

16.50

090-982-930-909-00404

Bessemer - Lay Dam 44+115 kv T.L 50016666

Encroachment # 1009

STATE OF ALABAMA )

County of Shelby )

Instrument prepared by  
the Corporate Real Estate  
Dept. of Alabama Power Co.  
Birmingham, Ala.

GRANTEE'S ADDRESS  
ALABAMA POWER CO.  
P. O. BOX 2641  
BIRMINGHAM, AL 35291  
ATT: CORP. REAL ESTATE

AGREEMENT between ALABAMA POWER COMPANY, hereinafter referred to as Licensor, and  
Lew Gagneaux and wife, Constance Gagneaux hereinafter referred to as Licensee.

WHEREAS, Licensor has acquired and is the owner of an easement which embraces, among other rights, the right to construct, operate and maintain electric transmission lines and telegraph and telephone lines, towers, poles and appliances necessary or convenient in connection therewith upon a strip of land 100 feet in width, which is part of a tract of land situated in Shelby County, Alabama, such easement being more particularly described in that certain deed executed by Floyd Miles and wife, Mrs. Roseanna Miles date 12 October 1949 and recorded in Deed Book 141, page 325 in the Office of the Judge of Probate and reference is hereby expressly made to such records for a particular description of such land; and,

WHEREAS, Licensor is using a portion of such strip of land pursuant to such easement and has erected thereon electric transmission lines and,

WHEREAS, Licensee is the owner of, or the owner of an interest in, the servient estate of the strip of land embraced in such easement and desires to use portions of said easement for the following purpose: To construct and maintain a covered wooden deck (20 feet maximum height and 4 feet maximum encroachment on right of way); a wooden privacy fence (08 feet maximum height) and a concrete pool apron (08 feet maximum encroachment on right of way) as shown on Alabama Power Company's drawing A-190-1014, sheet 1 of 1, which is attached hereto and made a part hereof, hereinafter referred to as the encroachment; and,

WHEREAS, the continued maintenance of such encroachment benefits Licensee in the use of the tract of land of which such strip of land is a part; and,

WHEREAS, such encroachment, at present, inconveniences Licensor in the exercise of such easement and restricts the use which Licensor is now making of such strip of land and may do so in the future to a greater extent; and,

WHEREAS, such encroachment increases the risks imposed upon Licensor in connection with the exercise of such easement:

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

Licensee will at all times hereafter indemnify, protect and save Licensor harmless from any and all claims, loss, damage, expense, and liability which Licensor may incur, suffer, sustain or be subjected to, resulting from or arising out of the construction, maintenance, use or presence of the Encroachment of Licensee upon that portion of its easement affected by the Encroachment; provided further, that Licensee shall indemnify and save Licensor harmless against such claims, loss, damage, expense, and liability to the extent the same may be caused by Licensor's acts of negligence, sole or concurrent, or that of its employees, or agents so long as such claim or loss involves in any way the construction, operation, maintenance or presence of the Encroachment.

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004 MCD 16.50

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Licensee agrees and covenants that neither by the occupancy of such portion of such strip of land with such encroachment, nor in any other way, is Licensee claiming; (1) adversely to Licensor in its ownership of such portion of such easement or (2) the right to maintain such encroachment on such strip of land, but that the maintenance of such encroachment by Licensee is with the recognition of the superior easement of Licensor; (3) Licensee will not further encroach on this right of way without prior written approval of the Licensor; (4) Licensee will bear full cost of any repairs of any of Licensor's facilities due to the existence of or any activities associated with the operation and maintenance of these encroachments; (5) Licensor is relieved of any and all liabilities that might arise from the construction, maintenance or due to the presents of this encroachment; (6) Licensee will install a 16 foot wide gate opening in any fencing on Licensor's easement area.

Licensee further agrees and covenants that Licensee will, within ninety (90) days from the date of written notice given Licensee by Licensor, remove such encroachments from such strip of land.

Notice herein referred to shall be deemed to be given by Licensor if the same is addressed to the Licensee at **1507 Hillspun Drive, Alabaster, Al. 35007** and posted with the U.S. Postal Service with postage prepaid. In the event Licensee should fail, within ninety (90) days after such notice is so mailed, to remove such encroachment, Licensor is hereby given express privilege, power and authority as agent for Licensee, to remove the same or any part thereof without any liability to Licensee which may accrue on account of any loss thereby sustained. Licensee agrees and covenants that in such event, Licensee will reimburse Licensor for the reasonable removal expenses incurred thereby promptly upon bill being rendered for the same. In the event such sum is not paid within thirty (30) days thereafter, it shall bear interest until paid at the then prime interest rate.

All the undertakings and covenants contained herein are to be construed as covenants which run with the land and shall be binding upon and enforceable against the respective successors, heirs or assigns of the parties hereto.

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

**IN WITNESS WHEREOF**, the parties hereto have executed this instrument and affixed their seals on this the 2<sup>nd</sup> day of September, 1994

**ALABAMA POWER COMPANY, Licensor**

Witnesses:

Eana V. Handley

Sara R. Parks  
Sara R. Parks, Supervisor  
Corporate Real Estate-Birmingham Division

Witnesses:

Alon D. Buning  
Alon D. Buning

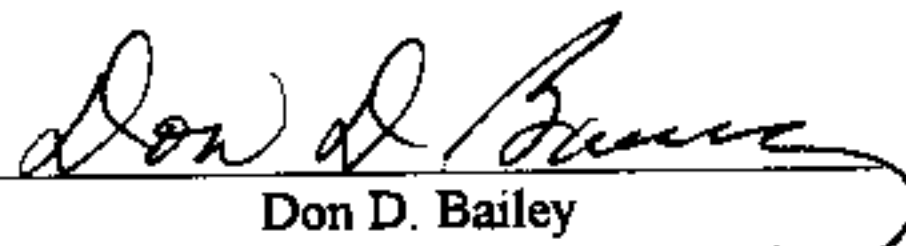
**Licensee**

Constance B. Gagneaux (LS)  
Lowell J. Agnew (LS)

STATE OF ALABAMA )  
County of Jefferson )

I, Don D. Bailey, a Notary Public, State at Large hereby certify that Sara R. Parks, whose name as Supervisor, Birmingham Division Office of the Corporate Real Estate Department of Alabama Power Company, a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this date that, being informed of the contents of this instrument, she, with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal, this the 2<sup>ND</sup> day of SEPTEMBER, 1994

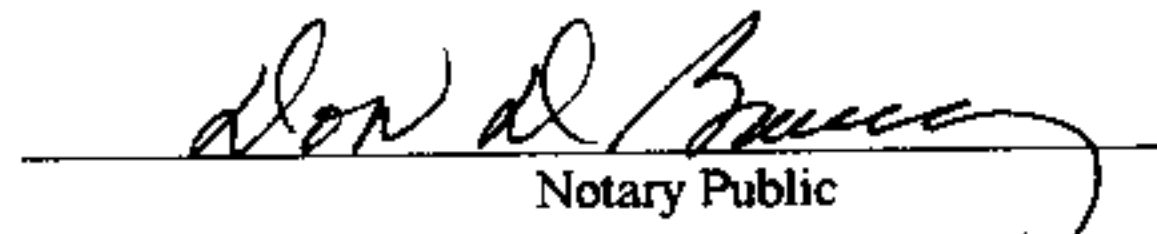
  
Don D. Bailey  
Notary Public State at Large

My commission expires 01 April 1995.

STATE OF ALABAMA )  
County of SHELBY )  
JEFFERSON )

I, DON D. BAILEY, a Notary Public, in and for said County, in said State, hereby certify that CONSTANCE B. GAGNEUX & HUSBAND, LEVEILYN J. GAGNEUX whose name(s) are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of this instrument, they executed the same voluntarily, on the day the same bears date.

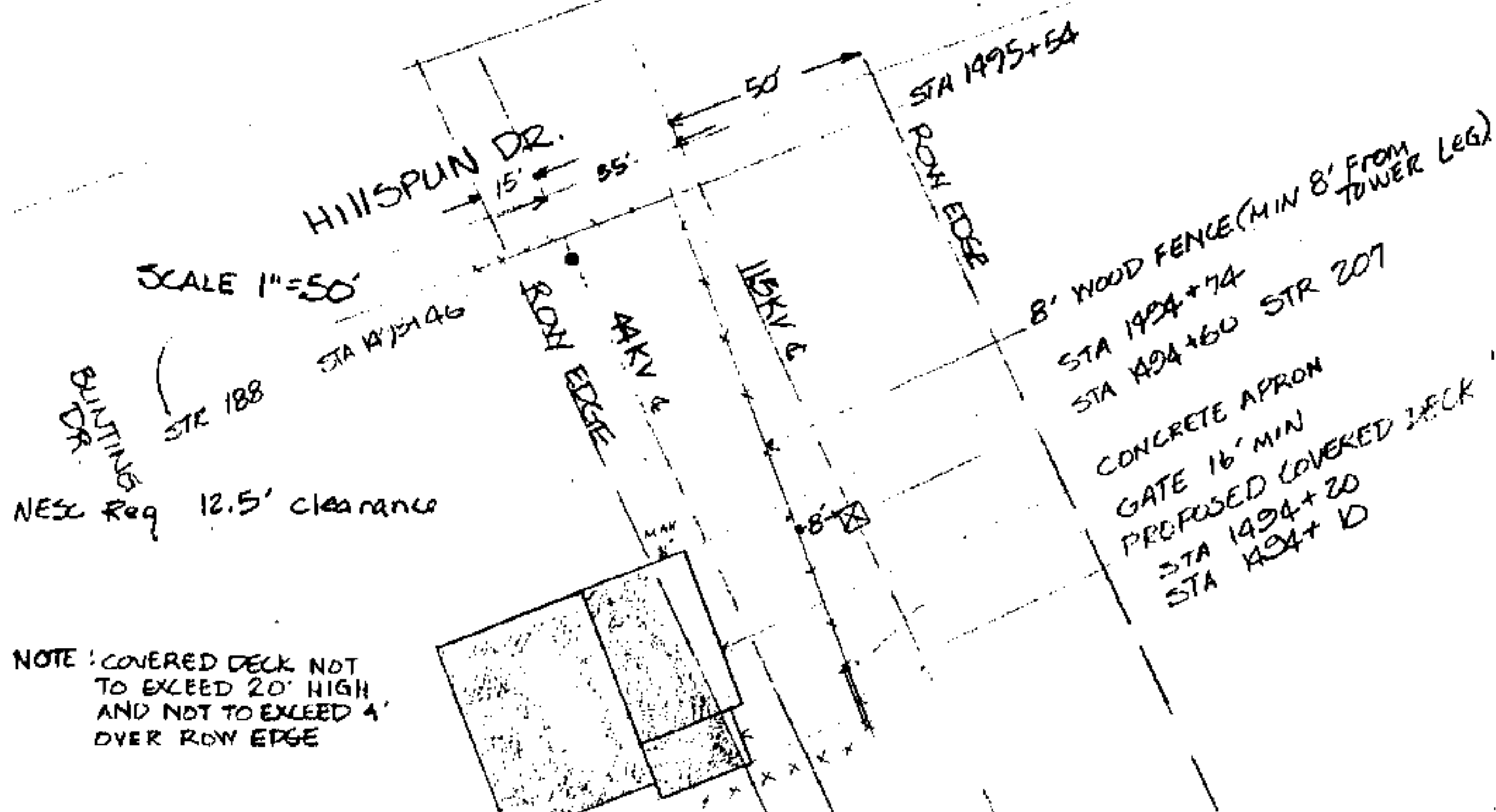
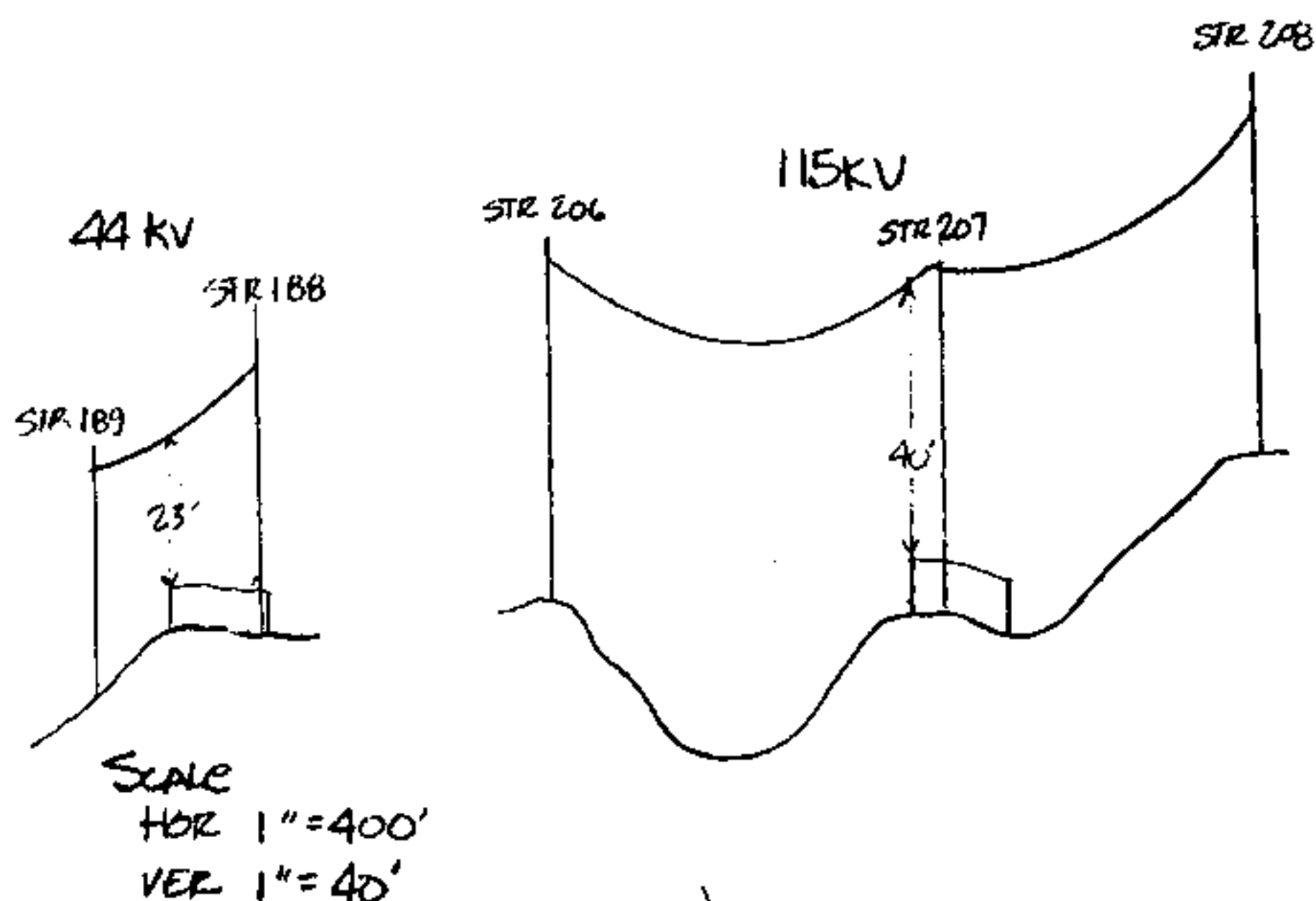
Given under my hand and seal, this the 2<sup>ND</sup> day of SEPTEMBER, 1994.

  
Notary Public

My commission expires 04-01-95

# SHELBY COUNTY

SEC 26 T-20-S, R-3-W  
PARCEL 89, 611 & 77



DR. <u>TLC</u>	NO.	DATE	REVISION	<b>ALABAMA POWER COMPANY</b>
TR.				
CK.				
APP. <u>K. K. K.</u>				
DATE <u>8/1/95</u>	SUPERSEDES			SCALE <u>AS NOTED</u> SH. <u>1</u> OF <u>1</u> SHEETS
SUBJECT <u>BESSEMER-CAERA 44KV &amp; 115KV</u>				A-190-1014
DETAIL <u>PROPOSED DECK &amp; CONCRETE APRON</u>				

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