

**TAW License Agreement**

**SUBJECT: Bessemer-Calera 115 kV & 44 kV**

**This Instrument Prepared By:**  
**Sara Parks**  
**Alabama Power Company**  
**Post Office Box 2641**  
**Birmingham, AL 35291**

**STATE OF ALABAMA        )**  
**:**  
**COUNTY OF SHELBY        )**

**THIS AGREEMENT**, made and entered into between **ALABAMA POWER COMPANY**, a corporation, (hereinafter referred to as “**Easement Owner**”), and **GEORGIA CROWN DISTRIBUTING CO. d/b/a Alabama Crown Distributing Co., Inc.** (hereinafter referred to as “**Fee Owner**”).

**WITNESSETH:**

**WHEREAS**, Easement Owner 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 all communication lines, towers, poles and appliances necessary or convenient in connection therewith upon, under, over and across a strip of land 100 feet in width, which is a part of a tract of land situated in the South One-Half of the Southwest Quarter (S ½ of SW ¼) of Section 18 and Northeast Quarter of the Northwest Quarter (NE ¼ of NW ¼) of Section 19, all in Township 21 South, Range 02 West, Shelby County, Alabama, and is particularly described in those certain instruments executed by M. B. Smith and wife, M. S. Smith, dated November 1, 1912, recorded in Deed Book 48, page 614; J. R. Nabors and wife, Anna E. Nabors, dated November 8, 1912, recorded in Deed Book 48, page 606; J. R. Nabors and wife, Anna E. Nabors, dated October 4, 1915, recorded in Deed Book 57, page 540; J. L. Hale and wife, H. A. Hale, dated December 2, 1912, recorded in Deed Book 48, page 596; and J. B. Adams and wife, Chloe L. Adams, dated March 23, 1915, recorded in Deed Book 57, page 373, all in the Office of the Judge of Probate, Shelby County, Alabama (the “**Easement**”). Reference is hereby expressly made to such records for a particular description of the Easement; and

**WHEREAS**, Fee Owner recognizes that Easement Owner has heretofore constructed and is presently operating and maintaining electric transmission lines, towers, poles, appliances and fixtures on the Easement and has the right and authority under those certain instruments referred to above to construct, operate and maintain electric transmission lines and all communication lines, towers, poles and appliances necessary or convenient in connection therewith; and

**WHEREAS**, Fee Owner is the owner of, or the owner of an interest in, the servient estate of the strip of land embraced in the Easement and desires to use portions of the Easement for certain purposes, including, without limitation, as an access road, deliver vehicle court and delivery turn around area, and access drive to the western portion of the real property owned by Fee Owner (including grading and filling work), on the Easement as shown on Drawing AX-190-1489-001, marked Exhibit “A”, attached hereto and made a part hereof, such improvements being hereinafter sometimes called the “**Encroachment**”; and



**WHEREAS**, the continued maintenance of such Encroachment does and will benefit Fee Owner in the use of the tract of land of which such strip of land is a part;

**NOW THEREFORE**, in consideration of the premises and the mutual covenants and agreements herein contained, and in further consideration of the sum of One Dollar (\$1.00) in hand paid by Fee Owner to Easement Owner, the receipt whereof is hereby acknowledged, it is hereby agreed and covenanted between the parties hereto as follows:

1. Easement Owner hereby expressly consents to Fee Owner's maintenance of such Encroachment upon said strip of land, subject to the terms of this Agreement. In addition to the facilities constituting the Encroachment depicted on Exhibit "A," Fee Owner shall have the right to install, subject to the terms of this Agreement, other facilities within the Encroachment that do not interfere with Easement Owner's rights, including, without limitation, pavement, landscaping not more than six feet (6') in height, directional signs, and fencing and gates (provided that keys or access codes are provided to Easement Owner).

2. During periods of construction or material alteration of the facilities constituting the Encroachment (including construction or alteration of any replacement facilities in the location of the Encroachment), and only during such periods, Fee Owner will secure and maintain at its expense, a policy of commercial general liability insurance in a form acceptable to Easement Owner in its reasonable discretion and in an entity which is qualified to do business in the State of Alabama and which is acceptable to Easement Owner in its reasonable discretion, which policy shall insure Easement Owner against and hold it harmless from any and all liability which Easement Owner may incur as the result of any bodily injuries, death to persons or damage to or destruction of property, whenever occurring, suffered or allegedly suffered by Fee Owner, its employees, tenants, invitees, or licensees, based upon or growing out of the ownership, use or occupancy of said strip of land or the construction, operation or maintenance of such electrical facilities on said strip of land by Easement Owner, caused, occasioned, or contributed to by the negligence of Fee Owner, its agents, servants, employees, tenants, invitees, or licensees, but excluding any such liability caused, occasioned or contributed to by the negligence or willful misconduct, sole or concurrent, of the Easement Owner, its agents, servants, employees, tenants, invitees, or licensees, so long as such claim or loss involves in any way the construction, operation, maintenance or presence of the Encroachment. Such policy shall provide coverage to Easement Owner by naming Alabama Power Company as an additional insured against risk of such liability in the amount of Two Million Dollars (\$2,000,000) for each occurrence, personal injury or injuries, death to persons and/or damage to or destruction of property or properties, and shall contain a provision that such policy will not be terminated as to Easement Owner until Easement Owner shall have been given at least sixty (60) days notice in writing (or such shorter notice period as is required by Fee Owner's insurer, but in no event less than thirty (30) days) of the date on which such policy will be terminated. Fee Owner will furnish Easement Owner with either a certified copy of such policy or other sufficient evidence thereof within thirty (30) days after the commencement of construction of the facilities constituting the Encroachment and on each subsequent renewal date of such policy until the completion of such construction. The minimum amount of insured liability is subject to review for adjustment by Easement Owner after five (5) years from the date of this Agreement and subsequent adjustments are subject to review after five (5) years from the date of such adjustments. Any adjustments required by Easement Owner shall be reasonable and reflect commercial general liability insurance limits in Shelby County, Alabama.

3. Fee Owner agrees and covenants that neither by the occupancy of such portions of said strip of land with such Encroachment, nor in any other way, has it claimed or is it claiming: (1) adversely to Easement Owner in its ownership of the Easement, or (2) the right to maintain such Encroachment on



such strip of land, but that the maintenance of such Encroachment by Fee Owner on said strip of land is with the recognition of the Easement, including the right of Easement Owner to place additional facilities hereafter on such strip of land in accordance with the Easement. Easement Owner agrees and covenants that neither by the exercise of its rights under the Easement nor by anything contained in this Agreement has it claimed or is it claiming adversely to Fee Owner in its ownership of the strip of land encumbered by the Easement. Notwithstanding anything herein to the contrary, Easement Owner acknowledges that Fee Owner retains all rights of ownership in and to such strip of land not inconsistent with the rights held by Easement Owner under the Easement.

4. Fee Owner agrees that in the use of the Easement as designated herein or in any other manner, it will not in any way cause the transmission lines, communication lines, or any other structures or electrical equipment of Easement Owner now or hereafter located on such strip of land to become or remain in violation of the requirements of the National Electrical Safety Code as to clearances between electrical conductors and ways accessible to pedestrians and vehicles. The said National Electrical Safety Code herein referred to is more specifically described in "Safety Rules for the Installation and Maintenance of Overhead Electric Supply and Communication Lines" published currently by the Institute of Electrical and Electronics Engineers.

Fee Owner also agrees in its use of the Encroachment to meet any applicable standards and requirements of OSHA pertaining to or associated with Easement Owner's facilities.

5. Fee Owner agrees that in the event Easement Owner notifies it in writing that said Fee Owner's facilities, or any parts thereof, on the Easement must be removed temporarily from the Easement to permit Easement Owner's existing or proposed construction, operation or maintenance of electric transmission lines, communication lines, or other structures and facilities permitted by the Easement on the Easement, Fee Owner, in such event, will promptly cause all said Encroachment, or designated parts thereof, on such strip of land to be removed therefrom for a period of time requested by Easement Owner in order to enable Easement Owner to perform construction or maintenance work on the Easement. Easement Owner agrees to provide at least thirty (30) days' advance written notice to Fee Owner of such removal, or such shorter period of time as is reasonably required by the circumstances.

6. Fee Owner further agrees and covenants that, at least thirty (30) days prior to such time as Fee Owner commences construction activity or installs improvements on the strip of land encompassing the Encroachment, it will construct and maintain at its own expense and in a manner satisfactory to and approved by Easement Owner in its reasonable discretion, a concrete curb, barricade, fender or other adequate protective structure around each tower, poles, guy wire, or other work now existing on the Easement within or enclosed by the present boundaries of the strip of land encompassing the Encroachment and each tower, pole or other work which Easement Owner may construct in the future on such strip of land within said boundaries in order to protect the same against damage from vehicles driven or parked thereon.

7. Fee Owner further agrees and covenants that no "long-term" parking (defined as leaving a vehicle unattended for three (3) or more consecutive 24-hour periods) will occur in any "truck court" or in or on any other area of the Encroachment adjacent to, abutting, or contained in the easement areas described above.

8. If at any point in the future Easement Owner is required by any applicable law, rule(s) or regulation(s), or for purposes of providing electricity to residents and businesses of Shelby County, Alabama, or maintaining its facilities in the Encroachment, to modify its facilities in the Encroachment such that Fee Owner must permanently modify its use of the Encroachment in some manner, Easement Owner will so notify Fee Owner in writing of its request for Fee Owner to modify its use of the





Encroachment in a specific manner, and the reason for such request (the "Requested Modification"). Easement Owner shall use reasonable efforts to insure that the Requested Modification will not materially interfere with Fee Owner's use and enjoyment of the Encroachment. Fee Owner shall have thirty (30) days (the "Response Period") to respond in writing to the Requested Modification. Such response shall state (i) that Fee Owner shall comply with the Requested Modification, and the time period within which Fee Owner will make such modifications, such time period to be commercially reasonable and subject to extensions for delays not caused by Fee Owner; or (ii) that the Requested Modification will materially negatively impact Fee Owner's business and a request that Easement Owner enter into good faith negotiations with Fee Owner to agree upon a revision to the Requested Modification that will not result in a material negative impact to Fee Owner's business (a "Negotiation Request"). If Easement Owner receives a Negotiation Request, Easement Owner agrees to negotiate with Fee Owner, in good faith, for a period of sixty (60) days (the "Negotiation Period") to reach a revision to the Requested Modification that is reasonably acceptable to both Easement and Fee Owners; provided, however, if the Requested Modification shall cause a closure of substantially all of the access drive over the Easement area that connects Fee Owner's real property on the eastern and western sides of the Easement area, as shown on Exhibit "A" (the "Connecting Drive"), then Easement Owner shall be required to offer to Fee Owner during such Negotiation Period a proposed alternative location within the Easement area for the Connecting Drive of a width of not less than thirty-four (34) feet, unless Easement Owner's proposed commercially reasonable use of the Easement area shall preclude all possible alternative locations of the Connecting Drive.

In the event Easement Owner and Fee Owner cannot reach agreement as to a revision to the Requested Modification during the Negotiation Period, or if Fee Owner fails to respond to the Requested Modification within the Response Period, then Easement Owner may remove or reconfigure the improvements located on the Encroachment or otherwise modify the Encroachment in accordance with the Requested Modification without any liability to Easement Owner whatsoever, except for any damage or injury resulting from Easement Owner's negligence and/or willful misconduct. Fee Owner covenants and agrees that in the event Easement Owner must complete the Requested Modification, Fee Owner will reimburse Easement Owner for Easement Owner's reasonable cost of completing the Requested Modification promptly upon its receipt of Easement Owner's invoice for such costs. In the event such sum is not so paid within thirty (30) days of Fee Owner's receipt of such invoice, such sum shall bear interest until paid at the then current prime rate, as published in the Wall Street Journal.

9. Easement Owner agrees that it will use reasonable efforts to minimize any interference with Fee Owner's use of the Encroachment in the event Easement Owner must enter the Encroachment to maintain or repair any of Easement Owner's facilities and/or equipment located within the Encroachment.

10. With respect to the strip of land encompassing the Encroachment, Fee Owner agrees and covenants that: (1) no flammable material, liquid or solid, will be stored or used by Fee Owner on the Easement, provided that Fee Owner shall be permitted to access the Easement by means of vehicles powered by combustible fuels, and such vehicles shall be permitted to transport products and materials used by Fee Owner in the ordinary course of business, including, without limitation, alcoholic and non-alcoholic beverages and related products and materials; (2) it will reimburse Easement Owner for the reasonable cost of any relocations or revisions of electrical facilities necessitated by the Encroachment; (3) no building of metal construction or otherwise, will be situated or maintained on any part of the Easement; (4) no vehicles permitted to be parked on the Easement will be over thirteen and one-half feet (13 ½') in height; (5) no lighting standards will be installed on the Easement; and (6) it will use the Encroachment only for commercially reasonable business purposes subject to the restrictions, limitations, and obligations contained in this Agreement.



11. Any and all notices required or permitted under this Agreement shall be made or given in writing and shall be delivered in person or sent by postage, pre-paid, United States Mail, certified or registered, return receipt requested, or by a recognized overnight carrier, to the other party at the addresses set forth below, and such address as may be provided to the other party from time to time. The date of notice given by personal delivery shall be the date of such delivery. The effective date of notice by mail or overnight carrier shall be the date such notice is mailed or deposited with such overnight carrier.

Fee Owner: Georgia Crown Distributing Co.  
d/b/a Alabama Crown Distributing Co., Inc.  
100 Georgia Crown Drive  
McDonough, GA 30253  
Attn: General Counsel

Easement Owner: Alabama Power Company  
1043 Gadsden Highway  
Birmingham, Alabama 35235  
Attn: General Counsel

12. It is understood and agreed between the parties hereto that all the undertakings and covenants herein are to be construed and intended as covenants which run with the land and are to be binding upon, enforceable against, and inure to the benefit of the parties hereto, their executors, administrators, successors and assigns.

13. Wherever in this Agreement the term Easement Owner or Fee Owner is used, such term shall be deemed to include their respective executors, administrators, successors or assigns.

*[remainder of page intentionally left blank; signatures appear on following pages]*

IN WITNESS WHEREOF, the parties hereto have executed this instrument and affixed their seals to be effective as of the 8<sup>th</sup> day of July, 2009.

**EASEMENT OWNER:**

**ALABAMA POWER COMPANY**

By: Sara R. Parks  
Name: Sara R. Parks  
Title: Land Supervisor

STATE OF Alabama

COUNTY OF Jefferson

I, Kimberly K. Ellis, a Notary Public in and for the State and County aforesaid, hereby certify that Sara R. Parks, whose name as Land Supervisor of Alabama Power Company, an Alabama corporation, is signed to the foregoing Encroachment Agreement and who is known to me or has produced sufficient identification to me, acknowledged before me on this day that, being informed of the contents of the foregoing Encroachment Agreement, she, as such officer and with full authority, did execute the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 8<sup>th</sup> day of July, 2009.

Kimberly K. Ellis  
Notary Public

My commission expires:

9/28/09  
[Notary Seal]

**FEE OWNER:**

**GEORGIA CROWN DISTRIBUTING CO.  
d/b/a Alabama Crown Distributing Co., Inc.**

By: [Signature]  
Name: DONALD M. LEEBERN, III  
Title: PRESIDENT

STATE OF GEORGIA

COUNTY OF MUSCOGEE

I, JOHN M. TANZINE, III, a Notary Public in and for the State and County aforesaid, hereby certify that DONALD M. LEEBERN, III, whose name as PRESIDENT of Georgia Crown Distributing Co., a Georgia corporation doing business in Alabama as Alabama Crown Distributing Co., Inc., is signed to the foregoing Encroachment Agreement and who is known to me or has produced sufficient identification to me, acknowledged before me on this day that, being informed of the contents of the foregoing Encroachment Agreement, he, as such officer and with full authority, did execute the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 29<sup>th</sup> day of JUNE, 2009.

[Signature]  
Notary Public

My commission expires: 10/26/2011

[Notary Seal]





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Shelby Cnty Judge of Probate, AL  
07/22/2009 08:26:47 AM FILED/CERT

**Exhibit “A”**

**Drawing AX-190-1489-001**

**[see attached]**



