

Monterallo - Calera 44 Kv T.L.

BD 16770

TAW # 1051  
File # 4-4-23  
STATE OF ALABAMA  
COUNTY OF SHELBY

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S 3 T 24 N R 12 E  
Shelby City

08/16/1995-22460  
12:31 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
004 REC 16.30

Inst # 1995-22460

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# LICENSE AGREEMENT, INDEMNITY & RELEASE OF DAMAGES

AGREEMENT between ALABAMA POWER COMPANY, hereinafter referred to as Licenser, and ~~Shane K.~~ Massey and wife, Katrina Massey, hereinafter referred to as Licensee.

WHEREAS, Licenser 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 50 feet in width, which is part of a tract of land situated in Shelby County, Alabama, such easement (the "Easement") being more particularly described in that certain deed executed by Floyd Miles and wife, Mrs. Roseanna Miles dated 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 (herein the "APCO Easement Area"); and

WHEREAS, Licenser is using a portion of such APCO Easement Area 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 a portion of the APCO Easement Area ("Licensee's Estate") embraced in such Easement and desires to use portions of said APCO Easement Area for the following purpose: To operate and maintain the already constructed frame house and driveway as shown on Alabama Power Company's drawing A-190-975, 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 Licensee's Estate; and

WHEREAS, such Encroachment, at present, inconveniences Licenser in the exercise of such Easement and restricts the use which Licenser is now making of the APCO Easement Area and may do so in the future to a greater extent; and,

WHEREAS, such Encroachment increases the risks imposed upon Licenser in connection with the exercise of such Easement:

NOW THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed and covenanted between the parties hereto as follows:

1. Licensee will at all times hereafter indemnify, protect and save Licenser harmless from any and all claims, loss, damage, expense (including, without limitation, legal fees and expenses), and liability for damage to property or death or injury to persons which Licenser 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 Licenser's Easement affected by the Encroachment; provided further, that Licensee shall indemnify and save Licenser harmless against such claims, loss, damage, expense (including, without limitation, legal fees and expenses), and liability for damage to property or death or injury to persons to the extent the same may be caused by Licenser's acts of negligence, whether simple or gross, 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.

2. Licensee agrees and covenants that neither by the occupancy of such portion of the APCO Easement Area with such Encroachment, nor in any other way, is Licensee claiming: (A) adversely to Licenser in Licensee's ownership of the Licensee's Estate; or (B) the right to maintain such Encroachment on the APCO Easement Area, but that the maintenance of such Encroachment by Licensee is with the recognition of the superior easement of Licenser. Licensee further agrees: (A) Licensee will not further encroach on the APCO Easement Area without prior written approval of the Licenser, which approval Licenser may withhold in its sole and absolute discretion; and, (B) Licensee will bear full cost of any repairs of any of Licenser's facilities due to the existence of or any activities associated with the operation and maintenance of the Encroachment;

This instrument prepared in  
the Corporate Real Estate Dept.  
of Alabama Power Co.  
Birmingham, Alabama

GRANITE ADDRESS  
ALABAMA POWER CO.  
P.O. BOX 2641  
BIRMINGHAM, AL 35291  
ATTN: CORP. REAL ESTATE

(03-15-94)

*Don L. Hardard*

3. Licensee understands that the Encroachment has been constructed in an area which is subject to certain dangers and risks, and Licensee hereby assumes all such risks. Licensee further hereby releases Licensor, its officers, directors, employees, agents and contractors from any and all liabilities for past, present and future (i) damage to the Encroachment and to all structures and improvements of whatsoever nature now or hereafter constructed or maintained by Licensee in the APCO Easement Area or on the Licensee's Estate, and (ii) injuries or death to persons which occur on or are related to activities or occurrences on the APCO Easement Area or the Licensee's Estate.

4. Licensee further agrees and covenants that Licensee will, within sixty (60) days from the date of written notice given Licensee by Licensor, remove and/or relocate the Encroachment to an area off of the APCO Easement Area.

5. Notice herein referred to shall be deemed to be given by Licensor if the same is addressed to the Licensee at 160 Buckingham Circle, Montevallo, AL. 35115 and posed with the U.S. Postal Service with postage prepaid. In the event Licensee should fail, within sixty (60) days after such notice is so mailed, to remove or relocate 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 so paid within thirty (30) days thereafter, it shall bear interest from the expiration of such 30-day period until paid at the Prime Rate prevailing from time to time. "Prime Rate" is the prime rate as published in THE WALL STREET JOURNAL's "Money Rates" table, then Licensor will choose a substitute index rate which is based upon comparable information.

6. In case any one or more of the covenants, agreements, terms or provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein shall be in no way affected, prejudiced or disturbed thereby.

7. 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.

8. 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 17th day of ~~March, 1994~~ May, 1995. ✓ KSM  
LM

**CAUTION -- IT IS IMPORTANT THAT YOU THOROUGHLY READ AND UNDERSTAND THIS AGREEMENT BEFORE YOU SIGN IT.**

**LICENSOR:**

ALABAMA POWER COMPANY

Witnesses:

Thomas R. Davis

By: Sarah P. Parks  
Its: Supervisor

Corporate Real Estate  
Birmingham Division

Sworn and subscribed to  
on the 17th day of May, 1995.

L. A. Green  
Notary Public  
9/97

**LICENSEE:**

LSM  
✓ Kevin S. Massey (Seal)  
Shane K. Massey  
Kevin S. Massey  
LM Katrina Massey (Seal)  
Katrina Massey

STATE OF ALABAMA )

JEFFERSON COUNTY )

I, WILLIAM R. CHILDRESS, a Notary Public in and for said County in said State, hereby certify that Sara R. Parks, whose name as Supervisor, Corporate Real Estate, Alabama Power Company, a corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day, that, being informed of the contents of the instrument, she, with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal, this 1<sup>ST</sup> day of JUNE, 1995.

William R. Childress

Notary Public - State at Large

My commission expires: 1-4-98

STATE OF ALABAMA )

COUNTY OF )

I, \_\_\_\_\_, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_ whose name \_\_\_\_\_ signed to the foregoing instrument and who \_\_\_\_\_ known to me, acknowledged before me on this day, that being informed of the contents of the instrument \_\_\_\_\_ executed the same voluntarily, on the day the same bears date.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
Notary Public - State at Large

My commission expires:

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