

CHILTON COUNTY, AL
 Judge ROBERT M MARTIN
 Filed/cert 09/21/2018 9:45AM
 DEED TAX 1

217371

20180926000343870 1/12 \$49.00
 Shelby Cnty Judge of Probate, AL
 09/26/2018 02:26:12 PM FILED/CERT

TOTAL 51.25
 12 Pages
 TYPE: R BOOK:2018 PAGE:217371

**THIS INSTRUMENT PREPARED BY
 RODNEY MANASCO, PLS
 VOLKERT, INC.
 1110 MONTLIMAR DR., SUITE 545
 MOBILE, ALABAMA 36609**

STATE OF ALABAMA)

Project No. BR-0145 (504)

PROJ NO SAM-2016-01252-APW

COUNTIES OF CHILTON & SHELBY)

Tract No.9, Parcels 1 and 2

RIGHT OF WAY FOR PERMANENT EASEMENT

THIS EASEMENT AGREEMENT (hereinafter referred to as "Agreement") made and entered into as of the 4TH day of September, 2018 by and between ALABAMA POWER COMPANY, a corporation, hereinafter sometimes referred to as the Grantor, and STATE OF ALABAMA, hereinafter sometimes referred to as the Grantee.

WITNESSETH:

WHEREAS, Grantor has acquired and owns certain lands and interest in lands in, on, and adjacent to the Coosa River which lie within the project boundary of Lay Reservoir (the "FERC Project Lands and Waters"), and Grantor is subject to the Coosa License issued by the Federal Energy Regulatory Commission ("FERC") for the Coosa River Project, FERC No. 2146; and

WHEREAS, within the FERC Project Lands and Waters, Grantor has acquired and owns certain lands and interest in lands located in the SW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 20, Township 24 North, Range 15 East, in Shelby and Chilton County, Alabama, more particularly described below and depicted in Exhibit A (referred to herein as "Grantor's Property"); and

WHEREAS, Grantee owns a certain bridge on SR 145 over Waxahatchee Creek, which is located within Grantor's Property and the FERC Project Lands and Waters (the "SR 145 Bridge"); and

WHEREAS, Grantee desires to construct a new, and to remove the old, SR 145 Bridge, generally referred to as Alabama Department of Transportation Project No. BR-0145(504) (the "ALDOT Project"); and

WHEREAS, Grantee desires to acquire from Grantor an easement and right of way on, over, and across a portion of Grantor's Property in order to construct, operate, and maintain the ALDOT Project, including such rights to enter, grade, level, fill, drain, pave and build a road or highway, bridges, culverts, ramps, and cuts as may be necessary ("Project Easement"); and

WHEREAS, Grantor is willing to grant, subject to the conditions set forth herein, the Project Easement on Grantor's Property.

JACKSON

NOW, THEREFORE, in consideration of the premises, and of the covenants and agreements of the Grantee as hereinafter set out, and in further consideration of the sum of Eight Thousand and No/Dollars (\$8,000.00) in hand paid to the Grantor by the Grantee, receipt of which is hereby acknowledged, the Grantor does hereby grant the Project Easement, to the extent of its interest, and subject to its flood rights, unto the Grantee, its successors and assigns, upon Grantor's Property described as follows:

A part of the SW ¼ of SE ¼, Section 20, Township 24 North, Range 15 East, identified as Tract No. 9 on Project No. BR-0145 (504) in Shelby and Chilton County, Alabama and being more fully described as follows:

PE 1 of 2:

Commencing at a right of way monument located on the East present R/W line of SR-145 (said point is perpendicular to project centerline at station 100+09.82 RT);

thence N27°33'00"E along said East present R/W line of SR-145 a distance of 1224.33 feet to a point on the acquired R/W line (said point perpendicular to project centerline at station 112+40.28 RT);

thence N64°19'54"E along the acquired R/W line a distance of 159.89 feet to a point on the acquired R/W line (said point is offset 170.00 feet right of and perpendicular to project centerline at station 113+70.00);

thence N26°02'36"E along the acquired R/W line a distance of 226.13 feet to a point on the acquired R/W line (said point is offset 160.00 feet right of and perpendicular to project centerline at P.T. station 115+90.01);

thence N27°33'04"E along the acquired R/W line a distance of 256.94 feet to a point on the grantor's property line and the **Point of Beginning**;


thence N52°57'06"W along the grantor's property line a distance of 16.03 feet to a point on the grantor's property line;

thence N63°23'11"W along the grantor's property line a distance of 59.24 feet to a point on the grantor's property line;

thence N57°24'32"W along the grantor's property line a distance of 14.78 feet to a point on the East present R/W line of SR-145;

thence N27°33'00"E along the East present R/W line of SR-145 a distance of 369.04 feet to a point on the grantor's property line;

thence S87°16'18 E along the grantor's property line a distance of 31.61 feet to a point on the grantor's property line;


20180926000343870 2/12 \$49.00
Shelby Cnty Judge of Probate, AL
09/26/2018 02:26:12 PM FILED/CERT

thence S79°55'46"E along the grantor's property line a distance of 33.29 feet to a point on the grantor's property line;

thence S87°30'56"E along the grantor's property line a distance of 32.37 feet to a point on the acquired R/W line (said line is offset 160.00 feet right of parallel to project centerline);

thence S27°33'04"W along the acquired R/W line a distance of 409.00 feet to the **Point of Beginning** of the property herein described, containing 0.80 acre(s), more or less.

PE 2 of 2:

Commencing at a right of way monument located on the East present R/W line of SR-145 (said point is located 3166.10 feet North of the intersection of said East present R/W line of SR-145 and the centerline of Waxahatchee Creek);

thence S27°33'00"W along the East present R/W line of SR-145 a distance of 2110.59 feet to a point on the acquired R/W line (said point ties to said East present R/W line of SR-145 right of project centerline and perpendicular at station 130+83.00 RT);

thence S62°27'00"E along the acquired R/W line a distance of 21.56 feet, more or less, to a point on the acquired R/W line (said point is offset 122.00 feet right of and perpendicular to project centerline at station 130+81.31);

thence S07°46'06"W along the acquired R/W line a distance of 144.17 feet, more or less, to a point on the acquired R/W line (said point is offset 160.00 feet right of and perpendicular to project centerline at P.T. station 129+42.24);

thence along the acquired R/W line and along an arc 308.10 feet to the right, having a radius of 6300.01 feet, the chord of which is S24°27'07"W a distance of 308.07 feet to a point on the acquired R/W line (said point also on the grantor's property line) and the **Point of Beginning**;

thence along the acquired R/W line and along an arc 87.69 feet to the right, having a radius of 6300.01 feet, the chord of which is S26°15'06"W turning to the right a distance of 87.69 feet to a point on the grantor's property line;

thence N10°48'58"W along the grantor's property line a distance of 46.36 feet to a point on the grantor's property line;

thence N02°32'35"W along the grantor's property line a distance of 54.37 feet to a point on the grantor's property line;

thence N29°43'44"W along the grantor's property line a distance of 39.17 feet to a point on the East present R/W line of SR-145;



20180926000343870 3/12 \$49.00
Shelby Cnty Judge of Probate, AL
09/26/2018 02:26:12 PM FILED/CERT

thence N 27°33'00" E along the East present R/W line of SR-145 a distance of 39.92 feet to a point on the grantor's property line;

thence S29°18'12"E along the grantor's property line a distance of 103.92 feet to the **Point of Beginning** of the property herein described, containing 0.11 acre(s), more or less.

And as shown on the right of way map of record in the State of Alabama Department of Transportation a copy of which is also deposited in the office of the Judge of Probate as an aid to persons and entities interested therein and as shown on the Property Sketch attached hereto and made a part hereof.

The easement granted herein is subject to the following terms and conditions:

1. Grantor is entering into this easement-agreement on its understanding that no public official or public employee (or their family members) will be compensated by or otherwise receive personal gain or financial benefit from the easement agreement. Grantee is responsible for verifying that the request for and acceptance of this easement agreement is in compliance with the applicable federal, state and local ethics laws.

2. Grantee acknowledges that Grantor is entering into this easement agreement based on its understanding that no public official or public employee (or their family members) will be compensated by or otherwise receive personal gain or financial benefit from the easement agreement. In accepting this easement agreement, Grantee confirms that no such individuals will be compensated by or receive personal gain or financial benefit as a result of this easement agreement. Grantee understands that it is responsible for verifying that the request for an acceptance of this easement agreement is in compliance with the applicable federal, state and local ethics laws.

3. Except for the easement purposes expressly permitted herein, Grantee shall make no other use of Grantor's Property without first obtaining the specific written consent of Grantor.

4. The Project Easement herein granted is made subject to all matters of record and all easements and rights-of-way for roads or other public utilities which are now located on the right-of-way herein granted, and there is excepted from this grant the facilities, lines, and appurtenances attached hereto.

5. The rights herein granted are subject to the provisions, terms, and conditions and for the duration of the license for the Coosa River Project, FERC No. 2146, issued to the Grantor by the Federal Power Commission, now the Federal Energy Regulatory Commission ("FERC"), with an effective issuance date of June 1, 2013, as subsequently modified and amended, and as it may be further reviewed, extended, or amended, as described in the records of FERC for the construction, operation, and maintenance of the Lay Dam Reservoir and hydroelectric plant, and other upstream and downstream projects included within the FERC license for the Coosa River Project, and the provisions, terms, conditions, and time duration of any new or modified license

including any authorization of flooding to higher elevations, as may be issued by FERC, or any successor governmental authority, to Grantor due to the expiration of Grantor's existing license or otherwise (the "License"). In addition, the rights herein are subject to the requirements of any laws, rules, regulations, or ordinances of any federal, state, or local governments, agency, or other authority having jurisdiction over the FERC Project Lands and Waters.

6. In the event the said ALDOT Project, as constructed, maintained, and operated hereunder, shall interfere with, or become subject to damage by, the full enjoyment by the Grantor of any uses of said property (i) in connection with the construction, operation, and maintenance of the Lay Dam Reservoir and hydroelectric plant for the purpose of the production or transmission of electricity, or (ii) as may be required in connection with the maintenance by Grantor of the License, including, in either case and without limitation, flooding to higher elevations, or (iii) related existing structures or facilities of Grantor, including, but not limited to substation facilities, private roads, towers, poles, guy wires, conductors, cross arms, counterpoise conductors, or anchors, Grantee agrees to protect, modify, or otherwise alter said ALDOT Project at no expense to the Grantor. The Grantor shall be the sole judge as to what constitutes such interference but agrees to discuss with Grantee the nature of the interference and possible means for eliminating it.

7. The right to use the land and waters, which is the subject of this conveyance, for all purposes of FERC Project License Number 2146, is hereby expressly reserved to the Grantor, its successors, and assigns, including but not limited to, Grantor's flood rights up to the 397 contour of Lay Dam Reservoir.

8. Grantee is informed and understands that in the operation of Grantor's business there will be fluctuations in the level of the water on the lands involved in this agreement. It is understood and agreed that the rights of Grantee hereunder shall be subject at all times to the paramount right of the Grantor, its successors and assigns, to raise and lower the waters of the Coosa River or any extension of such waters from time to time in the operations of its dam or dams and works, whether upstream or downstream from said lands, and to flood such lands and any other lands owned by it or which it has the right to flood permanently or from time to time, and the Grantor shall not be liable for damages of any nature whatsoever which may result directly or indirectly from such flooding to any elevation, or by reason of the maintenance or operations of its said dam or dams and works.

9. By acceptance of the easement granted herein, Grantee agrees for itself and for its successors and assigns that Grantor shall be relieved and held harmless by Grantee, its successors and assigns, from and against any damages caused to Grantee's bridge, or to any of Grantee's real or personal property, located on the land of Grantor, which results from flooding caused by Grantor, or by Grantor's successors or assigns, to any elevation so long as such damages arise out of the maintenance and operation of the Grantor's hydroelectric projects.

10. The said ALDOT Project shall be constructed, operated, and maintained in accordance with the adopted procedure of well regulated businesses and undertakings of the same or similar kind, and in such manner as not to be in conflict with, or cause the facilities of the Grantor or its successors, lessees, licensees, and assigns to be in conflict with, the specifications now or hereafter prescribed by any environmental, health, safety or other laws, rules, regulations,

or ordinances of any federal, state, or local government, agency, or other authority having jurisdiction over the Project Easement or the FERC Project Lands and Waters and Grantee shall be responsible for requesting and receiving, or causing to be received, any and all permits, approvals or authorization under said laws or regulations. Further, to the extent allowed by law, Grantee shall indemnify, protect, defend, and hold Grantor harmless from any and all claims, loss, damage, expense, and liability which Grantor may incur, suffer, sustain, or be subject to, resulting from or arising out of any such conflict with any such laws, rules, regulations, or ordinances.

11. Grantee shall take all necessary precautions during the construction, operation, and maintenance of the Project Easement to protect FERC Project Lands and Waters from siltation and every form of pollution. Grantee shall take all necessary precautions during the construction, operation, and maintenance of the Project Easement to protect the present scenic, recreational, and environmental values of any affected FERC Project Lands and Waters. Specifically, but in no way in limitation of the foregoing, during and following dredge and fill operations and the construction, operation, and maintenance of the Project Easement, all practical measures shall be taken, including rip rapping, mulching, and seeding with a permanent ground cover and/or planting of trees and shrubs, and other measures to maintain proper Best Management Practices (BMPs) for preventing the introduction of silt into the Lay Dam Reservoir and to control erosion and sedimentation. Grantor agrees to discuss with Grantee any conditions requiring corrective action, possible means to accomplish said corrective actions, and Grantee shall take reasonable steps to promptly correct the same.

12. To the extent allowed by law, Grantee will at all times hereinafter indemnify, protect and save Grantor harmless from any and all claims, loss, damage, expense and liability which Grantor may incur, suffer, sustain or be subject to resulting from or arising out of the construction, operation, maintenance, repair and/or removal of the ALDOT Project upon the license herein granted; provided, further, that Grantee shall indemnify and save Grantor harmless against such claims, loss, damage, expense and liability to the extent the same may be caused by Grantor, its successors or assigns, acts of negligence, sole or concurrent, or that of its employees or agents so long as such claim or loss involves in any way work of the Grantee, its contractors, agents or employees, in the construction, operation, maintenance or presence of the ALDOT Project.

13. To the extent allowed by law, it is agreed that any obligation hereunder relating to indemnity or the payment of expenses by Grantee incurred prior to the termination of this indenture shall survive any termination of this indenture.

14. This easement shall be construed in its entirety according to its plain meaning. The parties agree that this easement has been drafted through the course of negotiation by the parties.

15. Grantor expressly reserves the right of ingress and egress across Grantor's Property and Grantor further reserves from any use by Grantee, all existing electric transmission lines, related facilities, and rights-of-way therefore which are located on Grantor's Property. Grantor also reserves the right to construct, operate, and maintain additional lines, towers, and appliances as may become necessary or desirable in the future, without compensation to the Grantee, together with rights-of-way therefore and the right to grant to others the right to use such rights-of-way,

and to use in the future existing rights-of-way for the construction, maintenance, and operation of such facilities as the Grantor desires in connection with its operations, so long as the new facilities do not unreasonably interfere with the Project Easement.

16. During construction, operation and maintenance within the Project Easement, Grantee shall take, or cause to be taken, such measures, and shall install or cause to be installed such safety procedures and devices, as may be helpful, useful, or necessary to ensure the safety of the public using the FERC Project Lands and Waters.

17. The Grantee shall not use the easement herein granted in any manner so as to endanger health, create a nuisance, or otherwise be incompatible with the overall recreational use of the Reservoir, or as specified at any time in connection with FERC Project Number 2146, nor shall Grantee unduly restrict public access to the Lay Dam Reservoir.

18. Grantee promptly shall notify the Grantor of any unusual or hazardous conditions relating to the construction, maintenance, or existence of the Project Easement.

19. Upon completion of construction within the Project Easement, Grantee shall remove or cause to be removed all equipment used and all debris and refuse resulting from or related to said work and shall leave the premises in a condition satisfactory to Grantor.

20. Grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on land of Grantor will occur in a manner that will protect the scenic, recreational, and environmental values of the project. It is understood and agreed that the Project Easement granted by the Grantor to the Grantee is granted for the uses set forth herein only and, should the Project Easement be abandoned or cease to be used for such purposes for a period of one hundred eighty (180) days, this grant and consent shall terminate forthwith and all rights, title, and interest granted hereby shall revert to and become the property of the Grantor, its successors, and assigns.

21. In the event of a breach by Grantee of any covenant contained herein and such breach remains uncorrected for thirty (30) days after notice of such breach has been given to Grantee by Grantor or such additional period as Grantor may agree to in writing, this Agreement shall, at Grantor's option, be terminated forthwith.

22. In the event of the termination of this Agreement for any reason permitted hereunder, the Grantor shall have the right to require Grantee, at Grantee's expense, to remove improvements and any other properties, both real and personal, that have been placed on Grantor's Property within three hundred sixty-five (365) days after date of such termination, or some earlier time period in the event removal is mandated by any state or federal controlling authority. In the event that Grantee shall fail to remove such properties as aforesaid, Grantor may remove the same and Grantee shall forthwith reimburse Grantor for all costs and expenses of any kind associated therewith.

23. Grantee, in the construction and maintenance of the Bridge shall not deposit or place any spoil closer than 25 feet to any Grantor roads, substation facilities, poles, towers,

structures, and/or guy wires located on any of the lands of Grantor, and no spoil shall be placed at any location that will reduce the present conductor clearances underneath any Grantor facilities.

24. Grantor reserves unto itself, its successors and assigns, the right to construct, operate and maintain on the lands of Grantor, lines and poles and towers and appliances helpful, useful or necessary for the transmission of electric power as may become desirable in the future, without compensation to the Grantee, and the right to permit other corporations, entities, firms and persons to attach wires to said poles and towers.

25. Grantee's works shall be constructed, maintained, and operated at all times so as not to interfere with navigation on or over the Coosa River at no expense to Grantor.

26. Grantee shall take all necessary precautions during construction and subsequent operation and maintenance of the Easement to protect and enhance the environmental values of any affected FERC Project Lands and Waters.

27. Grantee shall at all times comply with and cause its contractors to comply with the provisions of ALA. CODE §§ 37-8-52 to -55. Grantor will provide Grantee information regarding compliance with the above provisions.

28. If any term of this Easement, to any extent, shall be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected hereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

29. The agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and supersedes any other agreements, written or oral, between the parties concerning such subject matter.

30. To the extent allowed by law, in the event of a breach of any term, covenant, restriction or condition of the Easement by Grantee, Grantor shall have, in addition to the right to collect damages, the right to enjoin such breach or threatened breach in a court of competent jurisdiction.

31. Consistent with consultations provided by the United States Department of the Interior Fish and Wildlife Service (USFWS), maps provided show construction may occur within wooded areas adjacent to the present SR-145 road and the bridge at issue could be suitable summer habitat for the *Myotis* species of bats, including Indiana, northern long-eared, and gray bats. Accordingly, any tree clearing associated with this Project Easement shall be conducted solely between October 15 and March 31 so as to avoid adverse effects upon the same. Additionally, existing structures shall not be removed between November 1 through March 31 of any given year.

32. Consultations provided by the Department of the Army Corps of Engineers (DA) issued a Nationwide Permit (NWP) to Alabama Department of Transportation (ALDOT) for the discharge of fill material into jurisdictional waters of the U. S., regulated under Section 404 of the Clean Water Act. Specifically, this project involves replacing an existing structurally deficient bridge with a 540-foot-long by 46.5-foot-wide pre-stressed concrete girder bridge. This will

require six, 6-foot-diameter concrete posts (170 square feet) and the filling and grading of 0.25 acres of wetlands for embankment. This request is authorized by NWP 23 for Categorical exclusions (Federal Register, January 6, 2017 Vol. 82, No. 4). In order for this NWP authorization to be valid, the work must be performed in accordance with the General Conditions of NWP 23 and the Section 401 Water Quality Certification for the Nationwide Permits, which can be viewed at www.sam.usace.arm.mil/Missions/Regulatory.aspx.

33. Where notices are provided for herein, such notices shall be conclusively deemed given when posted in the United States mail, addressed as follows:

Notice to Grantor:

Alabama Power Company
Corporate Real Estate
P. O. Box 2641
Birmingham, AL 35291

Notice to Grantee:

State of Alabama
Alabama Dept. of Transportation
P.O. Box 303050
Montgomery, AL 36130

TO HAVE AND TO HOLD UNTO the Grantee, its successors and assigns, forever, subject to the reservations and conditions herein stated.

IN WITNESS WHEREOF, Alabama Power Company has caused this instrument to be executed in its name by Angie B. Noel, its Land Manager, and the STATE OF ALABAMA, being duly authorized thereto.

CHILTON COUNTY, AL
Judge ROBERT M MARTIN
Filed/cert 09/21/2018 9:45AM
DEED TAX 1

217371

TOTAL 51.25
12 Pages
TYPE: R BOOK:2018 PAGE:217371

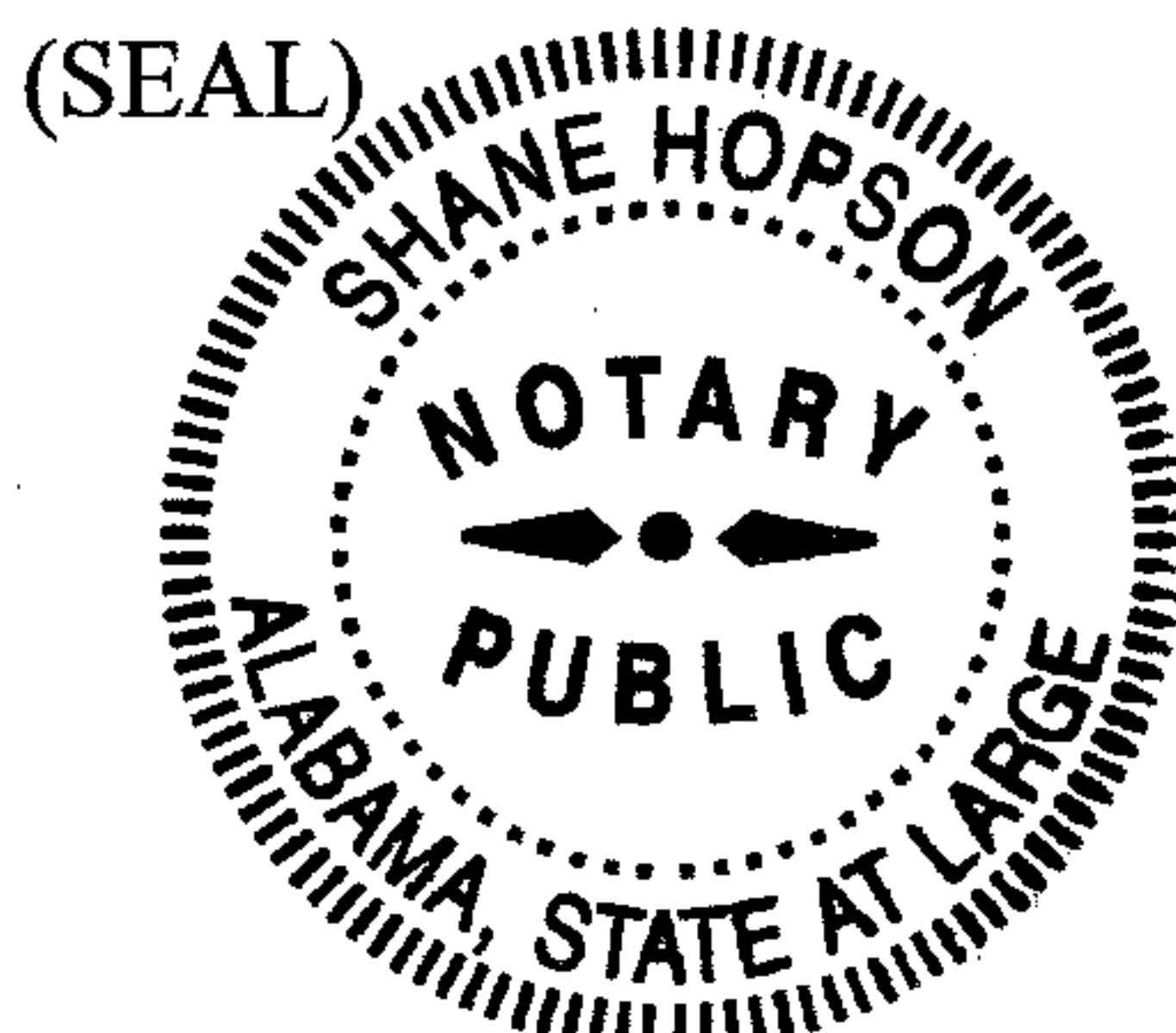
ALABAMA POWER COMPANY

By Angie B Noel
Its: Land Manager of Corporate Real Estate

STATE OF ALABAMA)
COUNTY OF JEFFERSON)

I, the undersigned, a Notary Public, in and for said County in said State, hereby certify that Angie B. Noel, whose name as Land Manager 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 this instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand and official seal, this the 10th day of AUGUST, 2018.



[Signature]
Notary Public
My commission expires: 9/15/19

TERMS ACCEPTED:

STATE OF ALABAMA

By *John R. Cooper*
Its Transportation Director

Approved as to form:

William F. Patten RP
Chief Counsel, ALDOT

STATE OF ALABAMA
COUNTY OF

) *State at Large*

I, *Linnea B. Austin*, a Notary Public, in and for said county and State hereby certify that *John R. Cooper*, whose name as *Transportation Director* of the STATE OF ALABAMA, 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 this instrument, _____, with full authority, executed the same voluntarily for and as the act of said State of Alabama.

Given under my hand and official seal this the *4th* day of *September*, 2018.

(SEAL)

Linnea B. Austin
Notary Public
My Commission expires: _____

MY COMMISSION EXPIRES AUGUST 31, 2019


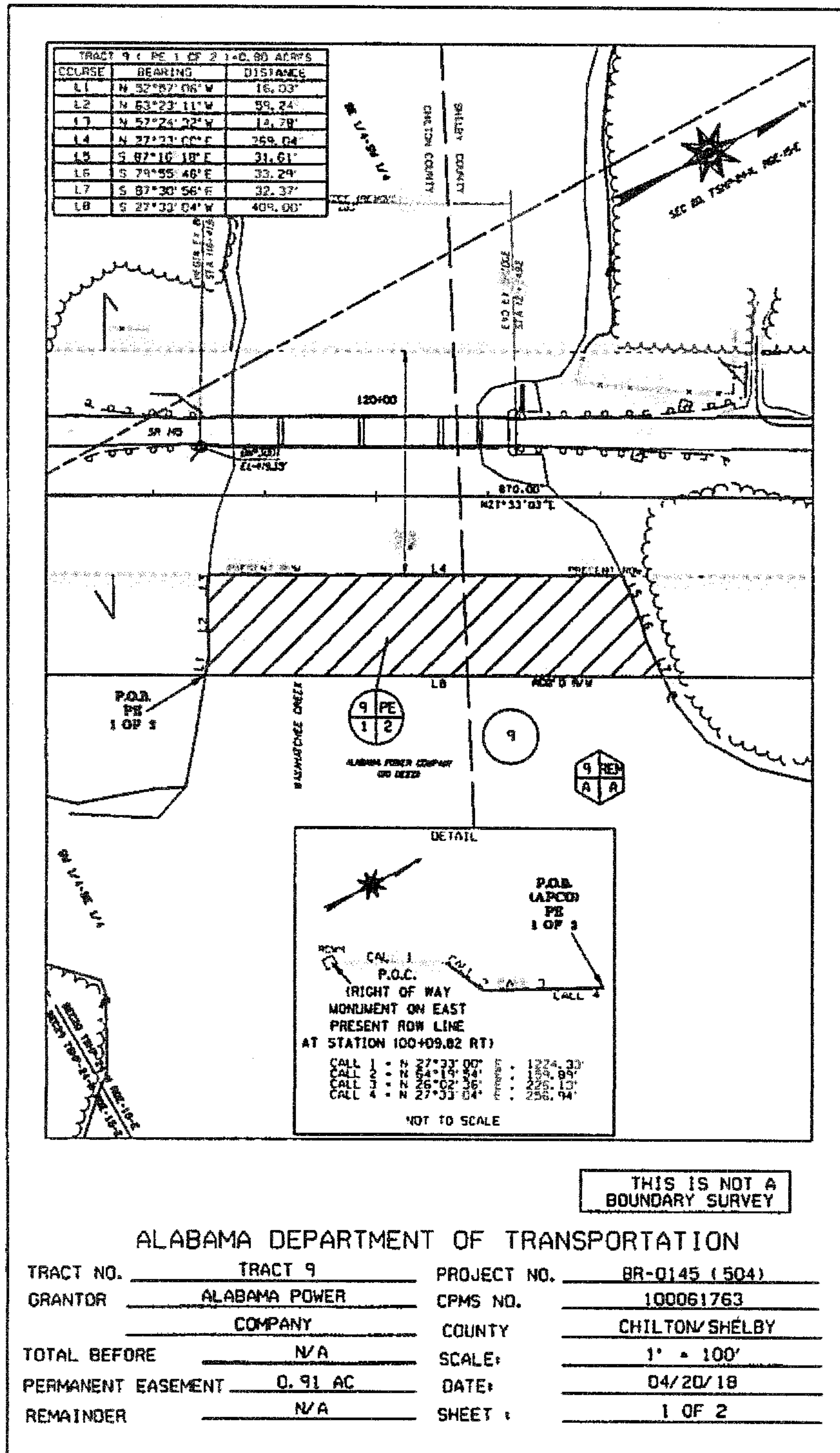
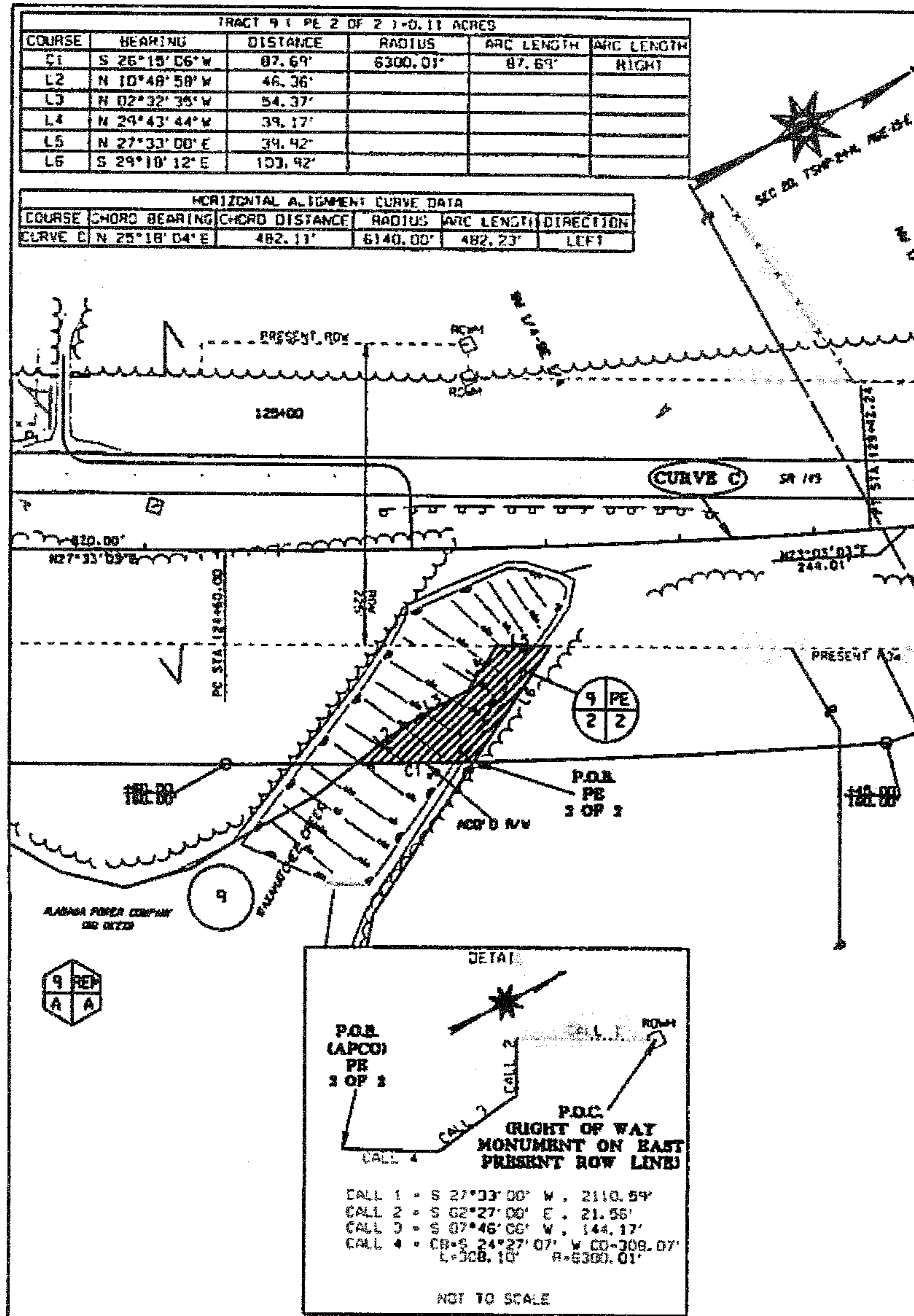

20180926000343870 10/12 \$49.00
Shelby Cnty Judge of Probate, AL
09/26/2018 02:26:12 PM FILED/CERT

EXHIBIT A





THIS IS NOT A
BOUNDARY SURVEY

ALABAMA DEPARTMENT OF TRANSPORTATION

TRACT NO.	TRACT 9	PROJECT NO.	BR-0145 (504)
GRANTOR	ALABAMA POWER	CPMS NO.	100061763
	COMPANY	COUNTY	SHELBY
TOTAL BEFORE	N/A	SCALE:	1" = 100'
PERMANENT EASEMENT	0.91 AC	DATE:	04/20/18
REMAINDER	N/A	SHEET :	2 OF 2