

ENCROACHMENT AGREEMENT

BD 16945

This Instrument Prepared By:

Bessemer - Gaston 230kV T.L.

Southwest Quarter of the Southwest Quarter
Section 07, Township 20 South, Range 2 West
Shelby County, Alabama
Lats/Longs _____

Don D. Bailey, LAS
Alabama Power Company
Post Office Box 2641
Birmingham, AL 35291-1980

T.L. # 8-5-34

Alabama Power Company, hereinafter called the "Power Company", hereby consents for

Highway 52 LLC

hereinafter called the "Undersigned" to use an area within the Power Company's above-named transmission line right(s) or way described as follows:

20020821000398430 Pg 1/3 17.00
Shelby Cnty Judge of Probate, AL
08/21/2002 14:37:00 FILED/CERTIFIED

Said right of way being **One Hundred (100)** feet in width and extending in part through the above-described area on which Power Company has constructed and now maintains and operates said electric transmission lines by virtue of certain easements heretofore acquired by the Power Company. The said right(s) of way (is or are) more particularly described in Power Company's documents: Parcel Number 232074 acquired from W. H. Coats and wife, Mettie Coats dated 01 September 1965 and recorded in Deed Book 238, page 604/605 in the Office of the Judge of Probate, Shelby County, Alabama,

The use of the area by the Undersigned within said right of way, pursuant to this consent, shall be limited to the construction, operation, and maintenance of dumping excess soil from elevation of no more than 538 feet at edge of Shelby County Highway 33 to a point in a northeasterly direction along the said rights of way for a distance not more than 300 feet and with a 2 percent downslope to a point that ties into the original grade of the land hereinafter referred to as the "Encroachment" as approved by the Regional Transmission Department. **It is specifically understood that no buildings or other obstructions of any type will be permitted within or on subject transmission line right of way.**

The plans and specifications as submitted by the Undersigned meet the Power Company's approval provided the Undersigned agrees to the following terms and conditions:

1. The Undersigned agrees to obtain all necessary rights from the owners of the lands crossed by the Power Company's rights of way in the event the Undersigned does not own the said lands and rights.
2. The Undersigned agrees to use said area within the Power Company's right(s) of way in such a manner that will not interfere with Power Company's activities and facilities as now, or hereafter, exist thereon (hereinafter referred to as Power Company's "activities" and "facilities"). In the event the Encroachment should interfere with Company's activities or facilities in the future, the undersigned agrees to revise, relocate or remove the Encroachment so as to remedy such interference.
3. The Undersigned agrees that the use of Power Company's right(s) of way as herein provided shall in no way affect the validity of the Power Company's easement(s) and shall in no way modify or restrict the use or rights of the Power Company, its successors or assigns, in and to the area to be used. The Undersigned acknowledges that Undersigned's use of Power Company's right(s) of way is with the recognition of the superior easement of the Power Company.
4. The use of said area within said right(s) of way by the Undersigned shall be at the sole risk and expense of the Undersigned; and that the Power Company is specifically relieved of any responsibility or damage to the facilities and property of the Undersigned resulting or occurring from the use of said right of way by the Power Company as provided for herein. Undersigned agrees not to bring action from the legal process in that instance.
5. The Undersigned agrees not to use and will prohibit agents, employees and contractors of Undersigned from using any tools, equipment or machinery within ten (10) feet of Power Company's overhead conductors. Undersigned agrees to comply with the attached copy of Act 504 passed by the 1967 Regular Session of the State of Alabama Legislature.
6. The Undersigned also agrees that in the use of the right(s) of way, Undersigned will not in anyway cause the facilities of the Power Company now or hereafter located on the right(s) of way to become or remain in violation of the requirements of the National Electric Safety Code. The Undersigned also agrees to meet the standards and requirements of OSHA pertaining to or associated with Power Company's facilities. The Undersigned agrees to reimburse the Power Company for all cost and expense for any damage to the Power Company's facilities resulting from the use by the Undersigned of said area within said right(s) of way.
7. The Undersigned agrees to notify or have his contractor(s) notify the Power Company's Transmission Representative Mr. Brett Luebke or Mr. Johnny Gill at Telephone No. (205) 226-1095 at least two (2) days prior to actual construction on the Power Company's right(s) of way.

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8. R/W LANDSCAPING SPECIFICATIONS: Right-of-way documents grant the Power Company the right to remove trees and brush from the limits of the right of way. However, for aesthetics in urban areas, Power Company will permit some planting of shrubbery and low growing trees provided these plants do not interfere with the access to and operation of Power Company's facilities. A plant low growing trees is defined as a tree which normally grows no more than 15 feet in height at maturity.

9. This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, successors and/or assigns.

The Undersigned hereby accepts the foregoing consent subject to the terms and conditions set forth above and in the event the Undersigned fails to perform as herein provided and has not executed this Agreement on or before the 15th day of May, 2002, this Agreement shall become void and no use of the Power Company's right of way as herein provided for shall be made.

TO HAVE AND TO HOLD the same to the Power Company, its successors and assigns, forever.

IN WITNESS WHEREOF, this Agreement has been duly executed, this the 9th day of July, 2002.

Witness

(Husband) (Seal)

Witness

(Wife) (Seal)

NOTARY PUBLIC: _____

(My Commission Expires: _____)

OR

ATTEST (if corporation) or WITNESS

Highway 52 LLC
(Name of Corporation/Partnership/LLC)
Member Interstate Restaurant Investors
By: John M. Klover LLP
Its: Partner

By: _____

Its: _____

NOTARY PUBLIC: Judith Ann Lemsky

(My Commission Expires: 1-11-03)

The Power Company has by its duly authorized agent executed this Agreement, this 5th day of August, 2002.

ALABAMA POWER COMPANY

By: Dan L. Hauducil, Jr.

Title: Chief Technical Specialist

Witness

(My Commission Expires: 8/26/2005)

NOTARY PUBLIC: Handlyn Gayme

[illegible]

ALABAMA POWER COMPANY

SUBJECT BISSEMER-GASTON 230KV TL

DETAIL FILL DIRT PLACED ON ROW
STA. 1054+10 TO STA. 1058+85

SCALE 1" = 40'
SHEET 1 OF 1 SHEETS
SUPERSEDES

DRAWN BY B. LUEBKE TRACED _____ DATE 4-25-42

CHECKED _____ DATE _____

APPROVED _____ DATE _____

DATE-
DATE-DATE-
DATE-