

ALABAMA POWER COMPANY, )  
 )  
 Applicant, )  
 )  
 V. )  
 )  
 LEON WILDBERGER and )  
 )  
 EVELYN WILDBERGER )  
 )  
 Defendants. )  
 )  
 IN THE CIRCUIT COURT OF  
 BALDWIN COUNTY, ALABAMA  
 CIVIL ACTION NO. \_\_\_\_\_

APPLICANT ALABAMA POWER COMPANY'S  
WRITTEN REQUESTED CHARGES TO THE JURY

Comes now the applicant, Alabama Power Company,  
and moves the Court to give the following written requested  
charges to the jury:

1. I charge you, ladies and gentlemen of the jury, that the landowners in this case have the right to use the land involved in the right of way condemned in any manner which does not interfere with the use of such land by Alabama Power Company for the purposes for which such land is condemned.

*Siven*  
*J. Fair J. Madlock*  
*Judge*

2. The Court charges you that the measure of damages and compensation to be awarded the landowners in this case is the fair market value of the strip of land actually taken for the right of way as of October 20, 1975, the date when the original application was filed in this case, and, in addition, the depreciation, if any, in the fair market value of the remaining adjacent lands belonging to the landowners.

*Siven*  
*J. Fair J. Madlock*  
*Judge*

3. In arriving at the depreciation, if any, in the fair market value of such remaining lands belonging to the landowners you may consider the right of the landowners to use the strip of land actually taken in any manner which does not interfere with the use of such strip by Alabama Power Company for the purposes for which such land is condemned.

*Siven*  
*J. Fair J. Madlock*  
*Judge*

4. The Court charges you that the term "market value" of lands, as used in this case, means the price that in all probability would result from fair negotiations where the seller is willing to sell and the buyer desires to buy.

*Given*  
*J. J. Maske*  
*Judge*

5. I charge you that the burden is on the landowners in this case not only to reasonably satisfy you that their lands adjacent to the right of way were damaged, but also to reasonably satisfy you as to the depreciation in the reasonable fair market value of such adjacent lands, and if the landowners fail to reasonably satisfy you as to the amount of such depreciation in value, then you must not award any damages for such adjacent lands.

*Refuse*  
*J. J. Maske*  
*Judge*

6. I charge you, ladies and gentlemen of the jury, that Alabama Power Company does not have the right to fence in the lands which are sought to be condemned for its transmission line.

*Given*  
*J. J. Maske*  
*Judge*

7. The Court charges you that all the evidence with respect to value which has gone before you in this case is opinion evidence and is not conclusive upon you, and that you have the right to look at such evidence in the light of your own common sense and may disregard it entirely if you find it not worthy of consideration.

Given  
Jeffery J. Madlock  
Judge

8. The Court charges you that Alabama Power Company in this case acquires only the right to use the lands sought to be appropriated for the purposes of building, operating and maintaining a transmission line across the lands sought to be condemned, and that the title to such lands remains in the defendants.

Given  
Jeffery J. Madlock  
Judge

9. The Court charges you that the landowners are not entitled to recover any damages on account of any fears prospective purchasers of remaining property adjacent to the right of way may have as to possible, fanciful or imaginary dangers resulting from the use of the transmission line on the property sought to be condemned.

Given  
Jeffery J. Madlock  
Judge

10. I charge you, ladies and gentlemen of the jury, that the landowners in this case have the right to cultivate the right of way in this case; to go across it and to use it generally in any way which does not interfere with the transmission line of the applicant.

*Given*  
*Telfair, Madison*  
*Judge*

11. I charge you that you cannot take into consideration as an element of damages in this case any speculative injury which might result at some future time on account of negligence on the part of Alabama Power Company in the operation of its transmission line.

*Given*  
*Telfair, Madison*  
*Judge*

12. I charge you that in estimating the damages to which the landowners in this case are entitled, you must not speculate as to the value the land might have at some time in the future and must give only such damages as are ascertainable as of October 20, 1975, the date of the filing of the original application for condemnation by Alabama Power Company.

*Refused*  
*Telfair, Madison*  
*Judge*

13. I charge you ladies and gentlemen not to consider any element of value based upon those possible and imaginary uses of the landowners' land which are mere speculative claims.

*Given*  
*Jefair J. Madburn*  
*Judge*

14. I charge you that if you find that the testimony about the use of the property as an amusement park is mere speculation about a use to which the property may be put in the future, and not an element of its market value as of October 20, 1975, then you should not consider it in arriving at the compensation due the landowners.

*Given*  
*Jefair J. Madburn*  
*Judge*

15. I charge you that the use of the subject property as an amusement park is a remote and speculative use and you therefore should not consider it in arriving at the compensation to which the landowners are entitled.

*Refused*  
*Jefair J. Madburn*  
*Judge*

16. I charge you that if you reasonably are satisfied from the evidence in this case that any witness has magnified or exaggerated the value of the land taken, or the damages to the land not taken, on account of his interest in the outcome of this action, or his prejudice, or want of knowledge or experience or truthfulness, then you have the right, and it is your duty, to disregard the evidence of such witness insofar as the same is unjustly magnified or unjustly increased, either as to the value of the land taken, or the damages to the property not taken.

*Given*  
*Jeffrey J. Markburn*  
*Judge*

17. I charge you, ladies and gentlemen of the jury, that if after considering all the evidence in this case you are reasonably satisfied that the part of the land not taken, is of equal or greater value than it was before the right of way was appropriated, then you are not to allow any damages for such remaining lands, but must confine your verdict to the compensation for the land actually taken.

*Given*  
*Jeffrey J. Markburn*  
*Judge*

J. B. BLACKBURN

BALCH, BINGHAM, BAKER, HAWTHORNE,  
WILLIAMS & WARD

*J. B. Blackburn*  
Attorney for Applicant,  
Alabama Power Company

*Stanley M. Brock*  
Attorneys for Applicant,  
Alabama Power Company