their interest in the land involved in such proceeding to Southern Electric Generating Company.

In witness whereof, J. M. Walton and wife, Maggie L. Walton, have hereunto set their hands and seals this day of January, 1958.

J. M. Walton (SEAL)
Maggie L. Walton (SEAL)

STATE OF ALABAMA }
JEFFERSON COUNTY }

I, , a Notary Public in and for said County in said State, hereby certify that J. M. Walton and wife, Maggie L. Walton, whose names are signed to the foregoing release, and who are known to me, acknowledged before me on this date that, being informed of the contents of the release, they executed the same voluntarily on the date the same bears date.

Given under my hand and official seal this the day of January, 1958.

Notary Public
Jefferson County

SOUTHERN ELECTRIC GENERATING
COMPANY, a corporation,

Plaintiff,

v.

J. M. WALTON,

Defendant.

IN THE CIRCUIT COURT OF
SHELBY COUNTY, ALABAMA

NO. 157

JUDGMENT

On the day of January, 1958, came into open court the applicant, Southern Electric Generating Company, a corporation, by and through its attorneys and also came the defendant, J. M. Walton, by and through his attorney;

And it appearing to the Court that the parties to this cause have now, in writing, waived a trial by jury and have entered into a stipulation which is on file in this cause which provides for entering a judgment herein for plaintiff, Southern Electric Generating Company, granting to it all the relief, rights, interests, easements and privileges set out, described and prayed for in its application for order of condemnation.

It is, therefore, premises considered, ORDERED, ADJUDGED and DECREED by this Court that the said written agreement or stipulation be, and the same hereby is in all respects ratified, confirmed and approved.

And now comes the plaintiff, Southern Electric Generating Company, by its attorneys, and shows unto the Court that it has heretofore deposited with the Judge of Probate of Shelby County, Alabama, the sum of Five Hundred Dollars (\$500.00) in money for such defendant as damages and compensation for the condemnation of the lands described in paragraph 3 of Article Fourth of such application.

NOW, THEREFORE, it is ORDERED, ADJUDGED and DECREED by this Court that the said Judge of Probate of Shelby County pay to the clerk of this Court the sum of \$500.00, the amount heretofore deposited with him as aforesaid. It is further ordered that the said J. M. Walton is entitled to have and receive of the said clerk of this Court the sum of \$500.00.

And it further appearing to this Court that the plaintiff is entitled to have the fee simple interest in the lands, rights and interests condemned for the uses and purposes described in the application and that such application should be granted.

It is, therefore, premises considered, ORDERED, ADJUDGED and DECREED by this Court that such application of Southern Electric Generating Company for the condemnation of the right, title and interest of the said J. M. Walton in the fee simple interest in the lands described in paragraph 3 of Article Fourth of such application be and the same hereby is granted; such lands described in paragraph 3 of Article Fourth being located in Shelby County, Alabama and described as follows:

That part of the South half ($S\frac{1}{2}$) of Section 32, Township 20 South, Range 2 East, which lies north of the Coosa River and southwest of Yellow Leaf Creek, less and except the right of way through such lands owned by Southern Railway Company; the South half of North-east quarter of Southeast quarter ($S\frac{1}{2}$ of $NE\frac{1}{4}$ of $SE\frac{1}{4}$) and that part of the Southeast quarter of Southeast quarter ($SE\frac{1}{4}$ of $SE\frac{1}{4}$) which lies south and east of the Southern Railway Company's right of way in Section 31, Township 20 South, Range 2 East;

And it is further ORDERED, ADJUDGED and DECREED by this Court that the right, title and interest of the said J. M. Walton in the fee simple title in the lands described in paragraph 3 of Article Fourth of such application and other rights, interest, and authority sought to be condemned as described in such application, be and hereby are condemned, granted and awarded to said applicant, Southern Electric Generating Company, with the rights and for the uses and purposes set forth in said application and that the right, title and interest of the said J. M. Walton in the fee simple interest in the lands described in paragraph 3 of Article Fourth, together with all rights, interests and authority concerning same prayed for in said application be and the same are hereby divested out of the said defendant, J. M. Walton, and vested in the applicant, Southern Electric Generating Company;

And it is, premises considered, further ORDERED, ADJUDGED and DECREED by this Court that the applicant be and it is hereby granted the right to erect, construct, operate and maintain steam or other electric generating plants, together with substations, structures, works, towers, poles and wire lines and other appliances necessary, convenient or useful in connection therewith for such usages or purposes set forth in said application on, under, across and over the lands described in paragraph 3 of Article Fourth of the said application;

And it is, premises considered, further ORDERED, ADJUDGED and

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DECREED by this Court that applicant be and it is hereby granted all the relief, rights, interests, title and privileges set out, described and prayed for in said application;

And it is, promises considered, further ORDERED, ADJUDGED and DECREED by this Court that applicant be and it is hereby taxed with the costs incurred in this cause and let execution issue as to such costs.

Done in open court this day of January, 1958.

Judge of the Circuit Court
of Shelby County, Alabama

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SOUTHERN ELECTRIC GENERATING
COMPANY

v.

J. H. LEIBACHER, SR.

IN THE CIRCUIT COURT
OF SHELBY COUNTY, ALABAMA

JUDGMENT

On the 4th day of November, 1957, came into open court the applicant, Southern Electric Generating Company, a corporation, by and through its attorneys and also came the defendant, J. H. Leibacher, Sr., by and through his attorneys;

Thereupon the Court proceeded to hear the allegations of the application for condemnation, such application being incorporated herein and made a part hereof; and after hearing the allegations of such application, and all legal evidence offered by the parties concerning the same is of the opinion that the petitioner has the right and power to condemn land for the uses and purposes stated in such application and is entitled to the relief prayed for therein;

And further that said applicant is entitled to have the fee simple interest in the lands, rights and interests condemned for the uses and purposes described in the application and that such application should be granted;

IT IS, THEREFORE, Premises Considered, ORDERED, ADJUDGED and DECREED by this Court that such application of Southern Electric Generating Company for the condemnation of the fee simple interest in the lands described in Paragraph 2 of Article Fourth of such application be and the same is hereby granted; such lands described in Paragraph 2 of Article Fourth being located in Shelby County, Alabama and described as follows:

That part of Fractions L and M lying north and east of Yellow Leaf Creek less and except the railway right of way owned by Southern Railway Company; south half of Southeast quarter of Northeast quarter (SE $\frac{1}{2}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$), all in Section 32, Township 20 South, Range 2 East.

Thereupon the Court proceeded to have assessed by the jury the

damages and compensation to which the defendant, J. H. Leibacher, Sr., is entitled for the condemnation of the fee simple interest in the lands, rights, and interests condemned for the uses and purposes described in such application;

Thereupon on the 7th day of November, 1957, came a jury of good and lawful men, to wit, _____, Foreman, and eleven others who being duly sworn and impaneled according to law, upon their oaths do say:

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NOW, THEREFORE, Premises Considered, IT IS ORDERED, ADJUDGED and DECREED by the Court that the defendant, J. H. Leibacher, Sr., have and recover of Southern Electric Generating Company the sum of Eleven Thousand and No/100 Dollars (\$11,000.00) as damages and compensation as to the lands described in Paragraph 2 of Article Fourth of such application.

And now comes the applicant by its attorneys and shows unto the Court that it has heretofore deposited with the Judge of Probate of Shelby County, Alabama the sum of Four Thousand and No/100 Dollars (\$4,000.00), which sum has been delivered to the Clerk of the Circuit Court of Shelby County, Alabama, and further with the Clerk of the Circuit Court of Shelby County, Alabama the further sum of Seven Thousand and No/100 Dollars (\$7,000.00) in money for such defendant as damages and compensation for the condemnation of the lands described in Paragraph 2 of Article Fourth of such application.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED and DECREED by this Court that the said J. H. Leibacher, Sr. is entitled to have and receive of the said Clerk of the Circuit Court of Shelby County the sum of Eleven Thousand and No/100 Dollars (\$11,000.00).

And it is further ORDERED, ADJUDGED and DECREED by this Court that the fee simple title in the land described in Paragraph 2 of Article Fourth of such application and other rights, interests and authority sought to be condemned as described in such application, be and hereby are condemned, granted and awarded to said applicant, Southern Electric Generating Company, with the rights and for the uses and purposes set forth in said application and that the fee simple interest in the lands described in Paragraph 2 of

Article Fourth together with all rights, interests and authority concerning same prayed for in said application be and the same are hereby divested out of the said defendant, J. H. Leibacher, Sr., and vested in the applicant, Southern Electric Generating Company;

And IT IS, Premises Considered, FURTHER ORDERED, ADJUDGED and DECREED by this Court that the applicant be and it is hereby granted the right to erect, construct, operate and maintain steam or other electric generating plants, together with substations, structures, works, towers, poles and wire lines and other appliances necessary, convenient or useful in connection therewith for such usages or purposes set forth in said application on, under, across and over the lands described in Paragraph 2 of Article Fourth of the said application.

And IT IS, Premises Considered, FURTHER ORDERED, ADJUDGED and DECREED by this Court that applicant be and it is hereby granted all the relief, rights, interests, title and privileges set out, described and prayed for in said application.

And IT IS, Premises Considered, FURTHER ORDERED, ADJUDGED and DECREED by the Court that applicant be and it is hereby taxed with the costs incurred in this cause and let execution issue as to such costs incurred.

Done in open court this day of November, 1957.

Judge of Circuit Court of
Shelby County, Alabama

SOUTHERN ELECTRIC GENERATING
COMPANY,

V.

J. H. LEIBACHER, SR.

IN THE CIRCUIT COURT
OF SHELBY COUNTY, ALABAMA

CASE NO. 133

CONSENT FINAL JUDGMENT

On the 13th day of April, 1959, came into open court the applicant, Southern Electric Generating Company, a corporation, by and through its attorneys and also came the defendant, J. H. Leibacher, Sr., by and through his attorneys;

Thereupon, the parties, in open court, stated that they have agreed upon a settlement of all matters presented by the pleadings and, by consent of the parties, in open court, it is ordered, adjudged and decreed as follows:

1. That the petitioner has the right and power to condemn the land for the uses and purposes stated in the application and is entitled to the relief prayed for therein;

2. That said applicant is entitled to have the fee simple interest in the lands, rights and interests condemned for the uses and purposes described in the application and that such application should be and is hereby granted;

And, it is further ordered, adjudged and decreed by this Court that such application of Southern Electric Generating Company for the condemnation of the fee simple interest in the lands described in Paragraph 2 of Article Fourth of such application be and the same is hereby granted; such lands described in Paragraph 2 of Article Fourth being located in Shelby County, Alabama and described as follows:

That part of Fractions L and M lying north and east of Yellow Leaf Creek less and except the railway right of way owned by Southern Railway Company; south half of Southeast Quarter of Northeast Quarter (SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of NE $\frac{1}{4}$), all in Section 32, Township 20 South, Range 2 East.

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3. The damages and compensation to which the defendant, J. H. Leibacher, Sr., is entitled for the condemnation of the fee simple interest in the lands, rights and interest condemned for the uses and purposes described in such application is hereby fixed at and determined to be \$8500.00;

4. That the jury demand is withdrawn and the right to a trial by jury is waived and parties agree that the Court without a jury enter and render this final decree.

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NOW, THEREFORE, Premises Considered, IT IS ORDERED, ADJUDGED and DECREED by the Court that the defendant, J. H. Leibacher, Sr., have and recover of Southern Electric Generating Company the sum of \$8500.00 as damages and compensation as to the lands described in Paragraph 2 of Article Fourth of such application.

The applicant shows unto the Court that it has heretofore deposited with the Clerk of the Circuit Court of Shelby County, Alabama the sum of Eleven Thousand and no/100 Dollars (\$11,000.00), which sum is now held by the Clerk of this Court, subject to the orders of the Court.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED and DECREED by this Court that the said J. H. Leibacher, Sr. is entitled to have and receive of the said Clerk of the Circuit Court of Shelby County the sum of Eight Thousand Five Hundred and no/100 Dollars (\$8500.00), and the Clerk of the Circuit Court is hereby directed to pay forthwith to said J. H. Leibacher, Sr. and Handy Ellis, his attorney of record, said sum of Eight Thousand Five Hundred and no/100 Dollars (\$8500.00). The Clerk is ordered and directed to pay to applicant the balance of said sum of Eleven Thousand and no/100 Dollars (\$11,000.00), amounting to Two Thousand Five Hundred and no/100 (\$2500.00) Dollars.

And it is further ORDERED, ADJUDGED and DECREED by this Court that the fee simple title in the land described above and in Paragraph 2 of Article Fourth of such application and other rights, interests and authority sought to be condemned as described in such application, be and hereby are condemned, granted and awarded to said applicant, Southern Electric Generating Company, with the rights and for the uses and purposes set forth in said application and that the fee simple interest in the lands described in Paragraph 2 of Article Fourth to-

gether with all rights, interests and authority concerning same prayed for in said application be and the same are hereby divested out of the said defendant, J. H. Leibacher, Sr., and vested in the applicant, Southern Electric Generating Company;

And IT IS, Premises Considered, FURTHER ORDERED, ADJUDGED and DECREED by this Court that the applicant be and it is hereby granted the right to erect, construct, operate and maintain steam or other electric generating plants, together with substations, structures, works, towers poles and wire lines and other appliances necessary, convenient or useful in connection therewith for such usages or purposes set forth in said application on, under, across and over the lands described in Paragraph 2 of Article Fourth of the said application.

And IT IS, Premises Considered, FURTHER ORDERED, ADJUDGED and DECREED by this Court that applicant be and it is hereby granted all the relief, rights, interests, title and privileges set out, described and prayed for in said application.

And IT IS, Premises Considered, FURTHER ORDERED, ADJUDGED and DECREED by the Court that applicant be and it is hereby taxed with the costs incurred in this cause both in this Court and in the Supreme Court of Alabama, excepting that said J. H. Leibacher, Sr. is hereby taxed with costs amounting to Seventy-five and no/100 Dollars (\$75.00) under motion of applicant heretofore made in this cause to retax costs, and let execution issue as to such costs incurred.

All of the foregoing terms and conditions of the decree were agreed upon and consented to by the parties in open Court.

Done in open court this 13th day of April, 1939.

Judge of Circuit Court of
Shelby County, Alabama

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1939 FEB -4 PM 3:05

Thomas H. Hamilton, Jr.
JUDGE OF PROBATE

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